

# Review of the Balance of Competences between the United Kingdom and the European Union

## List of Evidence

### Environment and Climate Change

This document is a record of all of the evidence submitted to the Department for Environment, Food and Rural Affairs and the Department of Energy and Climate Change call for evidence on the environment and climate change.

A summary of this evidence can be found in the Environment and Climate Change Report at: [www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review](http://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review)

The Report is part of the UK Government's Review of the Balance of Competences between the United Kingdom and the European Union.

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## **AB Sugar**

AB Sugar is a business segment of Associated British Food plc (ABF) a diversified food, ingredients and retail group with 2012 sales of £12.3 billion and 106,000 employees in 47 countries. ABF has a primary relationship with the UK Government through the Strategic Relationship Management (SRM) initiative, for which its sponsor departments are DEFRA, BIS and UKTI.

AB Sugar produces cane and beet sugar plus a wide range of associated products in 9 countries worldwide. It has invested £1.6 billion since 2005, of which over £340 million has been in Britain, much of which has been in renewable energy. The UK beet sugar industry is one of the most efficient sugar industries in Europe, makes an economic contribution of £1 billion/year and supports 13,000 jobs.

### **General comments**

EU and UK legislation We have highlighted where we believe the absence of EU legislation would have a significant effect on UK interests, and particularly where it would be necessary to enact replacement UK legislation to ‘fill the gap’.

Climate Change legislation. In relation specifically to Climate Change, we have ‘taken as read’ that the UK will remain signed-up to the Kyoto Protocol, whether this is independently or through the EU. A great deal of the legislation listed in the table accompanying the call for evidence emanates from the Kyoto Protocol, and we have therefore assumed that the UK would enact suitable/similar domestic legislation (such as the Climate Change Act) if this legislation did not come from the EU.

UK implementation of EU legislation. Any tendency to “gold plate” regulatory legislation coming from the EU can work to the disadvantage of UK competitiveness and investment, because it risks the imposition of harsher and more costly conditions on UK businesses than our competitors have to face. Implementation and transposition of EU Directives into UK legislation which goes beyond the original intentions of the Directive should therefore be avoided wherever possible, and should then only take place with clear justifications and an assessment of the implications (including competitiveness) for the UK economy.

Given the Government’s long-term strategic goals to promote investment and growth in the economy and to strengthen GDP, we would recommend an overriding principle that any new legislation (whether transposition of EU Directives or UK based legislation) should be assessed against these aims and wherever possible should contribute to their delivery. In any cases where the proposed introduction of new legislation could have negative consequences for investment and growth, this should be clearly disclosed and justified on the basis of the alternative benefits the proposed legislation would bring the UK economy or society.

Transparency. Wherever legislation is initiated, it is important that procedures are transparent and subject to consultation with stakeholders. Because of the complex nature of the EU legislative procedure, there is much that is not transparent and UK Government representatives have a duty of care to UK citizens to ensure that relevant information is made public in due time. This is equally important when the subject under scrutiny is not one that finds particular favour with the Government of the day.

Balance of Competences Reviews in other sectors. AB Sugar is also responding to the Trade and Investment and Transport reviews (Semester 2). In the latter case there is some overlap with this response. We will also be responding to the reviews on Agriculture and Energy in Semester 3 which we assume will deal with elements that are missing from this review – e.g. energy efficiency/CHP, security of food and energy supplies, 3rd Energy Package etc.

### **Advantages and disadvantages**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

#### **Answer:**

Directive 2008/28/EC – Promotion of the use of energy from renewable sources (Renewable Energy Directive); and Directive 98/70 as amended – quality of petrol and diesel fuels (Fuel Quality Directive)

#### Transport

AB Sugar has invested some £200 million in 2 plants in East Anglia and Humberside to produce 500 million litres annually of low carbon renewable fuel, bioethanol. These investments support over 1,000 jobs in remote or disadvantaged regions of England. The Renewable Energy Directive (RED) sets a mandatory target for the transport sector of 10% by energy to come from renewable sources by 2020. The EU's initiative to set mandatory targets and sustainability requirements under the RED has underpinned over £1 billion of investment in the UK biofuels industry, supporting 3,500 jobs. These investments are also currently some of the few UK sources of low carbon fuel to contribute to the decarbonisation of the UK transport sector which currently accounts for about 25% of the UK's carbon emissions.

Given the scale of AB Sugar's bioethanol investments, in the event that the RED and the FQD ceased to apply in the UK, equivalent UK legislation would be needed to:

- contribute to the UK's efforts under the Kyoto Protocol and the UK Climate Change Act
- underpin our investments in renewable energy



- secure UK jobs
- ii. disadvantaged the UK / your sector?

**Answer:**

Directive 2003/87/EC - establishing the EUETS scheme

The current EU Emissions Trading Scheme (EU ETS) replaced a well-designed UK scheme. AB Sugar participates in EU ETS, and is therefore familiar with the scheme and its operating rules. Our experience is that the monitoring and reporting guidelines as set out in Commission Decision 2007/589/EC are excessive and burdensome. Specifically the requirement to purchase and use specialist measurement equipment, such as gas meters and chromatographs, rather than using information collected by our fuel suppliers to demonstrate compliance, adds operating costs of a minimum of £50,000 per year. This undermines UK competitiveness and so goes against our proposed 'economic growth and investment' principle outlined in the introduction.

Commission Regulation 920/2010 – establishment of a system of registries

The UK devised and implemented an effective registry system compliant with the original regulation, developed with the help of some excellent software. The UK Government even licensed this registry to other Member States. Subsequently the Commission decided to create an EU system of registries, making the UK registry obsolete. The investment made in the UK system was therefore unfortunately wasted.

Council Directive 91/676/EEC – establishing nitrate vulnerable zones (Nitrates Directive)

British Sugar (the UK operating company of AB Sugar) purchases 7.5 million tonnes of sugar beet per year mainly in Eastern England, much of which is grown in Nitrate Vulnerable Zones. As with all regulatory controls the Nitrates Directive inevitably imposes additional costs on the industry. It is therefore important that the Directive is applied consistently across the EU to prevent the UK beet sugar industry being placed at a competitive disadvantage, as well as to ensure equivalent standards are implemented across the EU.

As we stated in the introduction, as a generalisation we recommend the UK avoids excessive transposition/implementation of EU Directives as this could undermine our UK goals for competitiveness, investment and growth.

See also Answer to Q3 below.

Directive 2000/60/EC – Water Framework Directive

British Sugar operates 4 manufacturing sites in Eastern England. The process of making sugar from sugar beet entails both the abstraction of water from, and the return of water to, local water courses. The water abstraction and discharge licences which govern this are agreed and monitored by the Environment Agency, and strictly enforced by British Sugar

manufacturing sites. As the implementation conditions attached to the licences are vital for the effective operation of our manufacturing sites it is important they are managed in careful consultation with our local sites and that a reasonable level of flexibility is applied where appropriate.

#### Directives 2001/80/EC - Large Combustion Plants Directive (LCPD), and 2010/75/EU - Directive on Industrial Emissions (IED)

We are currently drawing up plans to ensure that our own on site combustion activities will be compliant with the LCPD and IED, but we are not yet in a position to disclose the costs we will have to incur. However, we believe they will be substantial.

Implementation of the LCPD and IED will restrict the operation, or even force the closure, of certain UK electricity generation plants. This will have the effect of depleting the UK's electricity generation capacity so increasing the risk and likelihood of 'black-outs/brown-outs' after 2015/16. The cost of electricity for consumers will also increase. At the UK national level this is worrying, as it would reduce our international competitiveness as well as being extremely disruptive for the manufacturing sector and for consumers.

#### Regulation 1907/2006 – the registration of chemicals (REACH regulation)

Our experience is that the application of this regulation over burdensome. We therefore recommend more flexibility is allowed for Member States when interpreting it.

#### Directive 98/8/EC – Placing of biocidal products on the market

We are aware of a risk that ethanol could be classified under the forthcoming Biocidal Product Regulations if proposals at a very early stage within the EU are agreed. We would ask the UK to oppose such a regulation which would place unnecessary burden and cost on the industry.

#### Directive 2009/128/EC – Framework for the sustainable use of pesticides

See below.

#### Regulation 1107/2009 Placing of plant protection products on the market

Appropriate use of plant protection products is essential to support the production of high quality affordable food products, and to ensure our UK agri-food sector is efficient and competitive. These products also help to underpin the EU's and UK's food security goals.

We fully accept that plant protection products should be properly regulated to guarantee consumer safety and protect the environment. However it is essential that this regulation is carried out using sound science and as part of a balanced risk assessment process. The UK Government is sensitive to the role these products play in food production, and normally takes a pragmatic approach to their regulation – which we welcome. A recent example of this was when the UK voted against the Commission's proposal to impose a unilateral ban

on 'neonicotinoid' plant protection products, and to continue to oppose such a ban without justification and in the absence of a proper risk assessment. In this case the UK National interest would have been better served by the UK approach. The same approach must be taken when considering the regulation of other plant protection products.

#### Directive 2008/98/EC – Waste Framework Directive

The way the UK has chosen to implement this Directive in relation to the development of Anaerobic Digestion plants in the UK leaves UK operators at a competitive disadvantage.

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

2. 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?)

#### **Answer:**

See answer to Q1 i

ii. currently made at another level were instead made at EU level?

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

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

#### **Answer:**

As a general principle, it is vital that the UK should not be left at a competitive disadvantage by the imposition of more onerous standards than are faced by our competitors. Standards set at an EU level should be consistently applied and enforced across Member States, and should not be disproportionate. The UK should ensure on a case by case basis that when implementing EU Directives they do not go beyond the levels adopted by our competitors. Specific examples:

#### Directive 2008/28/EC – Promotion of the use of energy from renewable sources (Renewable Energy Directive)

Our experience is that the mandatory standards of the Directive, including sustainability standards, are consistently applied across the EU. This is greatly helped by the establishment of a regulators "club", REFUREC.

Council Directive 91/676/EEC – establishing nitrate vulnerable zones (Nitrates Directive) As with all regulatory controls the Nitrates Directive inevitably imposes additional costs on the agricultural and food industries. It is therefore important that the Directive is applied

consistently across the EU to prevent UK industries including the beet sugar industry, being placed at a competitive disadvantage, as well as to ensure equivalent standards are implemented across the EU.

#### Directive 2008/1/EC – Integrated Pollution Prevention and Control Directive (IPPC)

All 4 British Sugar operating sites are regulated under the IPPC Directive, guided by the Best Available Technology Reference (BREF) documents. The common application of the BREF documents is essential to avoid the distortion of competition across Member States.

4. 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?

#### **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

- i. focused on outcomes (results)?
- ii. based on an assessment of risk and scientific evidence?

#### **Answer:**

Directive 2008/28/EC – Promotion of the use of energy from renewable sources (Renewable Energy Directive); and Directive 98/70 as amended – quality of petrol and diesel fuels (Fuel Quality Directive)

The European institutions are currently considering a Commission proposal to amend these 2 Directives in such a way as to take account of greenhouse gas emissions caused by indirect land use change (ILUC). While a number of studies have been commissioned by the European Commission and other bodies, the burden of the science so far provides an insufficiently robust basis for legislation. There is a risk that the final decision on this proposal will impose unjustified and excessive constraints on the new biofuels industry, for example by introducing a retrospective cap on their use, which would effectively reduce the size of the available market. This would penalise our recent renewable energy investments and would damage investor confidence for the future.

An inappropriate and excessive ILUC outcome would therefore have a negative effect on the UK economy and on its climate change goals.

#### **Doing things differently**

6. 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?)

7. How far do you think the UK might benefit from the EU taking:

- i. More action on the environment/climate change?
- ii. Less action on the environment/climate change?

**Answer:**

See the answer to Q 10 a.

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

**Answer:**

Council Directive 2003/96/EC – taxation of energy products and electricity

The UK does not apply road fuel duty on the basis of energy content, but rather on the basis of volume. AB Sugar has invested in two bioethanol plants in the UK which between them at full capacity will supply just under 500 million litres of renewable fuel annually for blending into fossil petrol/gasoline. As ethanol has a lower energy content than petrol, by taxing all fuel on a volume basis the UK Government is putting UK bioethanol producers at a significant disadvantage, not only compared to fossil fuel, but also compared to EU competitors whose Governments tax fuel on an energy basis as required by the Directive. Currently the bioethanol supplied by AB Sugar investments is paying an additional duty of just under £100 million more than it would if the duty were applied on an energy basis.<sup>1</sup> For bioethanol which delivers over 50% savings on carbon emission this additional tax is both discriminatory and perverse. The UK should apply fuel duty on bioethanol on an energy basis as set out in the Directive.

See also the general comments at the start of this response.

- 9. a. 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?
- b. How important is it for the UK to be part of “Team EU” at the UNFCCC?

### **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

**Answer:**

Managing environmental protection and climate change is a long-term endeavour that invariably outlasts short-term political considerations. The European Commission is

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<sup>1</sup> This calculation is illustrative as it does not take it account the precise energy content of all relevant fuels.

currently consulting on climate change targets to 2030 and the UK has given particular focus to 2050 targets in the Climate Change Act. While it is proper that Governments give attention to the more distant targets (such as an 80% reduction in carbon emission as set out in the UK Climate Change Act), it is important that shorter term legislation is put in place and enforced now to ensure that solid foundations are built to start the long process of transition towards these distant targets. Without this, the UK's ambitious long term aspirations will remain fanciful hopes rather than deliverable goals.

It is also important that short term political expedients do not cloud judgements that have to be made today for the benefit of tomorrow. In general the EU institutions are less influenced by short term political considerations and are able to propose more far-reaching legislation. Investors need long-term horizons. Legislation for the environment and climate change, including in the transport sector, needs longevity if investments are to be made that will enable government-set targets to be met.

In the case of AB Sugar, significant investments have been made in renewable, low carbon transport fuels. In these instances EU competence has been a force for good, and in its absence we would need equivalent commitments and legislation from the UK to support the new industry.

b. 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?

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

**Answer:**

See general comments at the start.

**Anything else?**

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

**Answer:**

Company greenhouse gas reporting under the Companies Act.

Although not included in the table of relevant legislation in this part of the review, we felt it would be appropriate to comment on the new mandatory greenhouse gas reporting requirements introduced unilaterally by the UK under the Companies Act. This requires all UK based plc companies to report annually greenhouse gas emissions throughout their organisations, including in all their countries of operation. Our parent company, Associated British Foods plc is required to report under this legislation. Our experience so far is that this is a demanding additional activity which will increase costs significantly. It therefore goes against the 'investment and growth' principle outlined in the introduction.

## Electricity Market Reform (EMR)

Partly in response to the IED, LCPD and RED, the UK Government is in the process of implementing an Electricity Market Reform (EMR) through the Energy Bill currently going through Parliament. At the company level, British Sugar generates its own electricity and heat requirements from highly efficient Combined Heat and Power (CHP) plants established at its 4 operating sites, which also enable it to export more than 600GWh annually to the local distribution networks. While we cannot yet identify precise costs, our initial interpretation of the effects of the EMR indicates that its introduction will make it significantly more difficult and costly for British Sugar to achieve value for our CHP-generated low carbon intensity electricity exports.

### **ACCON UK Limited**

**Q1** Greater understanding of noise and air quality issues has come forward especially with respect to public perception.

**Q2** With respect to air quality the disadvantage to the UK with respect to a failure to achieve AQO's is that there may well be EU fines for breaches whereas ensuring no breaches occur is mostly beyond the powers of Government or local government.

**Q3** The difficulty with making decisions at national level or below is that they are at the whim of politics with very little longevity in the decision making going forward. In some instances the 'stick' of EU fines ensures that action is taken wherever possible.

**Q4** This will invariably rely upon the level of decision and its importance both locally, nationally and internationally. There is no single answer although it is clear to many that a requirement for certain environmental actions has no real purpose other than reporting statistical information.

**Q5** in some instances they provide a level playing field and the stick to make things happen.

**Q6** Overall probably the right balance and provides better access to EU markets.

**Q7** With respect to noise mapping i.e. the END, the focus is on providing noise mapping and statistics in a consistent manner across the EU countries along with Noise Action Plans. However there is no funding directly from Europe to assist in delivering the strategies and goals of noise mapping. Therefore an appropriate outcome of reduced population noise levels is not achieved or measurable.

**Q8** With respect to air quality there is clear scientific evidence with respect to the health impacts of increased exposure to specific pollutant concentrations.

For noise it is now known that there are certain health related risks based on increased population noise exposure although the general emphasis of the legislation has been to

reduce noise but not with any specific target noise levels. A full risk assessment has not been carried out for noise.

**Q9** A greater recognition of national circumstances and an appropriate level of funding specifically for noise and air quality would assist.

**Q10** Difficult to see any increased benefits although this needs to be tempered with possible no action from UK government and at local level.

**Q11** The status quo is probably about right and has ensured that in some instances quality and standards are preserved e.g. bathing water quality.

**Q12** The implementation of the Environmental Noise Directive (END) would be better focussed on achieving reductions in population exposed as opposed to providing statistics to the EU.

**Q13** none

**Q14** none

**Q15** The greatest challenges occur as a result of reduced scientific research and funding. Environmental protection and climate change need to be part of a balance with the availability of resources and long term planning for the 'what ifs'.

**Q16** A thorough review of the balance needs to take place in the first instance to determine where the constraints and opportunities may occur. Then the right balance can be determined. Wherever the balance lies it must not be a short term solution for political reasons.

**Q17** Not qualified to say.

**Q18** Any review of where the balance lies needs to be accompanied by a risk assessment which includes for the potential dilution of powers to deal with something in a consistent way across the UK.

For example if noise mapping was not required for EU purposes it would nevertheless be useful to aid noise reduction programmes and for planning control purposes. In this respect noise mapping could continue to be a useful tool within the UK.

### **Agricultural Biotechnology Council**

**Q2** The current implementation of the approval system for GM crops is disadvantaging the UK and the EU as a whole. The system itself does not need changing, but it does need to be properly implemented. The unequal and incomplete implementation, as a result of the actions of certain Member States of the European Union, has had and continues to have negative consequences for farmers, researchers and consumers in the UK.



There is a significant time and resource investment required to develop a new GM crop - the cost of discovery, development, and authorisation of a new plant biotechnology trait introduced between 2008 and 2012 was \$136 million, and the time from initiation of a discovery project to commercial launch is 13.1 years on average. Companies therefore inevitably focus their investments in areas of the world with more predictable and workable approval systems. The implementation of the current approval system, which denies farmer access to most GM crops grown elsewhere in the world, puts European agriculture and science at a competitive disadvantage, as academics and investments move to those parts of the world more inclined to fostering innovation. As a result, the UK is facing growing competition from countries like China and Brazil. China, for example, has a target for biotech revenues of between five and eight per cent of GDP by 2020, and Brazil is reaping huge benefits from its positive and effective regulatory approval system, having been politically opposed to GM technology less than a decade ago.

UK and European farmers are also being denied access to the economic and environmental benefits associated with the cultivation of biotech crops. Around the world, GM crops continue to grow in popularity with farmers, and figures released earlier this year by the International Service for the Acquisition of Agri-biotech Applications (ISAAA) show that 17.3 million farmers now use biotechnology, up by 600,000 from 2011. Additionally, global adoption of GM crops reached 170.3 million hectares in 2012, an increase of 10 million hectares from the previous year. Recent research in the UK, commissioned by Farmers Weekly, found that 61% of British farmers would grow GM crops if it was legal to do so. Reduced environmental impact was voted the main reason for this. Additionally, a recent Swedish study provides further evidence that UK and EU farmers are being disadvantaged as a result of the poorly implemented regulatory system, showing that European farmers could increase their annual revenues by 1 billion euros if they were allowed to cultivate GM crops such as maize, soybeans and sugar beet (of particular relevance to the UK).

**Q4** The national interest would be better served if decisions currently made at EU level, and the current regulatory system, were properly adhered to, without political interference from certain individual Member States. The current regulatory framework is adequate, but needs to be more rigorously applied. Higher political priority should therefore be given to increasing the efficient processing of applications. GM products should be put to vote without delay, with Member States' votes based on EFSA opinion. The Commission should also find a reasonable path forward that is accepted by a majority of Member States, but ensures a freedom of choice for farmers within a science-based system.

**Q6** Existing regulations with regards to agricultural biotechnology ensure the protection of the environment, but we would like to see regulations more rigorously applied, as we are concerned about the current implementation of the regulations. In 2011, the European

Commission released research from over 130 research projects, involving 500 independent research groups, over the period of 25 years, which concluded that ‘there is, as of today, no scientific evidence associating GMOs with higher risks for the environment or for food and feed safety than conventional plants and organisms.’ In fact, GM crops have notable environmental benefits, allowing farmers to deliver more food with a smaller environmental impact. In 2011 alone, the use of GM crops meant that 473 million kg less pesticide and herbicide had to be sprayed, reducing CO2 emissions by 23.1 billion kg. Despite this, the current management and implementation of the existing regulations in this area has led to severe financial implications for the UK. This is most notable in the form of the delays suffered by the industry. The current backlog in the EU approvals system for GMOs would take almost 15 years to clear at 2012 approval rates. A study published by the EU Commission in 2010 estimated that the overall cost to the economy of such disruptions could total nearly €10 billion. The costs in having GMOs approved in Europe has also been estimated at €7 – 10 million per event, predominantly due to the large number of studies which applicant companies have to present to European Food Safety Authority (EFSA). This backlog, combined with the costs of the approvals process, and the fact that European farmers are not given the option of growing most GM crops, creates a blockage to the commercialisation and export of agricultural innovations by the UK research centres. It also contributes to rising food prices, and undermines the international competitiveness of UK and European farmers.

**Q8** Existing regulations governing agricultural biotechnology and GM in particular, are designed to ensure environmental (and consumer) safety. The EU has one of the world’s strictest approval procedures for GM products. Whilst the current regulatory system regarding the agricultural biotechnology sector is a suitable science-based and evidence-based system, it is overlaid by a political process which is being misused by some Member States as a way of disabling the approvals process. In cases where decisions on GM crops have reached EU legal action, the European Court of Justice enforced existing regulations, as evidenced when the ECJ ruled against a French ban on the cultivation of GM maize.

**Q11** The EU does not necessarily need to take more or less action, but it needs to ensure that current regulations are applied and adhered to. Should the EU decide to take action in the future, it should be based on scientific evidence, with a full impact assessment to understand any consequences of such an action. Such a decision should also be strategic, and long-lasting.

**Q15** The global population is expanding rapidly – there are forecast to be 9 billion people on the planet by 2050, and critical resources such as land, water and energy will become scarcer. The challenge posed to the global food supply by climate change and the increasing population means that we need as many tools as possible to help us grow more food in a sustainable way. Biotechnology is one of many ways we can improve yields while reducing the

environmental footprint of agriculture, including through reduced spraying, cutting carbon emissions and conserving water. It is therefore imperative that the regulatory approvals process is properly applied and adhered to going forward, in order to allow UK and European farmers to benefit from agricultural biotechnology to respond to increasing demand whilst ensuring that the environmental impact is minimised. Where food stuffs, such as animal protein in the form of soy, can be produced in a more effective an efficient way in countries outside the EU, the system of approving new traits coming from those countries should be streamlined to ensure the best use of natural capital and land use both within Europe and further afield. Current EU legislation and capacity is again not keeping up with the rapid pace of change at a global level.

## **Agricultural Engineers Association**

This consultation has very limited impact on the Outdoor Power Equipment sector of our industry and all comments relate to Directive 2000/14/EC relating to the noise emission in the environment by equipment for use outdoors and the Machinery Directive 2006/42/EC which also include noise provisions for equipment.

### **Advantages and disadvantages**

1. What evidence is there that EU competence in the area of environment and/or climate change has:
  - i. benefited the UK / your sector?

Harmonised requirements for noise provides a level and transparent market place across EU27.

- ii. disadvantaged your sector?

There are overlapping different noise requirements within the provisions of Directives 2000/14/EC and 2006/42/EC which increase the costs and burden to manufacturers and consumers without any benefit. In addition it is mandatory to use third party test facilities to comply with 2000/14/EC.

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

2. 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?)

If decisions were made at an international level then manufacturers could market globally by homologating products to a harmonized international standard. The EU would need to accede to this agreement.

ii. currently made at another level were instead made at EU level?  
None.

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

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

It is extremely important to guarantee a level playing field for manufacturers and their products to have harmonized environmental standards.

4. 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?

No expertise.

### **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

No expertise.

ii. based on an assessment of risk and scientific evidence?

No expertise.

### **Doing things differently**

6. 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?)

More effective use could be made of EU's competence for the environment by creating an EU wide funded environmental enforcement agency instead of relying on National agencies which all have varying agendas and resource demands.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

No expertise.

ii. Less action on the environment/climate change?

No expertise.

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

No expertise.

9. a. 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?

No expertise.

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

No expertise.

### **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

No expertise.

b. 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?

No expertise.

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

No expertise.

### **Anything else?**

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

The UK government should make available the relevant resources/expertise to negotiate and protect the UK position at EU and international level regardless of whether the representatives are from government, industry or academia. Follow examples of Germany, Italy, Spain, France, etc.

### **Agricultural Industries Confederation**

#### **Introduction**

Through its member companies, the AIC represents services and inputs to agriculture worth over £6.5 billion. The Agri-Food sector accounts for 6.5% of the UK's total economy and generates £80 billion in Gross Added Value.

AIC welcomes the opportunity to challenge the status quo resulting from an extensive period of developments in environmental legislation, in the last 25 years.

While many of these interventions were necessary, and have relevance today, some will not be appropriate in the context of up-to-date science, evidence and challenges (Ref. The Future of Food and Farming, The Government Office for Science, (2011)). For the agricultural industry especially, food production, climate change and environmental protection are intrinsically linked. Sustainable solutions for the longer-term will require a movement away from aspects of current legislation (e.g. its scientific basis or its implementation).

## **Arising disadvantages, doing things differently and future challenges and choices**

The Regulation for placing Plant Protection Products on the Market (2009/1107), Sustainable Use of Pesticides Directive (2009/128/EC), Nitrates Directive (91/676), Water Framework Directive (2000/60) Drinking Water Standards (98/83) and the Industrial Emissions Directive (2010/75), in their current form, are beginning to bear consequences for agriculture. **This is why AIC and its partners are in the process of preparing evidence on the threats of the current legislative approach on business interests, the sustainable intensification of agriculture, and the opportunities that lie beyond. This will be made available to Government by the end of 2014 at the latest.**

We believe that industry would be better equipped to handle the issues of today and in the future, with greater investment in science, its targeted application through technology, acceptance of the role of capable, skilled people and a policy review of environmental standards which better match varying levels of confidence in managing risks in the UK. This will require regular reviews of the above legislation at EU and UK level to:

- i) More broadly assess the cumulative as well as individual effects of legislation,
- ii) Examine evidence of where legislation fails to drive innovative solutions which could otherwise produce more food, and at the same time achieve environmental protection
- iii) Consider opportunities for alternative policy drivers which could deliver multiple benefits beyond that which can be achieved by a so termed single-issue legislative approach.
- iv) Investigate greater UK decision-making on specific and relevant outcomes for regional environmental quality

## **Advantages**

With particular reference to UK and EU Climate Change legislation; overall this has created the most significant shift in environmental awareness in history and has provided an incentive for greater 'corporate social responsibility' and sharing of academic expertise internationally.

Agri-supply trade businesses and their farmer customers are now appreciating where there may be opportunities to secure products and services in the market place in the future.

## **Current disadvantages**

However, the well-known problem of carbon trading in Europe being based on a carbon price, more than half that of carbon traded in the UK, has, and currently places the UK at a competitive disadvantage compared to other EU based companies, and will continue to do so until the issues with the EU ETS Scheme are rectified. Presently, UK and European competitors are not trading on a level playing field.

### **Arising disadvantages**

Furthermore, if, at any point in the future, the pace of target GHG emission reductions, implemented through Climate Change legislation (UK or EU) is set higher than the technical and economic feasibility to achieve them, the interests of UK and EU are at risk of unfair competition from countries outside the EU.

### **Evidence**

The effects of the EU Emissions Trading System on EU fertiliser production, is a case in point, where domestic production is at risk to international trade. See attached position paper from our AIC's European partner trade association, Fertilisers Europe, in response to the 2030 framework for climate and energy policies and related evidence:

[www.fertilizerseurope.com/fileadmin/user\\_upload/publications/trade\\_economy\\_publications/Gas\\_publication\\_2012.pdf](http://www.fertilizerseurope.com/fileadmin/user_upload/publications/trade_economy_publications/Gas_publication_2012.pdf).

### **Arising disadvantages**

AIC is also a key partner in supporting agriculture to make its contribution to GHG emissions, through the UK GHG Action Plans. While we support the actions within these plans and are confident that the sector's target emissions will meet with improving farm efficiencies, and other related technologies, the outlook for 2020-2050 is less clear and potentially more problematic to the interests of agriculture plc, upon which our business depend on. It is in this period that both UK and EU climate change could be detrimental to AIC businesses depending on the share of the effort that agriculture is expected to take bearing in mind requirements for increasing farm production. See attached agriculture industry position paper.

Annex document -

**Agriculture and Climate Change:  
a position paper by the Delivery Partners for the  
Agricultural Industry Greenhouse Gas Action Plan  
October 2010**



***Climate change presents a challenge to agriculture worldwide – how to produce more food and non-food products while having a reduced impact on the local and global environment.***

1. Professor Sir John Beddington, Chief Scientific Adviser to the UK Government, warned in 2009 of a “perfect storm” of increasing demand for food, water and energy in the face of a changing climate. He highlighted the challenge of the need to almost double food production by 2050 while adapting to climate change and helping to mitigate its severe impacts.
2. Farmers worldwide currently have access to sufficient land on which to increase production, but to meet this challenge there is a need for investment in inputs, infrastructure, improved skills and innovations derived from research.
3. The precise impacts of climate change on agriculture are difficult to predict, but they will be experienced most likely through extremes of weather worldwide. As representatives of the UK agricultural industries we are firmly of the opinion that climate change is a threat to global human well-being, while recognizing that it may also present new economic opportunities for our sector (improved production efficiency, diversification, etc.). Our response to climate change may bring about many other environmental benefits, but there are likely to be complex trade-offs as well.
4. We support the UK Government's efforts to secure an international climate change agreement, and accept our responsibility to future generations for reducing the net greenhouse gas (GHG) emissions from agricultural production. To this end, we have devised a workable Action Plan, and we will embark on a programme of activities to ensure its effective delivery.

***We draw attention below to the limited potential for GHG emission reductions from agricultural production, and the shortcomings of international reporting systems***

5. The nature of agricultural GHG emissions is very different from other sectors of the economy such as electricity generation, transport, manufacturing, etc. The principal greenhouse gas for most industries is carbon dioxide (CO<sub>2</sub>) from fossil fuel combustion, while for agricultural systems methane and nitrous oxide are the main GHGs. Determining these emissions is much more complex than measuring CO<sub>2</sub>, and they are bound up in highly complex and imperfectly understood natural soil and animal microbial processes. These processes are not directly controllable by human intervention, and furthermore they are subject to seasonal and annual variability as a function of the weather, crop yield, etc.
6. A supply of nitrogen from organic or inorganic sources is an absolute requirement for the growth of crops and pasture, and it is an unavoidable consequence of soil processes that a small amount of the nitrogen in an agricultural system will be emitted as nitrous oxide. Likewise, methane is produced inevitably by bacteria in the rumen of cattle and sheep as they break down the cellulose in their diet, producing milk and meat for human consumption from the large areas of grassland that are often unsuitable for arable crops.
7. Unfortunately, the way that agriculture’s emissions are reported globally in the GHG inventory does not reflect many of the benefits that farming can bring (e.g. by storing

carbon in vegetation and soils, or by contributing low-carbon energy services to other sectors).

### ***The Industry's Action Plan***

8. The agricultural industry Greenhouse Gas Action Plan is a firm statement of intent and a commitment to reduce our sector's annual GHG emissions by 3 million tonnes CO<sub>2</sub> (equivalent) in England by 2020. Our focus is based on the following principles:

- production efficiency gains should be the focus of activity - we are seeking to improve the resource efficiency of production and reduce emissions per unit of output.
- we need an improved agricultural GHG inventory that accurately reflects progressive changes in farming practice, such as improvements to livestock diets, nutrient management and manure management.
- all other GHG costs and benefits associated with the industry should be recognised, such as the contribution of on-farm renewable energy and the storage of carbon in vegetation and soils.

9. Factors over which the agricultural sector has a degree of control mostly concern efficiencies of resource utilisation:

- nitrogen - in animal manures, crop residues, fertilisers and animal feeds impacting on nitrous oxide emissions
- livestock management systems - where methane emissions are related to production efficiencies.
- energy and fuels (net carbon dioxide emissions)

10. We believe that working through a voluntary industry-led partnership alongside government will capture existing good practice, and provide a potentially more cost-effective way of addressing the climate change challenge than regulation alone.

11. Successful examples already exist of this kind of voluntary initiative, as well as a range of sector-specific advisory services and roadmaps. Alongside Defra's own actions, the GHG Action Plan is intended to capture and extend best practice as well as addressing the gaps in farm business advice as they are identified, to ensure a concerted effort by the entire agricultural industry, sector by sector, across all regions and all categories of farmers and growers (conventional, organic, etc.).

### ***Future possibilities***

12. As an industry, we need to establish realistic goals for reducing agricultural GHG emissions towards a minimum future level, beyond which it may not be biologically possible to make further reductions. We must also remain open to future technological breakthroughs or innovative production systems that might be possible in the long term.

13. The biologically-constrained future minimum level of agricultural GHG emissions needs to be placed in the context of a decarbonised UK economy which recognises the contribution of agriculture to renewable energy and carbon storage, including new bio-based pathways such as biomass energy with carbon capture. The challenge of simultaneously reducing emissions while maintaining or increasing food production was recognised in the recent DECC 2050 Pathways Analysis.

14. It should be possible to establish an optimum GHG balance for the UK, based upon the most efficient systems producing domestically a substantial proportion of the food needs of the future population (c. 70 million by 2050). Concentrating on increased yields and efficiency across all types of farming would allow land to be available also for forestry, the cultivation of bioenergy crops and the maintenance of permanent grassland, all of which would increase the storage or displacement of carbon from burning of fossil fuels while providing other environmental benefits (biodiversity, soil quality, water quality, etc).

## **Alberta- UK Office**

Alberta United Kingdom Office

7<sup>th</sup> June, 2013

Dear Minister

RE: Second semester of the Balance of Competences Review

Thank you for the opportunity to attend the FCO's Balance of Competences briefing held on 20 May. Your review's call for evidence has been firmly noted and, in the first instance, I thought you might be interested in the Government of Alberta's experience of proposed European regulation with unintended consequences.

You may be aware that the Government of Alberta has been engaging with the European Commission and Member States over the implementation of Article 7(a) of the Fuel Quality Directive (FQD), which, as it currently stands, could unfairly discriminate against the Albertan oil sands. While we fully support the principle of the FQD, we remain concerned that its implementation will be based on discrimination, not sound scientific evidence.

It is on this point that the FQD is a prime example of EU level regulation, imposed on the UK, which is poorly thought out and may carry with it a number of unintended consequences that the UK government may wish to consider:

The proposed implementing measure currently contains a series of provisions which are designed to discriminate against the oil sands of Alberta while not applying a similar degree of scrutiny to most of Europe's current major crude oil sources. This approach may have the knock on effect of penalising UK companies operating in (or supplying) the Canadian Province of Alberta.

Currently only 40% of crudes entering the EU are reported. The Government of Alberta is fully transparent in its crude reporting and so the FQD has the effect of heavily penalising

transparency. It is hard to see how this approach will assist in meeting the FQD's objective of securing a 6% reduction in Eurozone CO2 emissions, and how this will possibly assist the UK in meeting its own environmental reduction targets.

The Government of Alberta is fully committed to the principle of transparency in the adoption and enforcement of policy and regulation. We hope that the comments above may be considered as part of your Balance of Competences review. Please do not hesitate to contact me should you require any further information.

Yours sincerely

Alberta – United Kingdom Office

### **AMSTaR Consultancy**

**Q1** Common legislation and regulations are an enormous benefit to large-scale enterprises (e.g. infrastructure development) where consortia are often multinational, and partners come with similar backgrounds and a 'common language'. Many environmental challenges are so great that there is a need for a response with sufficient weight (i.e. EU involvement) to be effective.

**Q2** Local variations in human and natural resources often require special treatment, and an EU 'one-size-fits-all' approach may not always be the best solution. EU legislation is often reactive and is too slow-moving to be effective. It is rarely flexible enough and reviewed often enough to respond adequately to changing circumstances, and is hardly ever judged against outcomes.

**Q5** EU standardisation is vital in any issues with cross-boundary implications, especially in the areas of water and air quality, and in certain cases waste management. Concerning the management of resources (mineral and natural), it is necessary to introduce a certain degree of freedom to allow for local variations.

**Q6** At present, much EU legislation is too inflexible, and lags behind need in areas where change is rapid. In general, environmental control and regulation is fully compatible with economic interests, but only if the right conditions exist for entrepreneurs and investors to be able to take advantage of the opportunities offered, particularly in the field of renewable energy.

**Q9** EU legislators and regulators need to recognise that local variations in mineral, natural and human resources, together with economic circumstances, can have a major effect on the utility and effectiveness of EU competence. Perhaps a more active dialogue between EU and UK legislators would help achieve this.

**Q10** Benefits might include:

- more long-term, strategic thinking and planning.
- greater confidence in overseas marketing.

**Q11** Benefits might include:

- less onerous burdens, particularly for SMEs.
- regulations more suited to local circumstances.

**Q12** Greater transparency in the mechanism by which the UK interprets EU Directives, with reference to how other member states do things differently.

**Q13** Standardisation across the EU is vital to the successful export of UK technology and services. But excessive standardisation would stifle the possibilities of the UK benefitting from particular advantageous circumstances in human and/or material resources.

**Q14** Climate change is the most trans-national of current environmental issues, and it is therefore vital for the UK to be fully integrated with the EU at the UNFCCC.

**Q15** Climate change is the most serious and challenging symptom of our dis-ease with the planet in terms of resource and energy consumption. It is also linked to population growth and trans-national redistribution and increasing urbanisation, issues which both need to be tackled urgently. Resource and energy efficiency offer huge economic opportunities for countries which are prepared to address them.

**Q16** The 'right balance' will depend on the particular issues being addressed. As there is no single solution, the best approach would be to promote dialogue and cooperation between UK, EU and international organisations involved.

**Q17** Without EU cooperation, the costs could be unsustainable, but conversely, working at an EU level would dilute some of the benefits to the UK.

**Q18** No, all points captured elsewhere.

## **Anaerobic Digestion and Biogas Association**

The Anaerobic Digestion and Biogas Association (ADBA) is grateful for the chance to respond to the government's review of the balance of competences between the UK and EU on environmental and climate change policy.

ADBA is the trade association that represents the range of interests and matters related to the anaerobic digestion of organic materials ("AD") across the UK. ADBA understands the complex range of skills required by developers of new AD plants, from feedstock management through technology to energy production, markets and resource to land.

ADBA has 350 members from across the AD industry, including farmers, local authorities, waste management companies, supermarkets, food processors, plant operators, energy and water companies, equipment manufacturers and suppliers, haulage operators, gas vehicle designers and conversion specialists, consultants, financiers and supporting service companies.

Biogas from AD is an ultra-low carbon, flexible green gas which is generated constantly and can be stored, helping to mitigate peak demand requirements. Already producing more than four times solar PV, anaerobic digestion can generate more than 10% of the UK's domestic gas demand and can be scaled up fast, helping to keep the lights on through the energy crunch as well as generating around 35,000 jobs. At the same time it can make a significant contribution to reducing climate change, improving air quality and energy and food security, recycling valuable nutrients and organic matter back to land, replacing chemical fertilisers and preserving critical resource targets, subject to the right policies being in place.

Around two thirds of the sector's potential comes from treating food waste. Separate food waste collections have been proven to reduce overall waste arisings, achieve cost savings while of course allowing the material to be treated through anaerobic digestion, which government recognised in 2011 gives 'the greatest environmental benefit' of any food waste treatment.

### **Advantages and disadvantages**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

ADBA believes that the overarching revised Waste Framework Directive (rWFD) has provided the impetus and certainty needed to develop more sustainable waste

management practices, including the treatment of organic waste through anaerobic digestion (AD).

The introduction of binding recycling and landfill diversion targets has given local authorities the confidence to deliver long term waste collection solutions to ensure that waste is dealt with more effectively, for example through separate food waste collections and mixed green waste collections.

EU policy has given businesses and local authorities greater certainty that policy is being set on a long term basis, rather than the perceived likelihood of more changes under national government policy.

European air quality legislation has also helped to highlight the poor air quality in many urban areas in the UK, and the UK's failure to comply with legal limits on Nitrogen Oxides (NOx) has led the government to explore cleaner transport options, including gas vehicles. This was exemplified by the UK's Supreme Court ruling in May 2013 that the UK government was failing to meet air pollution limits, with the possibility of large fines if NOx levels are not addressed.

While any infraction proceedings are likely to be delayed given the European Court of Justice will need to clarify a number of legal issues, the case brought clear pressure on the UK to address why they had not met the targets. This has contributed, at least in part, to the Department for Transport's ongoing drive to develop a coherent strategy to increase the number of gas and biomethane vehicles operating in the UK, to the benefit of the biomethane transport sector.

We also believe that the EU wide target to deliver 20% of energy from renewable sources by 2020 has helped to boost investment in the green economy by providing long term certainty over the direction of policy. Recently published figures by DECC show that electricity generation from renewables increased by 19% in 2012 to account for over 11% of the UK's electricity generation. We therefore strongly support the extension of a renewables target to 2030, and disagree with current UK government thinking that such a target should be rejected on the basis that it does not offer member states the requisite flexibility to manage their energy use effectively.

Leading businesses have consistently stressed the economic benefits that can be realised through long term green energy targets. This is demonstrated around recent calls for a 2030 decarbonisation of the power sector target, which was supported by companies including Asda, Microsoft, Pepsico, Phillips, Siemens, SSE and Unilever.

ii. disadvantaged the UK / your sector?

The ongoing development of European end of waste criteria for biodegradable waste has arguably created confusion and stymied the development of the digestate market in the UK.

Digestate is a by-product of the anaerobic digestion process, and can be applied to land as a biofertiliser, reducing the dependence on artificial fertiliser and recycling nutrients to land. If digestate is to be sold however, to other farmers or garden centres for example, the seller

needs to be able to demonstrate that it is a quality product. This is done through meeting “end of waste criteria” – in the UK the standard is BSI PAS 110.

Over the last two years however, the European Commission has moved towards developing separate end of waste criteria for biodegradable waste which could eventually supersede the UK’s PAS 110. This has created uncertainty over the standards that operators would have to meet, and over the costs of transitioning from PAS 110 to a new regime. ADBA believes that there is unlikely to be a significant amount of digestate trading across member states and therefore it is inappropriate for there to be EU level regulation.

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

2. Considering specific examples, how might the national interest be better served if decisions:

ii. currently made at another level were instead made at EU level?

ADBA believes that it is important that the EU continues to set strong targets on landfill diversion and renewable energy in order to help drive policy in these vital long term areas.

Where there is already effective member state regulation on an issue where there is little international competition or trade (see end of waste example above), it makes little sense for decisions to be made at the EU level.

ADBA supports the principle that national and local government should have the freedom to establish more ambitious environmental policy than that mandated at the supranational level. EU or global agreements are there to provide a minimum baseline, and where nations and regions are able to diverge from this to deliver above this baseline they should be encouraged to do so.

A pertinent example concerns Scotland’s approach to source segregated waste collection. The rWFD requires that ‘by 2015 separate collection shall be set up for at least the following: paper, metal, plastic and glass’, but only where this is ‘technically, environmentally and economically practicable’, which the UK government has used to argue that commingled collections will still be legal in 2015. Scotland’s devolved government has gone much further however, committing to rolling out food waste collections across all local authorities and businesses by 2015, in addition to the rWFD requirements on paper, metal, plastic and glass.

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

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



We believe that this is very important. Common environmental standards are needed on energy production, recycling and other areas to ensure the competitiveness of UK business alongside environmental protection.

4. 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?

We disagree with the premise that protecting the environment and UK economic growth are conflicting aims. The green economy now accounts for 8% of the UK's GDP and the CBI has noted that in 2012 over a third of the UK's economic growth came from the green sector.

Defra's Ecosystem Markets Task Force (March 2013) also outlined how business can profit from more sustainable activities. The report paid particular attention to the benefits that anaerobic digestion plants on farms can deliver, while recommending that unavoidable food waste should be diverted to local AD plants.

### **Doing things differently**

6. 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?)

We agree that there does need to be a greater recognition of national circumstances. As we explained in question 1(ii) with relation to end of waste, it is not always appropriate to develop overarching regulation where national legislation is already sufficient, and where there is little competition or trading between member states.

This greater responsiveness to the national context should also apply to waste reduction and energy generation targets where different Member States often have very different recycling rates and levels of renewable energy generation. Targets therefore need to be variable to make sure that all nations are stretched without being pushed too far, although there does of course need to be an overall framework to give a clear direction of policy.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

We believe that strong EU action on the environment and climate change has had a positive impact on developing the circular economy in the UK, which in turn creates significant economic opportunities in developing industries such as anaerobic digestion.

We would therefore welcome greater EU action, which would also ensure that UK business would not be at a competitive disadvantage as the same legislation would be implemented across member states.

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

ADBA believes that the UK government has not acted within the spirit of the rWFD which clearly mandates that member states should be encouraging source segregated waste collections, including separate biowaste collections.

Article 11 stipulates that 'by 2015 separate collection shall be set up for at least the following: paper, metal, plastic and glass if technically, environmentally and economically practicable', while article 22 requires member states to 'encourage the separate collection of bio-waste with a view to the composting and digestion of bio-waste'.

The UK government has however fought successfully in the courts to argue that the continuation of commingled collections is a legal interpretation of article 11, while offering support to separate food waste collections through the Waste Collection Support Scheme only as the third option of three.

9. a. 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?

There is a clear advantage in the EU playing a greater role in negotiating internationally, as this will help to produce a level playing field for businesses by agreeing common international standards.

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

ADBA believes that it is imperative that that the UK is part of "Team EU" at the UNFCCC. The UK will hold less sway in climate change negotiation if it operates alone. Other nations are also likely to pay close attention to the approach the EU takes.

### **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

Food security will become a pressing strategic concern in the coming years as the growing global population puts increasing pressure on food production, while peak phosphorus production will also be reached, exacerbating this problem.

Phosphorus is a central ingredient in artificial fertiliser and is therefore vital to food production, without which we cannot meet global demand. Phosphorus is a finite resource however and peak production is projected to be reached in 2033, after which levels of phosphorus will fall.

Anaerobic digestion presents an excellent opportunity to tackle this issue, as the process recycles the nutrients in organic waste, including phosphate, back to land when digestate from the AD process is used as a fertiliser, eliminating the need for phosphorus intensive artificial fertiliser.

Energy security is also emerging as a key challenge to the UK's long term economic health. As countries are forced to look for alternatives to fossil fuel supplies of energy, the UK is at risk of facing a shortfall of energy, highlighted by Ofgem earlier this year, which would push energy bills up and increase the risk of blackouts. The production of biogas through AD can however help to address this – the sector could meet 10% of the UK's domestic gas demand, and biogas can be used as baseload energy to balance the intermittency of other technologies.

These challenges are of course international in nature, and therefore require international action so the EU should have an active role to play.

## **Association for the Conservation of Energy**

The Association for the Conservation of Energy aims to reduce overall energy demand to ensure a secure and sustainable energy future. Through our lobbying, campaigning and research we help to achieve sensible and consistent policy, legislation and targets. ACE works to raise a positive awareness of energy conservation and encourage increased investment in all energy-saving measures.

We welcome the opportunity to contribute our views to this consultation.

### **Advantages and disadvantages**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

Without the various pertinent directives – currently the Energy Performance of Buildings directive, and the Energy Efficiency directive - the UK energy efficiency industry would be far less economically robust than it currently is. European legislation is vital to this industry's operation.

ii. disadvantaged the UK / your sector?

The only way our sector have been disadvantaged has been the continuing failure by the UK government to ensure full compliance with the relevant directives. And by the negative approach almost invariably taken by UKREP regarding any proposals emanating from either the Commission or the Parliament. .

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

2. 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?)

We do not accept that there is any good argument for the measures to be taken to assist our industry to be taken on a national rather than EU level; we have too much experience of gross inconsistency of national policy making on energy efficiency matters. Thank heavens that EU directives are so much more complex and difficult to mess around with.

ii. currently made at another level were instead made at EU level?

The EU level provides a level playing field for our industry.

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

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

These are absolutely vital.

4. 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?

The checks and balances within the European policy making machinery ensures this occurs – very unlike the “elected dictatorship” arrangement in the UK , where the legislature is controlled by the executive

### **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

So far as the EPBD and EED cited in 1(i) are concerned, these directives are specifically designed to deliver results which can be measured. Which is rather more than can be said for most UK policy – how for instance are we to know when/if the Coalition flagship programme “Green Deal” has succeeded in achieving its objectives - as these have never been identified?

ii. based on an assessment of risk and scientific evidence?

That is precisely what the EC’s mandatory impact assessment process for directives ensures

### **Doing things differently**

6. 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?)

One way would for the Commission to do its job more vigorously of ensuring that Member States do deliver each directive's' requirements purposefully

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

We are convinced that without more directives and targets, our industry will not continue to grow

ii. Less action on the environment/climate change?

This would be very bad for the UK energy efficiency industry

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

Yes. We should be less frightened of the idea of gold plating directives, especially as it has been seen elsewhere in Europe that by building sensibly upon the minimum requirements of directives, more cost-effective energy savings can be achieved – with greater benefit both to our environment and economy.

9. a. 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?

We believe that the EU should have a greater role, as it can speak for a more powerful bloc.

b. How important is it for the UK to be part of “Team EU” at the UNFCCC?

Very valuable.

### **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

We will face enormous problems meeting the challenges of combating the threat of climate change. It is vital that Europe continues to take the lead in maximising the business opportunities available in doing so.

b. 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?

More decisions should be taken on a pan-European basis

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

The costs would be minimal, the benefits considerable, of improving the efficiency with which we use fuel. To date the most effective legislation assisting this has been largely Europe-wide. Given the short term nature of so much decision making in the UK, it is vital that the EU continues to play a growing role in this policy area.

### **Anything else?**

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

Simply to express sadness at the sheer negativity of this entire consultation exercise.

### **Association of Drainage Authorities**

**Q1** We have focussed our response to reflect on the impact EU competence has had on the flood risk management and water level management sector and also specifically Internal Drainage Boards (IDBs). We have limited our response to refrain from commenting more broadly on EU competence in the area of environment and climate change. We believe there has been no benefit to flood risk management in the UK from EU competence. There may be benefit in mainland Europe given the fact that there are major rivers crossing national borders and hence need for transnational co-operation however this is not the case for the UK (we realise that the UK has opposed the Floods Directive for this reason).

**Q2** We believe there are several examples where EU competence has disadvantaged flood risk management and IDBs in the UK. For IDBs, the Directives that have most highly impacted upon their functions include the Water Framework Directive, the Habitats Directive, the Nitrates Directive and the Waste Directive. All of these have given rise to large costs associated with compliance which have not necessarily been properly considered. To comply now and into the future, IDBs have the need to apply vast amounts of money, resources and time with minimal benefit to reducing flood risk. An example of particularly high expense will include changes that need to be made to comply with EU Eel Regulations. Ultimately this will divert important funding away from the flood risk management budget (see further in question 4). With regards to the Waste Directive, this has been an example of a case where legislation has not been properly assessed and has had significant consequences to those on the periphery. In this case IDBs have been caught on the periphery of the legislation which was mainly considered to deal with other matters. Dredged material, removed from channels and rivers has been considered as and must be dealt with as 'waste' at the cost to the IDB. With regards to the Habitat Directive there is now the threat of legal action for workers conducting maintenance work relating to flood risk management, inadvertently killing a protected species such as water voles. This is a case where legislation creates conflict with those trying to reduce flood risk and safeguard the immediate environment.

**Q3** We believe there are cases where decisions could be better taken at the industry/ UK level. An example of this is action to be taken to protect Eels. We feel where issues are more local in context as opposed to trans-national; decisions should be more focussed at the national level.

**Q5** We appreciate that standards have been necessary to create a 'level playing field' however there are cases where differing interpretation across Member States means that this is not achieved. To exemplify this point, we can use the example of the Waste Directive where the UK has interpreted dredged material from channels and rivers as 'waste'. In other Member States the interpretation has been quite different and this is not treated as 'waste'.

**Q6** There are examples where a disproportionate amount of economic resource has been diverted from the flood risk management budget, in order to protect the environment (or more specifically species and habitat protection), following on from EU legislation. We would argue that this is against the wider UK economic interest. A concern is that this diversion of funding continues to increase. Particular examples where this has occurred includes paying for compensatory habitat and, something that is very current and set to impact in the next few years, paying for the protection of Eels under the European Eel Regulations 2007 and subsequent Eels (England and Wales) Regulations 2009. After January 2015 it will be a legal requirement to screen on any structure with flow over 20m<sup>3</sup>/day. This will impact what are being termed as 'critical structures' which most notably include many pumping stations in IDBs. Solutions to protect eels are not only technically difficult but very expensive. Whilst funding for IDBs to take action in this case is very necessary given that the regulations are in place and as IDBs themselves cannot get close to affording the actions they need to take, ultimately the funding will come from the flood risk management budget (FCRM GiA). We would argue that it would be in the wider economic interest of the country to apply the flood risk budget in a manner that reduces flood risk. This is at a time where the flood risk budget is being cut in other areas, such as the maintenance of watercourses and defences. In the last year it has been evident that lack of maintenance has led to an increase in the duration and extent of flooding in certain areas (e.g. in Somerset). This has had massive implications to the wider UK economy, particularly the farming industry.

**Q8** Many EU directives are driven by science which has failed to consider matters around the periphery of the subject matter and does not seem to be challenged when the Directive is framed. An example of this includes the Waste Directive which has implications on dredged material from rivers and watercourses. This is a case where a peripheral issue has not received sufficient assessment during the framing of the regulations but has a significant outcome at a local level.

**Q15** In the future there is likely to be an increase in flood risk and drought risk. This will have a wide array of impacts including the effect on habitats and water quality.

**Q16** With regards specifically to the flood risk industry, we can see that there is need to do more at industry/ UK level. There may be great benefit in mainland Europe given the fact that there are major rivers crossing national borders and hence need for trans-national cooperation. For certain issues, mainly those that aren't trans-national in nature, it is

important to think greater about the impact of international agreements at the industry level before taking action on the international level.

**Q17** We believe that it is important to bear in mind the costs of implementing EU Regulations and that these are nearly always underestimated.

**Q18** We want to reiterate that we have focussed our response to reflect on the impact of EU competence on the flood risk management and water level management sector. We believe that going forward there is a need to think carefully on what is being agreed upon and the costs (e.g. EU Eel Regulations). We realise there are benefits of EU competence such as trans-national cooperation and more ambitious standards in areas that would otherwise be politically impractical for progress. However the 'one size fits all' approach does not recognise differences between already existing practices and geographies in Members States. This is where national/ industry level decision making and input is needed.

### **Association of Manufacturers of Domestic Appliances**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

- i. benefited the UK / your sector?
- ii. disadvantaged the UK / your sector?

There are a significant number EU initiatives which have impacted the UK. Examples that affect the domestic appliance sector are those relating to:

- Protection of the ozone layer / global warming
- Energy efficiency marking for products (A through G labels etc)
- Ecodesign requirements, for example defining minimum energy performance criteria for appliances
- Various laws controlling the use of chemicals; RoHS, REACH, materials in contact with food, etc
- Producer responsibility legislation, such as Directives on packaging, waste electrical and electronic equipment and batteries

Domestic appliances are, with a few exceptions, designed to be sold across the EU and often in markets outside the EU as well. Therefore having a single market for these products has been a significant advantage. If the UK were not in the EU manufacturers they would still have to comply with all these laws anyway, similar the situation in Norway and Switzerland at present.



This is not to say that all aspects of every EU law have benefitted UK businesses, there are certainly some instances where we believe that the law has requirements that are either too stringent or regulate areas that do not require regulating. However, while the UK is an entity (depending on what happens on Scottish devolution) we have a large vote in EU institutions and at least have the possibility to influence events. Were we to leave the EU we would still have to meet EU laws but would have no say over their content.

2. 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?

The domestic appliance sector does not want to have to comply with a plethora of different national laws. Every national law represents an additional cost that either has to be passed to the end customer or reduces the profitability of the business affected.

As an example, the UK has WRAS requirements that cover the connection to the water supply and these cover domestic appliances such as washing machines, dishwashers, etc. No other EU country has these requirements and yet they seem to survive by simply complying with the applicable pan-European standards. As such, in this area, doing business in the UK is more restrictive than in other Member States.

Equally, we are aware of a draft French law which seeks to require a particular symbol to signify whether packaging is recyclable. As an industry we have made our concerns on this known to both the UK government and the Commission as we see it as a barrier to free trade.

No law has any value unless it is enforced in an effective and fair manner and the penalties for non-compliance are dissuasive. If it were seen that the UK national interest required extra requirements to be applied then these would only be effective if the market surveillance regime had the resources to prosecute offenders. Clearly there would be no 'mass immunisation protection' if the law were specific to the UK (and even less so if it applied in only one region of the UK) which would therefore require more resources to achieve the same level of protection as compared to a law that applied either globally or within the EU. This consideration would also need to take into account the fact that, increasingly, consumers and businesses are purchasing goods via the internet which makes market surveillance more difficult.

Already there are environmental measures that have been agreed globally, such as the Kyoto protocol. It seems that many third countries have not seen fit to pass these agreements into national and binding law for their own national interest: unfortunately the likely environmental consequences will not fall solely on such countries.

As the current debate on hydraulic fracturing shows, not all legislative aspects relating to protecting the environment are made at the EU level. However, this is not an aspect affecting the domestic appliance industry and so we make no comment on this point.

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

As far as manufacturers of domestic appliances are concerned, they would wish to see a set of common legal requirements to be applicable and enforced across as wide a range of countries as possible, providing those requirements have been scientifically and technically proven to be valid. Practically speaking, this means at the EU level.

A recent review of environmental legislation carried out by the Advisory Committee on Environmental Aspects (ACEA) of the International Electrotechnical Committee (IEC – one of the three international standards bodies, along with ISO and the ITU) showed that many countries outside the EU (e.g. Japan, China, Australia, New Zealand, South Africa, Latin America, etc) look to the EU when developing their own legislation. This is not to say that these countries adopt verbatim EU legislation, more that they wish to ensure that their exporters and markets are broadly in line with the large trading bloc which is the EU (sorry, this work is still in preparation and so it is not possible to provide a document to reference).

Environmental protection is very much in the public eye and so it is not surprising that there has been a significant increase in such legislation in recent years. As mentioned in answer 2, the domestic appliance industry would not wish to have to meet a multitude of different laws across the EU and so they are in favour of measures that facilitate free trade across the EU. However, we do not believe that it is necessary or appropriate to build into legislation a requirement for review or amend the law after a period that is typically only 3 or 4 years (Examples are the RoHS Directive and Ecodesign Implementing Measures). It seldom if ever seems the case that a Directive is “reviewed” and is found to not need revision!

Sometimes this is because the law contains limit values. However, the 1992 Single Market and 1985 New Approach are based on the law only containing essential requirements with Harmonised Standards detailing how to meet these while reflecting the State of the Art. Non-environmental laws based on the New Approach do not have such a built-in ‘review-by’ clause and have successfully protected EU citizens as regards safety and electromagnetic compatibility for decades. It seems that ‘progress’ is putting obstacles in the way of efficient EU law-making.

4. 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?

This question is valid only if it were possible to separate the UK economic interest from EU legislation. However, as stated in our answer 1, domestic appliance manufacturers have to

comply with EU legislation anyway and so any deviation between EU laws and UK laws places an economic burden on them in terms of facilitating the free trade of goods. Therefore the only relevant answer applies where subsidiarity exists (e.g. in the operation of a business) and here it is not necessary to consider the 'balance' between EU and UK laws.

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

- i. focused on outcomes (results)?
- ii. based on an assessment of risk and scientific evidence?

We are concerned that, particularly in the areas of ecodesign and energy labelling, the Commission and the European Parliament seem to be focussing on "what can we regulate next". As a general rule the Commission do not seem to have mechanisms in place to take the next step and determine whether that law has been effective at meeting its objectives, rather they seem to be focussed on seeing what new technical areas could be controlled. To be clear, improving the effectiveness of legislation should be an on-going activity and not one that is imposed by a "review in 'x' years" provision.

For many years the energy labelling Directives focused on a requirement to measure and display the energy usage and these measures resulted in products with reduced energy usage, driven by consumer pressure. But recent changes to these measures have added other parameters to measure and mark, such as water usage, acoustic noise, etc which are overloading consumers with information. Similarly the initial measures under the framework Ecodesign Directive focused on including an upper limit of power that could be consumed, but now we are seeing calls to consider environmentally conscious design, preservation of rare earth elements, durability, repair-ability and more. Rather than tackling each of these technical disciplines one-by-one, each implementing measure (EU Regulation) made under the framework Directive (applicable to certain categories of product, such as vacuum cleaners) is deciding what to regulate on a piecemeal basis.

The role of the European Commission is to propose legislation, but the mechanism for deciding what new laws are required is not as transparent as it should be. As seen from an industry perspective, it seems very rare indeed that the proposal to draft a law results in a decision that such a law is unnecessary and therefore is not taken forward is very uncommon. Also it seems that over the decades the number of Staff in the Commission has progressively increased and correlated with this has been an increase in the quantity and complexity of legislation. Put another way, the checks and balances that limit the number of UK civil servants do not seem to apply to their EU counterparts.

6. 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?)

Although voluntary agreements have their place the domestic appliance industry has found them to be ineffective for consumer goods where the price of an item is a very critical factor and there are many manufacturers to choose from. This is because it is very easy for a company that doesn't elect to join the voluntary scheme providing an environmental benefit (such as lower energy consumption) to undercut the price of products that are members of the scheme. Hence, ensuring a level playing field frequently requires legislative measures.

Notwithstanding the above, there are long-standing processes for how to develop legislation to support the Single Market dating back to 1985 which were developed to facilitate the single market by the end of 1992: these have been continually revised since then but are not used in their entirety to develop environmental legislation. The original concept was called the "New Approach" and its latest incarnation is referred to as the "New Legislative Framework".

Under the New Approach legislation would only contain 'essential requirements' and then standards would provide the technical details. Although this has been used in the field of safety to protect consumers, workers, users of medical devices, lifts, recreational craft, etc for decades and likewise to protect the electromagnetic environment (EMC) it has not been considered appropriate to protect the environment. Here standards are only used to provide measurement methods with the limits to be achieved defined in law. Therefore, as technology advances it is necessary to change the law, whereas for safety and EMC it is only necessary to use a well-tried method of updating references to revised standards and no change in the law is required. In general the same requirements within the European standard would apply uniformly across the EU, although if necessary and justified national differences can be catered for.

In 2012 a new EU Regulation covering standards, including those that support legal provisions, was published. This provides Member States and their enforcement bodies with rights to participate in the creation of these standards.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

ii. Less action on the environment/climate change?

We believe that any new environmental legislation should be based on a holistic approach founded on scientific research coupled to an economic impact assessment.

As an example, as regards ecodesign and energy labelling measures we see an increasing number of initiatives to reduce the energy consumption of an ever-widening array of products; which of course seems sensible when we are trying to phase-out old-style coal-fired power stations that pump CO<sub>2</sub> into the atmosphere. At the same time we see proposals to increase the durability of products and potentially have targets for preparing for re-use; which on its own can be seen to have some logic if it means reducing the use of raw materials. However, the two policies are totally contradictory since an old product will

almost certainly consume more power in use than an older product that has been repaired a few times or rescued from a waste disposal site. Clearly the need for durability and re-usability also depends on there being a continued market demand for the type of product in question, so for instance most charity shops will not accept VCRs, typewriters, etc because nobody wants them now – so why expend resources into extending their product life? What we do not seem to have is a system that looks at all these possible measures and then makes a decision on whether and what to regulate.

Hence it is not necessarily about the EU taking more or less action, it is about having a process to not take action unless there is clear environmental and economically viable justification for a potentially broad range of actions.

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

The UK needs to ensure that it does not 'gold plate' EU legislation and neither does it enforce it with a heavy hand when other Member States are using a light touch. Many successive governments have said that they do not intend to embellish EU Directives, with varying degrees of success.

But the letter of the law is only one thing, how it is enforced is equally important. Just as the government has an objective to not gold plate legislation, we should also seek to ensure that the manner in which EU Directives and EU Regulations are enforced is uniform. This does not mean a 'dive to the bottom' but neither should we see it as an appropriate goal to have the most rigorous enforcement system.

As industry body we are glad to see that there is now an increasing focus on enforcement, including cooperation between enforcement bodies throughout the EU. We would like to see these fora opened up to industry as a right, since currently industry is only invited to discuss specific issues and is then told to leave. Naturally we would not seek to be involved in matters where there is the possibility of compromising commercial confidentiality, but a system such as exists in the UK at the moment where meetings are split between 'policy' meetings involving industry, civil servants responsible for drafting law and market surveillance authorities, and 'implementation' meetings where industry is excluded.

9 a. 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?

Clearly the EU is able to exert a significant leverage in negotiations by virtue of its combined population of over 500 million inhabitants and a nominal gross domestic product that represents approximately 20% of the global GDP when measured in terms of purchasing power. Hence, when brought to bear in international negotiations and with

other large third countries (e.g. the USA and China) the EU has a significant advantage over the UK alone.

When discussing agreements with smaller countries naturally the EU's size can be an important factor. However, as the EU has to gain agreement from individual Member States, who may not all have the same objective, this can work against achieving an agreement, especially if time is critical.

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

If the UK wishes to have some chance of influencing what is agreed at the United Nations Framework Convention on Climate Change then it needs to participate actively in discussions based on clear objectives. But if the UK is happy to live with whatever is decided by others then it could opt-out entirely or simply take a back-seat role. There are no in-between options, since you can never rely solely on someone else arguing your point when they will inevitably have compromise options that are in their interests but not yours.

Given the UK's dependence on imports of oil and gas and the current debate on extraction of gas from fracking it would seem that the UK should invest on sending people to argue the UK's case strongly.

10 a. What future challenges or opportunities might we face on environmental protection and climate change?

The earth's resources are finite, which is true for things like rare earth elements (essential for the electrical and electronics industry) and fossil fuels alike. Fossil fuels are not only sources of power (creating CO<sub>2</sub> emissions in the process) but they are also the starting point for the production of plastics and other materials that we take for granted in today's world.

The EU is starting to look at ways of capturing rare earth elements from waste electrical and electronic equipment, but at the moment the cost of recovery is not financially justifiable compared with those of extraction from raw material. However, a large percentage of the extraction of these elements is controlled by a very few countries (in particular China) and these countries are not treated any differently when it comes to receiving e-waste containing said rare earth elements. Hence the EU has no way of retaining these materials for use by its indigenous industry. This would seem to be an area that needs to be looked at when considering free trade agreements, both between the EU and the third countries concerned but also within the wider WTO context.

We are not aware of any EU or UN initiative to consider the long-term viability of using fossil fuels as an energy source vs their wider application in the production of plastics and other materials essential if we are not to revert back to pre-20th century technology. Fortunately this time is still some way off, but it will require world-wide agreement and with many countries still burying their heads in the sand over global warming it should not be anticipated that agreement will be reached quickly either.

10 b. 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?

It is essential that environmental protection measures that affect the requirements for domestic appliances be agreed at the EU level. The EU should use its significant size advantage to eliminate or reduce technical barriers to trade with third countries on an equitable basis.

If the UK were to reduce its environmental requirements below those of the EU we would almost certainly become a dumping ground for non-compliant EU products. Without significant investment in market surveillance it would be impractical to enforce these newer, lower, UK requirements and so the practical consequence would probably be a race to the bottom, to the detriment of UK consumers and the UK environment. Equally, creating UK laws that were more stringent than those elsewhere in the EU would either result in these requirements being ignored (unless they were enforced correctly), or the UK products would become significantly more expensive (just as many Swiss goods are). Therefore the best course available to the UK is to be an active player in the EU, both in setting an appropriate regulatory framework and the drafting of individual measures.

The above does not mean that the EU institutions should not change. Over the decades there seems to have been a diminution in the power of Member States. The European Commission has grown in both the number of people employed within it and in its powers. Checks and balances should be put in place regarding its ability to propose legislation in the first place, simply having certain powers to water down proposals is insufficient, particularly now that the European Parliament has increased powers too.

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

No comment.

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

Implementing EU Directives and even EU Regulations isn't only about transposing the requirements of the legislation into law, it's also about uniformity throughout the UK.

With devolution this is becoming more problematic for industry because the black letter law may be enacted slightly differently in each region to suit local political pressures. Naturally manufacturers want as few differences as possible so that they can trade uniformly in all parts of the UK.

It is also about enforcement and uniformity of enforcement. Uniformity of enforcement can even be problematic within e.g. England if there is no central decision-making body. When

there are different enforcement bodies in different regions that are enforcing slightly different laws this makes matters worse.

This is something which is entirely within the gift of the UK and affects industry, but unfortunately it doesn't seem to be receiving any government attention at the moment.

## **Aviation Environment Federation**

The Aviation Environment Federation (AEF) is the principal UK NGO concerned exclusively with the environmental impacts of aviation. Supported by individuals and community groups affected by the UK's airports and airfields or concerned about aviation and climate change, we promote a sustainable future for aviation which fully recognises and takes account of all its environmental and amenity affects. As well as supporting our members with local issues, we have regular input into international, EU and UK policy discussions. In 2011 we acted as the sole community and environmental representative on the Government's South East Airports Taskforce. At the UN we are the lead representative of the environmental umbrella organisation ICASA, which is actively engaged in the current talks aimed at agreeing global climate measures for aviation.

We welcome the opportunity to respond to this consultation insofar as we are able, recognising that consultation covers an extremely broad range of issues. We respond below to the questions set out in the Call for Evidence.

### *Advantages and disadvantages*

*1. What evidence is there that EU competence in the area of environment and/or climate change has:*

*i. benefited the UK / your sector?*

*ii. disadvantaged the UK / your sector?*

EU legislation on air pollution has been very beneficial. There is no doubt that it can be influential in protecting citizens from ill health and death. In studies on Heathrow expansion, EU air pollution limits (for PM10 and NO2) were considered by the UK government to be critical. The government addressed the meeting or otherwise of these limits in great detail because the EU 'limit values' were seen as potentially preventing expansion or only allowing expansion in a way that addressed air pollution. Air pollution continues to be a factor that is addressed in all other proposals for airport expansion. While the UK has its own limits, equal to the EU ones, these are not even mentioned in government studies and in impact assessments for planning applications. Unlike the EU, there are no constraints, fines or sanctions implicit in the UK targets. Thus it can be



concluded that giving the UK competency on air pollution would remove all pressure to address air pollution.

EU legislation has undoubtedly been useful in addressing climate change, particularly as it encourages a levelling up in policy; it is hard to imagine that the UK would have agreed to the 80% emissions cut enshrined in the Climate Act if comparable commitments had not been made, and policy measures put into play, at European level. The EU emissions trading system for CO<sub>2</sub> is potentially of great use, notwithstanding the current problem of permits being higher than the demand, and has allowed the Committee on Climate Change to take effective account of aviation emissions under the Climate Act even though they are not yet formally included in UK carbon accounts. We very much hope that ETS can be rescued, for example through the use of a 'floor price' for carbon.

*Where should decisions be made?*

*2. 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?*

The answer to this depends on what one considers "the national interest". AEF considers it is in the national interest of the UK to protect the lives, health and quality of life for its citizens and to safeguard the future for the next generations.

There are some areas in which we would be opposed to any change in the current balance of powers between the EU and the UK

As noted above, EU competence on air pollution is a driver in reducing air pollution (or stopping it increasing). If competence were to be given to the UK, research, legal process, sanctions, etc would have to be instituted at UK level in place of EU activity, which is likely to be an inefficient process.

Also as noted above, the ETS has allowed the UK to develop a much stronger climate strategy than it would have done otherwise, given the inevitable concerns that would have arisen in relation both to competitiveness and to carbon leakage. It is also very unlikely that the stringent fuel efficiency standards for cars, which may help bring down air pollution around airports, would have been instituted in the UK.

For aircraft noise, the position is less clear-cut, as neither the UK nor the EU have introduced the quantitative noise targets that we consider necessary. Imposing noise standards for individual aircraft is already carried out internationally and it is not clear whether EU action would help. Noise standards for airports could be helpful, but they need

to impose minimum standards and not prevent more stringent national standards. Legislation currently being debated by the EU legislation could actually make it harder for the UK to impose limits on noise at airports through operational restrictions.

There is one specific area in which we consider it may be useful for the UK to consider a change to the current balance of competency, namely air traffic management. The UK has long held the view – which we support – that auctioning of slots at airports would be a more efficient and effective system than the current arrangements, which are based largely around grandfather rights, and that it would encourage airports to operate those flights for which most demand existed and that delivered the greatest economic benefit. Currently, however, our powers to effect change in this area are restricted as the system is managed at EU level, and the UK has been unable so far to persuade other states to agree to reform.

#### *Internal market and economic growth*

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

EU standards are important. Without them there would be competition between EU countries using low environmental standards as a competitive weapon. Airport lobbyists in the UK and other countries in the EU argue against environmental standards on the basis that they could impact their competitive position. (The main impact would be on transfer traffic, which is arguably ‘footloose’ as it could potentially go to another hub airport. Terminating traffic is much less affected.). A “race to the bottom” by EU countries would be unproductive because countries’ attempts to take traffic from each other would cancel each other out when they all impose low standards. Meanwhile, all EU citizens would suffer the health and quality of life impacts. An internal market that leads to this sort of outcome is by no stretch of the imagination “proper functioning”.

#### *4. 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?*

The implication behind this question is that strong EU legislation on environment and climate change will damage the UK economy. We do not accept this simplistic “environment versus economy” view. As noted in 3, a race to the bottom between EU countries benefits no-one in the EU and therefore does not serve the UK’s economic interests, particularly in the longer term.

Competition between the UK and countries outside the EU is a somewhat different issue. While it may be superficially attractive to argue for low standards in order to compete with the rest of the world, this is pernicious and ultimately indefensible. Does the EU really need to use low environmental standards as a weapon to compete with poor countries and ‘emerging’ economies? Should we be aspiring to the environmental and social standards of Bangladesh, China or Brazil in order to squeeze a few points increase in GDP? Low

environmental standards can impose their own costs in terms of human health and productivity. Road noise in England alone has been estimated to cost £7-£10 billion annually, and just one type of air pollution – particulates – at, conservatively, £16 billion per annum.

Competition between the EU and the rest of the world is very commonly cited as a reason for the EU not to take action on climate, particularly in the case of energy-intensive manufacturing which may lead to those industries re-locating outside the EU. However, the issue is much less significant in other sectors. It is not a serious issue for aviation because flights from, say, the UK obviously cannot re-locate to, say, China.

The problem of competition between the EU and countries outside could be tackled by the EU imposing a tax (at the right level) on embedded carbon on all products brought into the EU.

#### *Current legislation*

*5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:*

*i. focused on outcomes (results)?*

*ii. based on an assessment of risk and scientific evidence?*

We are not clear why a distinction is being drawn here. EU legislation is clearly focussed on outcomes (eg air pollution levels, protection of habitats, reduction of CO<sub>2</sub> emissions) but these outcomes are all informed by an assessment of risk and scientific evidence. (For example, CO<sub>2</sub> targets are informed by the risks of and due to climate change.)

A more relevant question is perhaps whether legislation relates to an over-arching objective or more proximate targets. There is a mixture. Air pollution targets, which are expressed in terms of limiting concentrations to protect human health, are an over-arching objective and an end in themselves. But emissions limits on cars or incinerators are proximate targets, intended to facilitate the aim of limiting concentrations.

#### *Doing things differently*

*6. 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?)*

This is rather technical issue and the answers are likely to vary greatly according to type of environmental impact.

*7. How far do you think the UK might benefit from the EU taking:*

*i. More action on the environment/climate change*

More action will help to protect EU citizens' lives, health and quality of life. For example, less illness and fewer deaths from air pollution, less heat stress, richer wildlife, and more beautiful landscapes.

*ii. Less action on the environment/climate change?*

Less action could lead to a slightly higher GDP for the UK in the short to medium term. This can happen for two reasons. Firstly, not taking action now is like borrowing money. It makes one richer for a short period, but ultimately a price has to be paid. Not protecting the environment is like mortgaging our future. Secondly, GDP is not a measure of human welfare. The only reason why sacrificing the environment for economic gain can seemingly work is because of the narrow definition of economic gain, namely consumption of goods and services that have a traded or market price but with no recognition of human life, health, welfare or happiness. Failure to make the right investments now to help the UK become a low carbon economy will almost inevitably lead to economic costs in the long term. Either carbon markets will have developed such that non-renewable energy sources have become very expensive or global efforts to develop low-carbon sources of energy will have stalled in which case high demand for fossil fuels is likely to increase their cost.

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

Any alternative should have as its aim to improve environmental protection, not weaken it as some would have.

*9. a. 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?*

As the EU is often better than most of the rest of the world in recognising and addressing environmental issues, a greater role should be beneficial to the local and global environment.

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

As the UK is better than many other EU countries in recognising and addressing climate change, a strong role should be beneficial for the local, EU and global environment.

### *Future challenges and opportunities*

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

We envisage two main challenges:

a) Continued or even increased claims that we should not protect the environment because it will damage the economy.

b) 'Beggar my neighbour' attitudes – if every other country doesn't take action, neither will we.

*b. 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?*

Action at all these levels is important. The order international, EU, UK and industry should be the order of preference because the broader the agreements or policies, the more can potentially be achieved. But where action at one level is not bearing fruit, it is vital that action at the next level down is prioritised. For example, currently, international action on climate is in many ways ineffective. This makes it more important to act at EU level.

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

This has been covered in previous answers.

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

a) We notice that there are 32 separate strands to the consultation. Of these, just part of one addresses climate change. This suggests a distinct lack of concern and priority about what is probably the most important issue on earth.

b) As our responses indicate, we are generally in favour of strong EU environmental policies and of not allowing MSs freedom to damage the local, European and global environment. However, it is important that EU policies do not constrain MSs who want to go further than the EU. If a MS wants to provide, say, better protection against noise or to

protect its habitats better than the EU requires, nothing in EU legislation or policies should prevent that or make it harder.

## **BAE Systems PLC**

**NOTE:** Our evidence is based on experience of Chemicals: REACH, RoHS, ODS, F-gases etc.

### **Advantages and disadvantages**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

*Whilst we are supportive of the aims of REACH, there are practical challenges in implementation across industry. There are no apparent benefits that have been seen in the short term from the implementation of REACH. However, benefits from the reduction or removal of hazardous substances from products or processes in the sector may become evident in the longer term.*

ii. disadvantaged the UK / your sector?

**General:** *The introduction of REACH has increased the risk of supply chain disruption, and has added cost due to the management overhead associated with managing this risk and developing risk mitigation plans.*

**Registration:** *The sector has seen an increase in the number of formulations withdrawn from the market, either due to direct non-registration for the use or indirectly due to REACH driving a rigorous commercial review of product streams in the chemical manufacturers and formulators sector.*

**Authorisation:** *(i) The current approach to the proposal of substances as Substances of Very High Concern (SVHC) under REACH lacks structure and stability which contributes to the uncertainty in industry over which substances will be next. There is a fear of sequential substitution from one substance to another as the regulation implements controls in a piecemeal fashion. (ii) The aerospace sector is now spending money to ensure the availability of key substances and process that will be impacted by REACH Authorisation (e.g. Chromium Trioxide and Strontium Chromate). This activity has an inherent risk in that the granting of an Authorisation cannot be guaranteed. This drives businesses to consider alternatives to carrying out the affected processes in the EU. Once these questions have been raised the information then becomes part of the wider strategic decision making in the business.*

**Supply Chain Communication:** *The implementation of Article 33 of REACH, which requires suppliers of articles to inform their customers if they contain more than 0.1 % w/w of substances of very high concern, has been challenging for industry as a number of member states disagreed of the European Commission's interpretation. This has created a 2 tier system across the EU under the same regulation.*

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

2. 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?

*No response*

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

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

*Consistency of approach is required to ensure free movement of goods within the EU. However, this needs to be balanced with the burden incurred – e.g. inconsistent application of REACH Article 33 creates a requirement for much more detailed data gathering in those MS where a more stringent approach is applied. This incurs additional cost for questionable benefit in the reduction of risk. Consistency of approach is important for trade with partners outside the EU as businesses will wish to seek maximise return on their investment in compliance systems.*

4. 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?

*We cannot answer the question posed, but we recall that a recent BIS report “The impact of Regulation on Growth”, May 2012 recorded the following findings:*

*“There is strong evidence from industry- and firm-level studies that higher product market regulation reduces economic growth,....”*

*“...further reduction of product market regulation is likely to have positive impacts on growth.”*

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32107/12-821-impact-of-regulation-on-growth.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32107/12-821-impact-of-regulation-on-growth.pdf)

### **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

ii. based on an assessment of risk and scientific evidence?

*Within REACH the process for considering a robust impact assessment of substances to be subject to authorisation, with the involvement of affected industry groups, is limited and appears to operate more on hazard than risk. This can be contrasted with the extensive*

work that is being undertaken to consider additional substances for inclusion in the RoHS Directive. [www.umweltbundesamt.at/rohs2](http://www.umweltbundesamt.at/rohs2).

*For example the information used to prioritise SVHC substances for authorisation is taken from the information provided in the substance registration dossier. Whilst this may have been valid at the date of submission the prioritisation approach does not take account of actual uses (i.e. a supplier might register more uses to allow for market growth or include historical uses) or the blacklisting effect that classification as an SVHC has to drive some uses out of the market ahead of authorisation or the research into alternatives that is being undertaken.*

*As a specific example strontium chromate is contained in the 4<sup>th</sup> recommendations for authorisation based upon uses in the aerospace, steel coil coating and automotive. However, the consortium that has formed to prepare authorisation documentation is considering the aerospace applications only.*

### **Doing things differently**

6. 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?)

*The EU's competence could be used to conduct robust impact assessment of making substances subject to Authorisation or Restriction under REACH. Based on the current processes it is not clear where and when impact assessment is carried out.*

*An alternative view is that the EU has a significant amount of legislation for improving the environment yet further improvement is required, so perhaps it is time to consider other approaches.*

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

*The UK could benefit if it were able to invest in alternative technologies ahead of regulatory action, then being in a position to exploit those technologies.*

ii. Less action on the environment/climate change?

*Less regulation would be less of a burden to EU industry and thus enable economic growth, see the response to question 4, regarding the impact of regulation on growth.*

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

*It would be difficult for the UK to address issues unilaterally. However, it would be preferable to address the root cause of problems rather than regulating across the full length of supply chains. The further away, geographically and contractually, a business is from the origin of the goods subject to control the harder it is for that business to exert control or influence.*



9. a. 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?

*No response*

b. How important is it for the UK to be part of “Team EU” at the UNFCCC?

*No response*

### **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

*In future there will be challenges with global supply chains and implementing specific requirements in relation to the materials used in a product or their origin. Systems which require the collection of large amounts of data will add cost to products and will inevitably contain inaccuracies.*

*There may be opportunities to agree common frameworks and standards for the collection and communication of product data to avoid re-processing and re-formatting of the same data.*

b. 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?

*No response*

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

*No response*

### **Anything else?**

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

**Volume of Change:** *It appears that the volume and rate of change of EU legislation in the environmental areas is particularly high. This presents a constant challenge for industry to implement the required compliance activity and manage any consequential business risks.*

**Defence Exemptions:** *The EU Treaties provide for exemption for the purposes of defence of a Member State. In some cases this is explicitly identified within regulations or directives, in other cases it is not. A consistent approach is desirable. Further, when an exemption is granted in one MS it must be mutually recognised and so transferrable across all EU Member States. The European Defence Agency can have a useful role in supervising this process.*

**Burden on SMEs:** *Noting the calls to reduce the burden of regulation on SMEs, appropriate consideration needs to be given to how any SME exclusions would be managed as goods progress through the supply chain to larger organisations.*

## **Bearder, Catherine MEP**

**Q1** The UK environment has improved greatly already as a result of EU competence in the field of environmental and climate change policies. Of particular note are reduction in carbon dioxide, improvements in water quality and better waste regulation. CO<sub>2</sub> emissions have been reduced in the UK due to the European Union's environmental and climate change policies. A major reduction has come from the Emissions Trading Scheme (ETS), created in 2002. The system limits the amount of CO<sub>2</sub> firms can produce in 7 key industries: energy, steel, cement, glass, brick-making and paper/cardboard production and aircraft emissions. The EU also supports reducing CO<sub>2</sub> emissions in the UK and throughout Europe through Carbon Capture and Storage (CCS) to bury emissions so they do not enter the atmosphere. Although not a long term solution, it provides some temporary respite. In 2008 the EU also reasserted a commitment to reduce the amount of CO<sub>2</sub> emitted from new cars and to fine manufacturers for each gram of CO<sub>2</sub> they produce over their target. This was set at €20 in 2012, increasing to €95 in 2015. Water is important to the UK and was an early priority for the EU and legislation continues to be developed in this area. Important, human health-dominated regulations were adopted early on to improve the quality of drinking water, and coastal and inland bathing waters, but other laws were adopted which sought to improve water standards for freshwater and shellfish. Bathing water in particular is important in the south east of England, which is leading the way when it comes to keeping beaches clean, tidy and safe to use. More recently, the EU adopted an ambitious Directive to improve the basic level of wastewater treatment across Europe. The EU then adopted the water framework Directive, which aims to raise the quality of all surface waters to 'good status' by 2015. Waste is another environmental sector in the UK which has been significantly improved through EU legislation. The EU has a long-term objective to control the disposal of particularly polluting substances such as asbestos, sewage sludge and batteries. It has also moved to deal with the production and transport of more toxic waste, and the reduction, re-use and recycling of packaging waste. Another important area of EU activity is nature conservation, an area British people tend to feel very strongly about. The two most important and well known Directives deal with the protection of birds and of natural habitats.

**Q2** There have at times been disparities between European Commission Regulations and Directives and the decisions of the European Court of Justice (ECJ) and this fuels eurosceptic attitudes. For example, in 2009 the ECJ ruled that EU states can set their own limits on CO<sub>2</sub> emissions (the European Commission cannot enforce common quotas). However, the Commission appealed against this ruling because it could compromise the Emissions Trading Scheme. The UK supports imposing EU-wide CO<sub>2</sub> emissions but some Eastern European countries are not, for example Poland, Estonia, Bulgaria and Latvia. In addition, there are still issues with UK implementation of EU Directives. For example, the Waste Framework Directive, despite delivering a lot of successes already for the UK, has not been fully implemented. Focus should be on its full implementation. Without it, markets are distorted to the detriment of environmentally responsible operators. It might be pointed

out that a lot of criticism of the EU is directed towards its excessive legislation, However, when investigated it is often found to be 'gold plating' or increased legislation put on to the basic directives at member state level which causes the most outrage. The UK has a reputation for this, and this also applies to misinformation about the Common Fisheries Policy, such as who sets landing quotas etc.

**Q3** EU agreements that affect climate, oceans, rivers and air pollution are especially vulnerable as they are influenced by human impacts across many countries. In these cases international agreements can work well. They are sometimes found in the form of legally binding documents that have legal implications if they are not followed and, at other times, are more agreements in principle or are for use as codes of conduct. These agreements have a long history with some multinational agreements being in place from as early as 1910. These international agreements involve the EU as a whole, along with for example, the US and Africa.

**Q4** A Eurobarometer survey revealed that 64% of the public believe that environmental decisions should be taken at a European level (European Commission 2002c Eurobarometer Report 58.0. December 2002. DG Press and Communications: Brussels). In addition, 87% felt that the environment should be one of the EU's top priorities (European Commission, 2002d Eurobarometer Report 56. April 2002. DG Press and Communications: Brussels) although this survey was conducted before the full scale of the European financial crisis was known so opinions may have now changed. European involvement has made national environmental policy more open and transparent. In the past, before environment and climate change were on Europe's agenda, many important British environmental decisions were made secretly, with very little public involvement. By contrast, EU policies tend to embody clear standards and timetables along with strict legal definitions, which leave much less room for political 'fudging' and much more scope for stakeholder involvement, particularly in areas such as resource efficiency where key national businesses input their decisions on policies. Over time, continental European approaches have steadily replaced the administrative 'rules of thumb' and informal 'gentleman's agreements' with polluters that were an unfortunate element of British policy. The role of the Parliament since the Lisbon Treaty has meant a greater influence of the role of the MEPs on the decision making process. They are directly elected by the citizens and remain their link to this decision making process. They have a wider circle of expertise and experience than the limited number of council members and have a direct focus on the EU as a whole.

**Q5** The EU's sustainable development strategy applies to all fields of policy, including the internal market. The key factor when it comes to integrating environmental concerns into the EU's internal market policy is the need to find a balanced approach between the free movement of goods and environmental protection. The increasing openness of the market is sometimes perceived as a threat to the quality of Europe's environment. By the same token, environmental standards are often seen as barriers to market access. Finding a way to integrate these two policy areas is the main challenge facing Europe's policy-makers. The EU's internal market integration strategy, adopted in 2001, sets out a series of

objectives, actions and indicators, and was the first step towards this goal. The strategy is implemented through existing EU legislation in areas such as standardisation, public procurement, eco-labelling, taxation, environmental agreements, state aid, and industry and product policy.

**Q6** At present, the economic situation in the UK is taking priority over environmental concerns. However, environmental policy can also be the key to improving the economy so more emphasis should be put on greener solutions. For example, China is investing so heavily in greening technologies that it is driving down the costs of these emerging technologies and building economies of scale. China is aiming to increase its technology and industrial self-sufficiency and global leadership, both to best gain from the high value employment opportunities and build its export domination of these newly emerging global industries. We should therefore learn from China and recognise that investing in the environment is also investing in the economy.

**Q7** Much EU legislation is based on results, with the development of indicators being a key to monitor progress. A specific example of this is carbon reduction commitments. By 2020, the EU has committed to cutting its emissions to 20% below 1990 levels. This commitment is one of the headline targets of the Europe 2020 growth strategy and is being implemented through a package of binding legislation.

The EU is also having an influence on a global scale through this target. It has offered to increase its emissions reduction to 30% by 2020 if other major emitting countries in the developed and developing worlds commit to undertake a fair share of a global emissions reduction effort. The progress that the EU is making in meeting this target is being monitored.

**Q8** Climate change in particular is an area of environmental policy that is based on scientific evidence and on the risk assessment should we do nothing. The scientific evidence that the world's climate is changing is clear and extensive. Nevertheless we need further research to refine our understanding of how the climate system works and how climate will change in coming decades. The Department of Energy and Climate Change (DECC) funds and supports the Met Office Hadley Centre Climate Programme, a world-leading programme of climate research and modelling. The programme works with research councils and academic centres in the UK and collaborators worldwide, to build the scientific evidence that informs our policy and decision making. This includes analysis of observations, computer model predictions of climate change, and assessment of the extent to which human activities have contributed to extreme weather and climate events. The IPCC also gives governments the most up-to-date assessments of the scientific, technical and socio-economic aspects of climate change. From my own experience at the European Parliament, working on resource efficiency with MEP Gerben-Jan Gerbrandy, I know that MEPs carefully scrutinise scientific evidence before giving opinions on proposals for regulations from the European Commission. Gerbrandy had many meetings on resource efficiency with the European Environment Agency, who informed him of the most important aspects and developments of this field.

**Q9** The EU could benefit from more ‘joined-up’ thinking in terms of sustainability. Sustainability should be seen as a process of change rather than a specific end point. To pursue sustainability effectively, greater efforts must be made to integrate an environmental dimension into the development of policies for agriculture, transport and energy sectors that tend to drive unsustainable development. In the past, the EU has really struggled to address the environmental impacts created by these sectors, especially concerning the Common Agricultural Policy.

The EU should also extend its focus beyond EU borders. A major priority area is already the developing world and this should continue. By doing this the EU

**Q10** Dealing with climate change and becoming more energy efficient is not just the right thing to do – it is the smart thing to do. The contribution that energy efficiency and renewable energy is already making to the global economy, especially in China, is significant and it sparks investments, delivers jobs, and creates growth. Of course, the transition will require investment but doing nothing will undoubtedly be the most expensive option at all. I believe European money spent on renewable energy is an investment for all European countries, especially the UK, in employment and competitiveness.

**Q11** I don’t believe that the EU taking less action on the environment or climate change will be beneficial for any sector in the UK.

**Q12** The European Commission is now devoting more of its resources to improving the implementation of EU policies at the member state level. The quality of implementation varies from country to country and sector to sector, but is generally regarded as the ‘Achilles heel’ of EU environmental policy. Britain’s record is better than most, but is not unblemished. The underlying problem is that implementation depends on what happens inside each state, as member states are formally responsible for ensuring compliance. The EU institutions are in a subservient position. Hard choices need to be made by states because until they empower the EU with greater oversight and powers of compliance, EU environmental policy is always likely to suffer from a sizeable ‘implementation deficit’. As pressure builds to upgrade implementation, Brussels is already responding by devising new approaches – e.g. implementation guidelines, closer direct relations with member states just after formal agreement on a proposal; a forum for exchange of implementation best practices - to reduce the communication black-out between the time Ministers agree a new measure, and the achievement of the objectives the measure sets out to attain.

**Q13** The EU as a party in its own right can have a significant say in negotiations and agreements internationally or with third countries. The EU gives legal teeth to international environmental agreements and greater negotiating strength in international discussions. As a party in its own right to many international environmental agreements, the EU has (in the case of climate change) been able to make them more ambitious and (in many other cases) more implementable at the national level. It is widely recognised that the outputs of the 2002 world summit on sustainable development in Johannesburg, would have been far

weaker had it not been for the international leadership exercised by the Commission and the member states of the EU.

**Q14** The EU is a world leader in combating climate change and the UK should remain as part of this 'team' at the UNFCCC. Collective EU action was crucial for example in establishing the Kyoto protocol – an achievement unattainable for the UK acting alone. It was strong leadership by the UK and the European Commission together that helped to keep a strong and united 'Team EU' position at the UNFCCC in Durban in 2011 and this secured a remarkable global commitment including all major emitters. Were the UK to exit the EU it would be bound to follow most of the decisions made at EU level on environmental issues (through agreements such as Norway does now) without the input into the decision making process at Council and Parliamentary levels. Therefore we would be behaving to adapt our legislation with a democratic disadvantage.

**Q15** Our future challenges in the environmental sector are also our future opportunities. For example, BP projects that with known and probable policy and technology developments, global CO<sub>2</sub> emissions from fossil fuels may be 26% higher in 2030 than they were in 2011, partly as a consequence of coal use in rapidly growing economies. There are several reasons why achieving substantial and rapid GHG emissions reductions will be challenging. Some important low-carbon technologies, including Carbon Capture and Storage, still face significant technology, logistical, infrastructure and cost challenges. Concerns are also spreading about nuclear energy following the Fukushima disaster in Japan. In the meantime, the GHG intensity of oil and gas extraction and production looks likely to increase.

There will be challenges for the environment as concerns over our economic situation take priority. Global economic challenges have reduced the focus of some governments on climate policy, at least in the short term. However, the commitment by both developed and developing countries at the UN's most recent climate change conference in Doha to negotiate by 2015 an agreement that requires action from all countries by 2020, is acknowledgment that an emphasis on carbon policy will return.

But these challenges present opportunity for policy makers as more aggressive, but still plausible, energy policy combined with technological advancements could lead to slower growth in CO<sub>2</sub> emissions than expected.

**Q16** The EU needs to have in place strict regulations. The UK needs to properly implement these regulations whilst helping industry comply with them. Industry needs to take the help, for example in the way of funding, from the UK government and comply with the regulations/directives. The UK needs to be sitting at the table when the decisions are being made and to bring the experience, needs and expertise of the UK into all environmental policy making.

**Q17** none

**Q18** none

## **Benson, Nicola**

**Q1** I feel that the EU is a stronger force with dealing with the environment and Climate change; UK government changes so much and each government has a different idea of what they think will get them votes, not actually how it will benefit the country and the future. The EU will actually listen to what various groups are saying and will then decide to make a change based on the evidence and looking to the future. The recent development in the pesticide that affects Bees is an example.

**Q2** The EU deciding certain things is great if a larger concern, but is not helpful for local concerns. If the EU and the UK work with (rather than against) each other, than i am sure this could be rectified.

**Q3** It is obvious each level should COMMUNICATE and WORK TOGETHER to make decisions. Government do things based on votes, or trying to make a legacy - so aren't really interested in the final impacts to the UK population and its future. For instance, labour set up Code for Sustainable Homes with the BRE, but now the conservatives want to get rid of it by making up some rubbish about trying to get the construction industry going. Haven't they noticed that the construction industry is going and is competitive, therefore is thriving!?! The EU does not understand or can relate to regional interest alone, but communication between regional national would help to make decisions. I don't think it right that one level should make the final decision.

**Q4** As I said above, there should be proper communication and processes to ensure that one level are not responsible overall to make a decision without proper consultation with the other levels who may be more in tune with the issue and its impacts.

**Q5-Q18** Not Answered

## **British Aggregates Association**

We welcome the opportunity to comment on this consultation.

I am responding on behalf of both [British Aggregates Association](#) as well as for [The Barytes Association](#) and also my various other interests in the minerals industry in the UK, Europe and globally gained in over 40 years experience mainly at the sharp end of industry. I am a member of the CBI Minerals Group and also of the UK National Minerals Forum which includes central, devolved and local government officials, planners, heritage groups and NGOs as well as industry representatives. I am also involved with the activities of [Euromines](#) and through them an EU Commission Expert Group the [Raw Materials Supply Group](#) which includes industry, the Commission and member state representatives.

In summary we have been disadvantaged as a sector and also compared with our colleagues in the same sector in other EU countries by the increasing EU thrust of environmental legislation. A strict adherence to a *one size fits all* is often not appropriate as the responsibility for environmental legislation in our sector varies enormously between member states - some have all matters mining through a “Mining Agency”, some through an “Environment Agency” and most through the planning system which historically was the standard in the UK.

This has been aggravated by the UK

- being less active in EU negotiations and stakeholder groups than other key member states, particularly Germany, France and Sweden
- having a prescriptive rather than Napoleonic national legal framework.
- creating DEFRA splitting away the responsibility for environment from planning which had previously both been within the previous DETR, now CLG.
- using the new and unproved (and unwelcome to our sector!) Environmental Permitting (EPP) system as an additional and unnecessary impost and cost on an already over-regulated industry
- allowing BIS (DTI) to have a less prominent and focussed voice for industry and our sector overall. In addition the coal sector was further removed by being sent to DECC!

Further comments are restricted to those questions listed in the review which are most specific to our sector.

**Q1. What evidence is there that EU competence in the area of environment and/or climate change has benefited or disadvantaged the UK / your sector?**

The *Mine Waste Directive* ([2006/21/EC](#)) is a good example of EU legislation that has disadvantaged our sector, with increased costs and no environmental benefit. This followed a large metalliferous tailings dam failure in Spain in the 1990s and a call for additional regulation for mining waste. The industry successfully sought a separate and unrelated piece of legislation rather than an amendment to the EU Waste Directive which was considered both inappropriate and alien to our sector. The UK already had fully serviceable legislation introduced following the Aberfan mining waste disaster in the 1960's, involving the Health and Safety Executive (Mines Inspectorate) and Planning Authorities which was seen as an ideal model the new EU Directive.

Regrettably the UK used DEFRA rather than CLG as the lead body to negotiate and further complicated the situation by transposing through the Environmental Permitting (EPP)



Regime with the Environment Agency as the regulator. The Directive is an unnecessary piece of legislation implemented in an unnecessarily burdensome manner as environmental legislation rather than safety/land planning. Virtually all other EU countries considered they had adequate measures in place domestically so essentially kept the status quo. (Incidentally Scotland did transpose through the land planning system)

There is serious concerns that a parallel situation is developing with the current proposed revisions to the EU Environmental Impact Directive (EIA) which could create a similar problem and would be yet further erosion of the land use planning regime in the UK by the imposition of inferior EU environmental legislation.

The Environmental Liability Directive is another example where the EU are now reportedly considering requiring industry to contribute to a Commission superfund which could then enable its potential use for any perceived environmental damage by other companies in other countries. This counters standard insurance responsibilities incumbent on any operating company in the UK and totally unacceptable for them to be held responsible for less stringent arrangements by other unrelated companies in other countries.

**Q4. 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?**

The review (para 14) highlights land use planning as a key example of one of the few remaining areas that remain within the competence of member states. It notes that.. *there are an increasing number of EU requirements affecting planning and development. These include not only environmental impact assessment, strategic environmental assessment and public participation in decision making, but also other requirements relating to habitats, water, etc. Another example of national competence is the protection and management of soils, an area also relevant to planning and development. A proposal for a soil framework directive remains stalled at EU level.*

We note the review also acknowledges (para 18) that ... *decisions may have to be made to balance economic needs with environmental protection while avoiding unnecessary burdens on business, industry and development.*

It is our firm view that the most appropriate and time-proven mechanism for the UK to make decisions on balancing economic needs with environmental protection is the land use planning system. We believe active measures should be taken to promote the primacy of land use planning and prevent, and if possible reverse some of the recent, erosion.

The need to achieve the correct balance between economic development and environmental protection is particularly critical for mineral extraction, where, unlike other forms of development, minerals can only be worked where they naturally occur in economic quantities.

Many of these minerals, some like fluorspar already on the EU endangered list, high purity limestone and barytes only occur in environmentally sensitive areas, like National Parks and AONBs.

**Q6. How could the EU's current competence for the environment be used more effectively? (e.g. better ways of developing proposals for and/or use of impact assessments, greater recognition of national circumstances, alternatives to legislation for protecting/improving the environment)**

The current review of the Environmental Impact Assessment Directive is being promoted by the Commission as 'smart regulation' and, while some of the proposed changes are supported by the industry, many of the changes would, if adopted be additionally and unnecessarily prescriptive.

Most mineral extraction developments in this country are supported by an Environmental Impact Assessment and the industry believes that the administration of the regulations through the land-use planning system has worked well since 1999. It is recognised that there are some areas of the Directive that need updating, but the major amendments as currently proposed swing the balance too far towards EU level control. We therefore strongly support the UK Government's efforts to secure less proscriptive amendments.

Government should resist moves by the Commission, as in this case, to set out detailed matters, such as procedural timelines, and specifying procedures for accrediting experts at an EU level.

EU legislation should focus on setting minimum standards in countries without the benefit of adequate and appropriate systems in place - and not changing the status quo in countries like the UK, or making our UK legislators feel they need to do or change anything!!.

**Q8. Are there any alternative approaches the UK could take to the way it implements EU Directives on the environment and climate change?**

The UK needs to recognise that the appropriate mechanism to transpose is preferably for our sector through the land-use planning system and generally not Environmental Permitting. The unnecessary problems caused by the lack of knowledge and

misunderstandings over the enormous differences between *waste* and so-called *mine waste* should be a salutary lesson.

Ideally our sector might be better served if the responsibility was within one section of BIS and the environmental, planning and associated legislative aspects were within the same government department and with an identifiable, clear and focussed point of contact.

**Q11. Are there any general points you wish to make which are not captured in any of the questions above?**

Climate change policy has seriously disadvantaged our mineral related high energy user industry - far, far more heavily than other industrialised countries in Europe and North America. In particular our primary aluminium production has been virtually wiped-out by the closure of the two largest of the UK's three smelters in the last two years, and the steel industry output in 2012 was still only 70% of pre-2008 recession levels compared to US(90%), Germany and Italy (86%); and France(81%).

**British Association for Shooting and Conservation**

**Q1** Because BASC is interested in migratory birds and the need for cross-boundary conservation we understand the importance of the European Birds and Habitats Directives and the Marine Strategy Framework Directive. They are vital, and through them there is now a network of protected terrestrial sites (Natura sites) across Europe, with plans for a similar coherent network of marine conservation zones around the UK and EU coast. Without the Natura network numbers of migratory waterfowl which are on the UK quarry list would not be as high as they are now

**Q2** To date we have not encountered cases where EU competence has placed additional burdens on our sector. What is concerning is that EU regulation has been gold plated when introduced into domestic law.

**Q3** Where policy has to be created in a cross-boundary way it makes sense for agreements to be multinational. If agreements are across the EU or international it will depend on the circumstance. The international Convention on Biological Diversity is driving much of the policy associated with nature conservation.

**Q4** We are unable to provide any evidence for this question.

**Q5** EU environmental standards should be made for sound environmental reasons. They should be divorced from the single market.

**Q6** This question is not relevant to our sector.

**Q7** Within our sector we think it is focused on outcomes, and it benefits from that. The problem we have faced in the UK is gold plating of the legislation for example: When identifying potential Marine Conservation Zones (MCZs) in England and Wales both Defra and Welsh Government decided that highly protected areas or reference areas should be part of the proposed network of new sites. There was no basis within the legislation to create highly protected reference areas within MCZs. A clear example of UK government and civil servants exceeding what Europe intended, resulting in regulatory creep. In a similar way the EU's policy framework for use of biocidal products allows some flexibility. The Health and Safety Executive have ignored the European option for flexibility, instead opting for rigorous protection and subsequent costs to countryside managers. A similar approach has been taken by the Environment Agency regarding animal by-products (ABP) and the Waste Framework Directive. There are exemptions available to allow ABP from healthy hunted animals to be left in the field. However, the Environment Agency has now decided that ABP should be regulated under the Water Framework Directive. Another clear example of regulatory creep exceeding what was intended by EU directives. Similar regulatory creep can be found in the implementation of the Environmental Noise Directive and the way it has been used to restrict or ban shooting activities.

**Q8** Within our sector EU legislation relating to the environment and climate change is based on risk assessment and scientific evidence. However, we are always aware that the European Commission is open to political influence. We therefore believe the requirements for impact assessments and scientific, evidence based decision making should be enshrined in legislation.

**Q9** EU legislation must focus on outcomes with a strong science base. Individual countries must be allowed to adapt the legislation to their circumstances and national delivery mechanisms. There should be no gold plating at the UK level, and if governments exceed EU requirements they put the economy at a disadvantage.

**Q10** We are unable to provide any evidence for these questions.

**Q11** We are unable to provide any evidence for these questions.

**Q12** There should be no gold plating of legislation unless a proper Parliamentary debate has taken place along with a full impact assessment.

**Q13** We are unable to provide any evidence for this question.

**Q14** We are unable to provide any evidence for this question.

**Q15** We have nothing else to add to the significant body of evidence already available on the challenges we face on environmental protection and climate change. See: The Stern Review on the Economics of Climate Change, Making Space for Nature, Sir John Lawton, the UK Committee on Climate Change Etc.

**Q16** We are unable to provide any evidence for this question.

**Q17** We are unable to provide any evidence for this question.

**Q18** The key issue regarding nature conservation is UK civil servants and agencies that decide to gold plate the directives resulting in significant regulatory creep. This is highlighted by the way Natural England have developed a complicated and bureaucratic approach to consenting wildfowling, whilst their colleagues in Wales and Northern Ireland adopt a much simpler approach. We have highlighted this issue as a priority in our response to the recent Defra consultation on smarter guidance and data.

With reference to paragraph 6 and the text box 'Scope of this report' BASC would draw attention to the last sentence which says:

Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

Government should consider how 'proportional' the actions of their agencies are when it comes to activities associated with shooting.

### **British Ceramic Confederation**

The British Ceramic Confederation (BCC) is the trade association for the UK Ceramic Manufacturing Industry, representing the common and collective interests of all sectors of the industry. Its 100 member companies cover the full spectrum of ceramic products and comprise over 90% of the industry's manufacturing capacity.

Membership of the Confederation includes manufacturers from the following industry sectors:-

- Gift and Tableware
- Bricks
- Refractories
- Floor and Wall Tiles
- Clay Roof Tiles
- Industrial Ceramics
- Sanitaryware
- Clay Pipes
- Material Suppliers

With so many on-going regulatory changes taking place and policy initiatives under implementation, now is an opportune time to take stock of the balance of competence between the United Kingdom (UK) and the European Union (EU), and we welcome the opportunity to respond to your consultation.

Although at first view it can appear that the balance of competence regarding environment and climate change is biased towards the EU, with deeper analysis it is apparent that there are a number of considerations that must be taken into account, including the UK Government's approach to the implementation of EU and UK policy and regulation. Therefore, within this consultation response we have raised a number of points relevant to both the EU and UK.

Outlined below are a number of general comments, followed by responses to the questions posed in the consultation document, including examples and evidence where applicable.



## **General observations on the balance of competence between the EU and the UK:**

1. **Although in certain instances it could appear to be desirable to restore the balance of competence from the EU to the UK, a key concern is the level of UK resources** (including financial and expertise), that would be available to implement this effectively.
2. **There are cases where although it may not be appropriate for an EU competence to be transferred to the UK, there are issues with the approach of the EU which should be addressed in order to improve performance and outcomes.** For example, the EU's stringent hazard based / precautionary approach to regulation can cause serious implementation problems for companies. In addition, the principle of proportionality often seems to be exceeded in the EU. Therefore, the EU should be encouraged to take a more balanced, risk based approach to regulation.
3. There are a number of situations where it is correct that the balance of competence is with the EU, however **it is critical that when implementing EU policy and regulation, the UK places a greater emphasis on ensuring that the UK's policy and legislative framework allows businesses to compete internationally and certainly within Europe**, in particular:
  - **There should be a more pragmatic UK transposition of Directives** in line with the purpose, as is common in many other Member States, of the Directives rather than reliance on strict legal interpretation.
  - **If the EU has exclusion clauses from Directives they should be implemented as a default** in the UK unless there is good reason not to.
  - **The implementation of national laws in the UK sometimes results in the UK manufacturing industry being at a competitive disadvantage** to companies in the EU or further afield.
4. It is sensible that in areas of shared competence, such as environment and climate change, either the EU or Member States may take action, but the Member States may be prevented from acting once the EU has done so. **We believe that the EU should exert its powers more consistently and robustly where the UK (or other Member States) have taken action beyond EU requirements, and where this is damaging competitiveness.** This is particularly relevant to climate change policy and regulation in the UK.
5. **When the EU develops and implements new policy and regulation, it must take account of the cumulative regulatory burden in each Member State.** It is vital that the EU takes the whole picture into account and makes allowances for those industries already impacted by national requirements.

6. **When implementing new legislation the EU should carry out a full financial and economic impact analysis at an early stage, and this should be updated on an on-going basis.** This will help ensure decisions are made based on comprehensive and current information, and that the legislation has the desired effect, without resulting in unforeseen impacts.
7. **The complexity of the UK legislative framework can mean that it is difficult for UK industry to gain applicable exemptions as working within the requirements of State Aid becomes too difficult.** We therefore appeal to the UK Government to ensure that the UK legislative framework is kept simple and business / growth friendly.
8. **Any targets (e.g. carbon reduction) introduced by the EU or UK need to reflect what is challenging yet achievable** and there needs to be a greater commitment to supporting industry to accomplish such targets through the provision of adequate funding to adapt and develop new technologies.
9. **It is essential that UK Government represents the interests of all manufacturing industries, and their associated jobs in supply chains, in discussions with the EU.** The EU generally has a holistic approach that is potentially beneficial to all sectors rather than a handful of 'picked winners'.

**Responses to Consultation Questions:**

1. **What evidence is there that EU competence in the area of environment and/or climate change has:**
  - a. **benefited the UK / your sector?**
  - b. **disadvantaged the UK / your sector?**

Whilst acknowledging that EU competence in the area of environment and climate change has led to tangible improvements in environmental quality and a relatively joined up approach to tackling climate change, there are a number of significant issues and challenges faced by the ceramics sector in this area, some of which are due to the interaction between the EU and UK in policy making and regulation (please see the response to question 4 below for specific examples).

Due to these issues and challenges, in certain instances it may be desirable to restore the balance of competence to the UK, however a key concern is the level of resources available to implement this effectively. The pooling of resources and expertise generally means that the EU is likely to have more resources to enable specialists to focus on defined topics / work areas than in the UK. If the balance of competence in an area were restored to the UK, resources would have to be allocated to ensure effective delivery. This would require increased budgets if it was to be effective.



Therefore, we believe that EU competence in the area of environment and climate change should remain, but improvements in implementation need to be tackled by the UK as a matter of urgency in order to ensure that the UK ceramics industry is not disadvantaged.

### **Where Should Decisions be Made?**

#### **2. *Considering specific examples, how might the national interest be better served if decisions:***

- a. 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?)***
- b. currently made at another level were instead made at EU level?***

We agree with the balance of decision making powers in the EU and UK as although it is very important that there are national decision making powers, it often makes sense for decisions to be made at an EU level, in order to help ensure consistency of approach across Europe. However, there are many instances where the desired uniformity is not achieved (see questions 4 and 8 below for specific examples).

One way to promote consistency would be through the implementation of regulations at the EU level, as opposed to directives, in order to enable standardised enactment. However, this would only be effective where regulations are fully reviewed and evaluated prior to implementation in order to ensure that they are realistic and fit for purpose. There are also instances where, due to particular local environmental sensitivities, flexibility in the implementation of directives must be promoted (for example the Environmental Impact Assessment Directive), rather than a comprehensive and prescriptive approach by the Commission which may not cover or be necessary in all local situations.

The EU should also take a more active role in checking that directives and regulations are actually applied in each of the Member States. Otherwise, countries such as the UK which has a comprehensive and legalistic approach to implementation can be left at a competitive disadvantage.

### **Internal Market and Economic Growth**

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

Consistent implementation of EU Environmental standards across all Member States is necessary for the proper functioning of the internal market in order to ensure a level playing field.

**4. 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?**

There are a number of comments we wish to make in response to question 4:

- Although the importance of the EU in regulating the environment and climate change is acknowledged, we believe there is currently too great an emphasis on these issues. It is our view that the EU should have a more balanced approach to sustainable development, which allows flexibility to respond to economic and social needs, not just focus on the environment. The recent recession and continued sluggish /stalled growth in Europe is being further stifled by certain pieces of EU policy and regulation, particularly in relation to climate change (see below and question 8 for specific examples). Once healthy levels of growth are re-established, the remaining ceramics industry may be in a better position to further respond to environment and climate change challenges. Currently it is difficult for EU companies to act in isolation.
- While the EU's focus on environment and climate change is challenging, it is the UK's approach to both the implementation of EU policy and regulation combined with additional national legislation that causes most concern. There are a number of examples where the UK has acted beyond the requirements of the EU, which in turn has undermined the competitiveness of the UK ceramics industry (examples include the Climate Change Act targets and the Carbon Price Floor costs), and this goes beyond intended EU action. As it states in Paragraph 10 of the consultation document in relation to the Single European Act 1986, which introduced a specific Treaty base to protect the environment, *'through the impetus it gave to the creation of the internal market, it also lead to the harmonisation of emissions standards in order to avoid distortions to industrial competitiveness'*.

It makes sense that in areas of shared competence, such as environment and climate change, either the EU or the Member States may take action, but the EU needs to play a greater role in preventing additional Member State action that is detrimental to competitiveness. In the UK, specific climate change related regulation has undermined the competitive position of the ceramics industry with the rest of Europe and beyond. A greater balance is needed between interstate competition and environmental protection, and we believe that the EU should exert its powers more consistently and robustly where Member States have taken action beyond EU requirements, and where this is damaging to competitiveness.

- When the EU develops and implements new environment and climate change policy and regulation, it must take account of the cumulative regulatory burden in each Member State. For example, changes to the EU Emissions Trading Scheme (EU ETS) at EU level will have less of an impact on manufacturing industry than the cumulative burden of EU ETS plus national taxes and charges. The EU must take the whole picture into account and make allowances for those industries already impacted by national requirements. In the case of the UK, there are a number of cumulative costs, particularly in relation to climate change related taxes and levies, and so when companies are making dispassionate decisions about where to invest in Europe, this impacts the outcome of whether to invest in the UK.

Equally, the UK Government has a responsibility to consider the cumulative impact of EU and national legislation when considering new regulation.

- Finally, when implementing new environment and climate change related legislation, the EU should carry out a full financial and economic impact analysis at an early stage, which is then updated and made public on an on-going basis. This will help ensure that the legislation has the desired beneficial environmental and full economic effect (i.e. the cost not just of implementing the legislation, but wider economic costs such as job losses and the closing of UK manufacturing capacity), without resulting in unforeseen impacts.

### **Current Legislation**

#### **5. *Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:***

- a. focused on outcomes (results)?***
- b. based on an assessment of risk and scientific evidence?***

There are instances where although it may not be appropriate for an EU competence to be transferred back to the UK, there are issues which should be addressed. EU legislation relating to environment and climate change is generally outcome focussed, which leads to a number of concerns including:

- An apparent lack of ‘bigger picture’ vision and understanding of the cumulative impact of legislation on industry. For example, focusing on issues such as carbon in isolation means that there is a lack of understanding about the full impact of implementing certain pieces of legislation (e.g. Carbon Price Floor, leading to increased electricity costs for all consumers), which can have serious economic implications. Also, the overall goal of the legislation will only have limited success as carbon emissions are merely transferred elsewhere due to carbon leakage.
- There needs to be recognition in the EU and the UK that placing greater legislative requirements on business will not lead to the desired outcomes as there is only so much that industry can do with available technology and funds. It is important that the EU works to reduce carbon emissions, but there is a fine balance between incentivising investment and driving business elsewhere.
- The focus on environmental rather than holistic outcomes can lead to the principle of proportionality being exceeded in the EU and UK. For example, back loading on the EU ETS is being used to “fix” a market based system; the market system should be allowed to work in line with market conditions, without making an intervention that will lead to higher costs for business and an increased likelihood of carbon leakage. Another example of apparently excessive emphasis on achieving environmental outcomes is in the development and burdensome implementation of REACH. Although the principle is laudable, the risks to supply chains, smaller suppliers and

the lack of alternative materials with similar functionality, undermines its potential benefits.

- At times, there is a lack of understanding about how some of the outcomes can be achieved, and whether they are actually possible (e.g. emerging food contact legislation). At times the assumption can be that 'industry will find a solution'. This may be the case in certain instances, but is not always possible due to resource constraints and the reality of business conditions.
- There appears to be limited understanding about the additional administrative burden that is created for industry and others (e.g. planning authorities), leading to disproportionate costs (for example proposed amendments to the Environmental Impact Assessment Directive).

Another concern is the excessively hazard based / precautionary approach to regulation in the EU, rather than a more measured, risk based approach. For the ceramics industry, this has been apparent with the development of food contact legislation, where unrealistic levels of heavy metals have been set where there is in fact a very low risk to the consumer. A more sensible approach here is for the UK and other Member States to encourage the EU to take a more balanced, risk based approach, and that all emerging proposals should be 'reality checked' with EU and national industry as part of the development process.

## **Doing Things Differently**

### **6. *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?)***

Although it is important that policy and regulation is in place to encourage and require companies to take action on environmental and climate change matters by, for example, establishing challenging but achievable carbon reduction targets, there should be a greater emphasis on the 'carrot' as opposed to the 'stick'. Industry is often expected to find the solutions to environment and climate change issues, and this is frequently achieved, but there must be greater recognition of the resource limitations that companies / sectors may have, particularly where breakthrough technologies are required.

If requirements are too burdensome (for example carbon reduction targets and taxation) and undermine business models, companies are likely to relocate to places that are more conducive to business.

There needs to be a greater commitment to supporting industry to achieve such targets through the provision of adequate funding to adapt and develop new technologies, particularly where market signals will not deliver. More public funds should be used to develop breakthrough technologies rather than just taxation. This approach could give a

very positive result and drive technology innovation in the EU, which in turn could be a useful global export.

- 7. How far do you think the UK might benefit from the EU taking:**
- a. More action on the environment/climate change?**
  - b. Less action on the environment/climate change?**

It is recognised that the action of the EU and UK has led to significant improvement in the quality of the environment, leading to substantial benefits for people and the natural environment. However, further action in some areas is becoming prohibitively expensive relative to the likely environmental benefits. As highlighted in Question 4, there must be a balanced approach to environmental protection. The EU and UK should not reduce action on the environment and climate change, but must focus on ensuring that current policy and regulation is implemented fairly and effectively across all Member States.

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

There are a number of instances where it is correct that the balance of competence is with the EU, however issues have arisen for the UK's ceramic sector due to the Government's approach to implementation of EU policy and regulation.

It is critical that the UK places a greater emphasis on ensuring that the UK's policy and legislative framework allows businesses to compete internationally and certainly within Europe. In particular:

- There should be a more pragmatic UK transposition of Directives in line with the purpose of the Directives rather than reliance on strict legal interpretation. In addition, where existing UK legislation exists which meets the overall purpose of new EU legislation, there should be no need to enact new UK legislation. Examples include legislation relating to health and safety, environmental impact assessment, and energy efficiency. This is consistent with the UK Government's pledge to 'remove red tape'
- If the EU has exclusion clauses from Directives they should be implemented as a default in the UK unless there is good reason not to. For example, the Mineralogical Processing Exemption in the Energy Tax Directive was implemented in many Member States many years before it was in the UK. This has been to the advantage of EU businesses, but to the detriment of the UK ceramics industry.
- The implementation of national laws in the UK sometimes mean that UK manufacturing industry is at a competitive disadvantage to those in the EU or further afield. For example, although it is positive that the UK Government is taking steps to reduce carbon emissions, strict carbon targets in UK and extensive UK only carbon and climate-related taxes mean that the ability of UK ceramics companies to

compete is reduced, carbon leakage may increase, and imported goods and global carbon emissions are likely to rise – the opposite effect of what was intended.

- The complexity of the UK legislative framework can mean that it is difficult for UK industry to gain applicable exemptions as working within the requirements of State Aid becomes too complex. We therefore appeal to the UK Government to ensure that the UK legislative framework is kept simple and business / growth – friendly. This will improve the current complex situation where state aid issues are a major stumbling block to the implementation of exemptions. The complex array of climate related taxes on UK electricity bills (e.g. The Renewables Obligation, Feed In Tariffs, Electricity Market Reform, Carbon Price Floor, Climate Change Levy, Carbon Reduction Commitment, and EU ETS) provides a good example of where this issue is apparent. A number of these taxes has had to go through / is going through a complex procedure to partially exempt just a few ceramics companies from some of the charges. In addition, the plethora of taxes puts an enormous administrative burden on ceramics companies in the UK, made worse by the complex interactions between them e.g. CRC, EU ETS and CCA. In comparison, in Germany some competitor companies are able to gain free electricity transport charges and up to a 99% rebate on a significant (€55/ MWh) green tax.

**9. a. 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?**

The EU has a significant and important role to play when negotiating on a global scale, generally far more so than if the UK were to act independently. However, this can be dependent on the nations involved, for example the UK may be able to play a greater role when influencing Commonwealth countries.

**b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

We believe that it is very important for the UK to be part of “Team EU” at the UNFCCC.

**Future Challenges and Opportunities**

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

A number of issues have been raised in responses to previous questions, but a key challenge for the future is to achieve the right balance between economic growth, international competitiveness, and environmental protection.

**b. 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?**

A number of points have been made in the answers to previous questions, but as an additional point, industry needs to be able to have a stronger voice to ensure there is a balanced approach to addressing environment and climate change issues, and that major concerns about international competitiveness are taken into account across ALL sectors in the UK, not just those identified as a “priority” by the UK Government.

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

This is about having a more balanced approach in the UK and the EU. If all industries were consulted and their views taken into account, it should ensure more sensible and efficient legislation at all levels. If this was achieved, it would lead to more effective and efficient use of time for the UK Government and businesses, and should ultimately lead to a more positive outcome for the environment and climate change.

**British Coatings Federation**

The British Coatings Federation is the sole UK trade association for manufacturers of decorative coatings, printing inks, industrial coatings and wall-coverings, representing a £2.5 billion value industry and the interests of over 140 member companies. The majority of BCF members are SMEs, formulating coatings and inks for a wide range of consumer and industrial use. Our Brochure "The Impact of Coatings - Britain's Most Visible Industry", which can be downloaded from the BCF website [www.coatings.org.uk/The\\_BCF/The\\_Impact\\_of\\_Coatings.aspx](http://www.coatings.org.uk/The_BCF/The_Impact_of_Coatings.aspx) , provides an overview of the breadth and depth of the uses of our members' products and demonstrates the extent to which society is dependent on the coatings and inks industry.

We would like to submit the following commentary to the Call for Evidence, Review of the Balance of Competences, Environment and Climate Change.

**Advantages**

There is little evidence that REACH has benefitted the UK or the coatings sector.

**Disadvantages**

REACH has had and continues to have, massive costs for the coatings industry. However, this disadvantages the UK against non-EU countries and regions, rather than against other EU Members States. Significant resource has had to be put in, by coatings manufacturing companies, to update safety data sheets, monitor changes to chemical classifications and proposed restrictions/authorisations and search for substitutes. There is an ever-changing list of substances that have to be studied to ensure that companies are able to substitute or reduce highlighted chemicals. This involves carrying out performance tests for coatings containing the substances in question, to ensure they are able to protect surfaces against the required criteria both short and long-term.

We are starting to hear from SMEs who are unable to support the cost of developing new substances due to the costs of REACH registration and testing. The costs for registration, including testing a substance and dossier submission is of the order of 50,000 Euros. For new materials, and for existing ones from 2018, this applies when only one tonne of the substance is sold in a year. The profits from these sales are not sufficient to justify the initial expenditure. Small companies will no longer be able to innovate. This will hit the UK significantly, but will have a lesser effect on the large chemical companies, such as those in Germany, who will have the resources.

A further problem is the uncertainty of REACH in that companies, particularly SMEs, do not know what to do when, as chemicals get put onto various lists, there is no plan on what happens next. For example in June, 6 chemicals were chosen from 100+ SVHCs, to be put forward for possible authorisation (e.g. ADCA) but companies are not sure about the others on the list. There is no certainty whether they will just sit there or they will possibly be proposed for a restriction/authorisation, and if so, when. This makes any 'development' impossible to plan as if the chemical does not move forward to a possible restriction/authorisation then it does not need replacing but conversely if it does any timescale to replace it is too short anyway.

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

In order for the free market to work, we cannot have each Member State having separate requirements. We are currently seeing France introduce its own laws on nanomaterials, indoor air emissions and toxicovigilance. Germany (and Switzerland) are bringing in their own requirements for food packaging (including printing inks) which is starting to cause chaos as companies cannot meet all requirements. For SMEs who formulate a single product for global usage, this causes numerous issues in terms of product labelling, product literature, data sheets etc. for what should be a harmonised European Union.

However, there are some issues that should be handled at UK level. Some restrictions and authorisations are being proposed for substances that consumers are not exposed to. These are only used in industrial settings where occupational controls are in place and are covered by existing occupational legislation. It would be better if exposures to these were controlled by occupational measures such as Workplace Exposure Levels (under the Control of Substances Hazardous to Health Regulations). These, still, might have to be made as binding limits, set by the EU.

An example of this are the chemicals di-isocyanates. Di-isocyanates are known respiratory sensitisers, used, inter alia, in one important range of paints - polyurethanes. There are no alternatives to these isocyanates for the production of polyurethane paints.



Polyurethanes are widely used in industrial applications, as the one advantage they have over many other coatings is their ability to produce highly durable, high gloss paints, which makes their use as finishes common.

The main use of these paints is in the vehicle refinish, marine, aerospace and protective coating applications (paints used on exterior steel fabrications to provide long lasting finishes). Formulating these coatings can produce a range of properties which are difficult or impossible to replicate by other paints. Over the years their importance has grown and they have often replaced other coatings which used much more solvent (VOCs) such as nitrocellulose vehicle refinish paints. Their durability also means that these coatings have extended lives resulting in longer periods between repainting.

The coatings are generally confined to industrial uses and as such their manufacture and application are well controlled with minimal emissions of isocyanates occurring. Applicators either wear full respiratory equipment or the paint is applied in enclosed conditions to avoid exposure to the operators. Controls on their use ensure that they can be safely used avoiding any concerns there might be to exposure to the isocyanate component. In addition, it is considered that the low number of occupational asthma cases caused by isocyanates can be further reduced by the application of Risk Management Options at national level.

A further example is BisPhenol-A, a chemical used to manufacture epoxy coatings, which has been given the all clear by EFSA the European Food Standards Agency, and is one of the most studied chemicals, but France, Denmark, Belgium etc. are all trying to impose their own restrictions – which are not all the same – on its use.

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

REACH is likely to restrict growth and, in some cases, cause business and employment to be lost outside the EU. One case is the authorisation of chromates. These materials have been used for the pre-treatment and protection of metals for many years. There is no immediate replacement that has the proven track record. They are used substantially in the aerospace industry, which is likely to source components from outside the EU where these materials can still be used. Coated articles can then be imported to the EU, with no restriction.

### **Current legislation**

Whilst purporting to be science-based, REACH focuses on hazard and not risk. Substances are at risk of being banned because they are hazardous, even if they can, and are, being used safely with the appropriate controls. An example of this is Azodicarbonamide (ADCA). Under the REACH regulation, the European Chemicals Agency (ECHA) has launched a public consultation on a draft recommendation to add ADCA to the REACH authorisation list (Annex XIV). This has serious implications for the wallcovering industry and other users.

ADCA is the foaming agent used in expanded plastics and rubbers. In the 1980's it was identified as a respiratory sensitizer that can cause industrial asthma. The UK Health and Safety Executive proposed safe working practices, and steps were taken by companies to protect workers, which was successful, as 27 cases of workers suffering sensitisation occurred before the year 2000, and only one since.

ADCA is the ideal foaming agent for plastics and rubbers. It foams at the right temperature, and foaming can be controlled to achieve different textures. This is particularly ideal for wallcoverings. At the present time, there is no viable alternative.

There are emerging wallcovering markets in China and Russia, which could take over production and supply of blown vinyl wallcoverings if ADCA cannot be used in Europe. This could sound the death knell for the UK wallcoverings industry as 50% of sales of wallcoverings are blown vinyl. Firms may, therefore, cease trading if they no longer have the critical mass. The major UK manufacturers are all SME's, that do not have the time or resources to immediately develop alternative foaming compounds, and all fear for their future if ADCA is banned, as this would make it difficult to compete with manufacturers from outside Europe.

ADCA has no consumer uses; it is compounded into the plastic or rubber, and decomposes during manufacture, so cannot be identified as a hazard to the consumer. The potential hazard is to the workers handling it, but by risk management, this has been controlled for the last 25 years.

### **Doing things differently**

The impact assessment for REACH was completely inadequate. Industry has already spent the estimated cost, even though it is only halfway through the timetable and has still not started to address the majority of chemicals – the small volumes down to one tonne p.a. A new, accurate impact assessment should be done to justify REACH.

There need to be much more focus on SMEs to ensure that they are able to resource the REACH requirements. This should be part of the impact analysis.

There also needs to be an assessment of SME's ability to innovate new chemicals whilst meeting the data requirements for the one-tonne threshold.

We do not see how the UK could take a different approach to the rest of the EU and still function as part of the free-trade area

### **British Ecological Society**

The British Ecological Society (BES) is pleased to present its response to the Defra/DECC consultation on the balance of competences between the UK and the EU in the areas of the environment and climate change.

The BES is the UK's learned society for the science of ecology, and is the oldest ecological organisation in the world. The Society has over 4,000 members based in the UK and around the world, including leading scientists working in research institutions and practicing ecologists working in industry.

In this response, we focus specifically on the impact of EU actions in the areas of (i) Water and Marine and (ii) Nature and Biodiversity, and on the need for EU-level approaches in these areas.

## **Summary**

- EU competence in the area of environment has led to directives that have had a positive impact on the UK's water quality and biodiversity, and strong evidence exists to support this. Moreover, EU measures have led to improvements in the UK environment that would not have occurred under pre-existing UK laws, and have set precedents for subsequent UK legislation.
- EU environmental regulation and directives provide continued protection for the UK environment despite national economic constraints and budget cuts in relevant Government departments. These overarching policies ensure that environmental protection measures are not at risk of being pitted against each other in the face of austerity.
- Long term trends in climate change and habitat degradation will render EU competence in the area of environment even more important in the future. Ensuring habitats and environments are resilient and able to withstand changes is a complicated process, requiring broad, long-term policies and international coordination.
- In some cases, the 'one size fits all' policy may not be the best approach for the environment in all member states. Greater flexibility on individual policies for member states could therefore lead to cost-effectiveness for the UK, especially in relation to environmental management.

Nature does not respect national boundaries. A joined up approach across Europe on biodiversity is necessary for effective action in this area, as each country's actions will affect its neighbours. While the UK is more geographically isolated in some senses, the issue is still particularly relevant with respect to water and migratory animals such as birds. The need for a coherent approach to the environment across Europe will also become more

apparent in the future. As climate change leads to species relocation<sup>2</sup>, a broader scale view of conservation will be needed to understand where species need to be protected the most. Furthermore, there are environmental issues that require effective international collaboration, such as protection from Invasive Alien Species, and issues where only a cumulative effect at a large scale will have a positive impact (such as ocean acidification).

## **1. What evidence is there that EU competence in the area of environment and/or climate change has benefitted or disadvantaged the UK/your sector?**

There are several examples of EU competence having had a positive impact on the UK environment:

### Birds

The Birds Directive (79/409/EEC) has successfully protected bird species that are considered to be most at risk and in need of most urgent protection, and has made a significant difference to protecting many other species from further decline. Research has shown that the targeted conservation measures associated with birds listed in Annex I of the Directive have resulted in these species faring better than those that are not listed for protection<sup>3</sup>. Research has also shown that outside the EU, where the Birds Directive does not apply, Annex I species fare no better than birds that were not on Annex I. This suggests that EU approaches can be more effective than non-EU actions.

### Water

The Water Framework Directive (2000/60/EEC) has had a positive impact by encouraging water managers to look beyond issues of water quality and take a wider, catchment based approach to water resource management. The directive has ensured that managers consider the overall ecological condition of water bodies in planning and decision making. For example, the Upstream Thinking initiative<sup>4</sup> by Wessex Water uses these ideas. It is important for the future that water management is ecologically sensitive in addition to helping safeguard aquatic ecosystems<sup>5,6,7</sup>.

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<sup>2</sup> Pateman R. 2013. [The effects of climate change on the distribution of species in the UK](#). Terrestrial Biodiversity Climate Change Impacts. Report card technical paper 6.

<sup>3</sup> Donald, P. F., Sanderson, F. J., Burfield, I. J., Bierman, S. M., Gregory, R. D., & Waliczky, Z. 2007. International conservation policy delivers benefits for birds in Europe. *Science*, **317**: 810-813

<sup>4</sup> [www.southwestwater.co.uk/index.cfm?articleid=8329](http://www.southwestwater.co.uk/index.cfm?articleid=8329)

<sup>5</sup> Everard, M. 2011. Why does 'good ecological status' matter? *Water and Environment Journal*, **26**: 165–174

<sup>6</sup> White, I. & Howe, J. 2003. Policy and practice: planning and the European Union Water Framework Directive. *Journal of Environmental Planning and Management*, **46**: 621 – 631

<sup>7</sup> Kallis, G. & Butler, D. 2001. The EU Water Framework Directive: measures and implications. *Water Policy*, **3**: 125-142.

As a result of the Urban Waste Water Treatment Directive (91/271/EEC) and the Bathing Water Directive (76/160/EEC), there have been improvements in water quality due to tighter controls over wastewater treatment and a ban on releasing sewage into the sea.

#### Bathing water testing in the UK, 1990-2012<sup>8</sup>

Testing year	1990	1996	2000	2005	2010	2012
EU/76/160 – tested	446	472	545	559	605	626
EU/76/160 – guideline	-	194	247	420	497	366
EU/76/160 – mandatory	345	423	514	550	589	590
EU/76/160 – fail	101	49	31	9	16	36

#### River water quality data<sup>9</sup>

% of river length of Good biological quality	England	Wales
1990	55.4%	78.5%
1995	66.2%	87.0%
2000	69.0%	78.3%
2005	71.4%	80.0%
2009	72.5%	87.1%

#### Marine

The Marine Strategy Framework Directive (2008/56/EC) has been influential in prompting the UK to better consider the problems impacting the marine environment and develop ways to encourage its protection. Adopting the framework in the UK was necessary because only a combined effort between all EU member states will help to ensure that the aim of the directive, to achieve 'Good Environmental Status' of the EU's marine environment, is met. This is because pressures on the marine environment such as pollution and fishing extend beyond the UK's territorial and exclusive economic zone borders. While there are comparable links to the WFD, the MSFD is an important piece of legislation which covers wider marine issues and biodiversity which are beyond the scope of the WFD.

#### Habitats

The Habitats Directive (92/43/EEC) has helped UK conservation bodies look at conservation in a wider EU context in a more systematic way. The directive has

<sup>8</sup> European Environment Agency

Bathing Water Directive – Status 1990 – 2012, EEA, 21 May 2013

[www.eea.europa.eu/data-and-maps/data/bathing-water-directive-status-of-bathing-water-5](http://www.eea.europa.eu/data-and-maps/data/bathing-water-directive-status-of-bathing-water-5)

<sup>9</sup> DEFRA. 2010. River water quality indicator for sustainable development – 2009 annual results. DEFRA statistical release, 7th September 2010, DEFRA, London, UK

encouraged the protection of a variety of habitats throughout the UK which provide benefits not only from ecological perspectives but also for society and the economy (through ecosystem services).

The directive has also been important for ensuring species in the UK such as great crested newts and dormice receive adequate protection, particularly in regards to planning infrastructure and developments. Both of these species were already protected under the UK's Wildlife and Countryside Act (1981), but the directive ensured that their habitats were thought of as a network (rather than individual sites as the UK planning system does) and set out how impacts should be mitigated. The principle of networked habitats is one that the government has now accepted through references to the Lawton Review<sup>10</sup> in the Natural Environment White Paper.

The introduction of stronger protection for Special Areas of Conservation under the Habitats Directive led to subsequent strengthening of the protection for SSSIs, e.g. under the Countryside and Rights of Way Act (2000); this provides an example of EU measures setting a precedent that is usefully reflected in subsequent UK laws.

### Air Quality

There have been significant improvements in air quality due to a number of EU Directives<sup>11</sup>. This has led to a statistically significant decrease in acidic deposition<sup>12</sup>, which benefits both the wider environment and specific conservation efforts, for example, chalk grasslands. Particulate matter and gaseous emissions can alter species composition in natural habitats. In calcareous grassland, NO<sub>2</sub> emissions lead to lower abundances of native grassland species<sup>13</sup>. Calcareous grassland is a diverse landscape, with up to 40 species per square metre, including rare endemic species such as orchids and early gentian (*Gentianella anglica*)<sup>14</sup>. Many species found in this landscape are the sole food source for specialist insect groups including the Adonis blue butterfly (*Lysandra bellargus*)<sup>15</sup>.

However, while extensive EU and UK policy intervention on acidification has produced considerable success, problems with air pollution remain. Between 2006 and 2008, 58% of all habitat areas sensitive to eutrophication from nitrogen deposition exceeded the Critical Load for nutrient nitrogen and is only forecast to decrease to 48% by 2020. Both UK and

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<sup>10</sup> [www.archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf](http://www.archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf)

<sup>11</sup> The Framework Directive 96/62/EC, 1-3 daughter Directives 1999/30/EC, 2000/69/EC, 2002/3/EC, and Decision on Exchange of Information 97/101/EC were merged in 2008 to form the overarching Air Quality Directive 2008/50/EC

<sup>12</sup> Kirk, G.J.D., Bellamy, P.H. & Lark, R.M. 2010. Changes in soil pH across England and Wales in response to decreased acid deposition. *Global Change Biology*, **16**: 3111-3119.

<sup>13</sup> Lee, M.A. & Power, S.A. 2013. Direct and indirect effects of roads and road vehicles on the plant community composition of calcareous grasslands. *Environmental Pollution*, **176**: 106-113

<sup>14</sup> Stevens, C.J., Thompson, K., Grime, J.P., Long, C.J. & Gowing, D.J.G. 2010. Contribution of acidification and eutrophication to declines in species richness of calcifuges grassland along a gradient of atmospheric nitrogen deposition. *Functional Ecology*, **24**: 478-484.

<sup>15</sup> Twiston-Davies, G., Mitchley, J. & Mortimer, S.R. 2011. The Stonehenge Landscape Restoration Project – conservation opportunities for rare butterflies? *Aspects of Applied Ecology*, **108**: 259-265.

EU legislation have failed to effectively reduce ammonia emissions, which are more toxic than other forms of nitrogen deposition<sup>16</sup>.

### Other

In addition, EU programmes such as LIFE<sup>17</sup> have facilitated the exchange of environmental knowledge, expertise and helped with funding provision for various UK conservation and environmental innovation projects.

## **2. Considering specific examples, how might the national interest be better served if decisions 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?) What decisions currently made at a national level could better be made at an EU level?**

In some circumstances, allowing the UK more flexibility in the way that it enforces and makes decisions regarding particular species or habitats could further benefit the national interest, particularly surrounding building and planning. For example, great crested newts are relatively common in the UK compared to the EU. Greater flexibility over the way they are protected would allow the UK to focus on other species that are nationally or internationally rare, providing greater cost-effectiveness. It would still, however, be necessary to ensure that the EU has scrutiny over such cases in order that the UK still works to protect internationally protected species and does not lead to undervaluing of such species.

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

EU legislation is outcome-focused, both in terms of quantified habitat extent and condition within the Habitats Directive, and through achieving good ecological status within the Water Framework Directive and good environmental status under the Marine Strategy Framework Directive.

The recent EU decision to ban the use of neonicotinoids is an example of a policy based on an assessment of risk and scientific evidence.

## **4. 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>16</sup> 2012 Review of Transboundary Air Pollution: Acidification, Eutrophication, Ground Level Ozone and Heavy Metals in the UK [www.rotap.ceh.ac.uk/sites/rotap.ceh.ac.uk/files/RoTAP%20Summary%20report.pdf](http://www.rotap.ceh.ac.uk/sites/rotap.ceh.ac.uk/files/RoTAP%20Summary%20report.pdf)

<sup>17</sup> [www.ec.europa.eu/environment/life/](http://www.ec.europa.eu/environment/life/)

There are cases where individual directives could be linked with others to benefit the UK and EU environment more widely and acknowledge the links between different ecosystem processes and pressures. For example, linking the Water Framework Directive with the Common Agricultural Policy would help to encourage farmers to manage diffuse pollution and promote aquatic habitat remediation. Linking legislation would also help to build greater resilience against future threats such as climate change.

The current approach to conservation tends to rely heavily on protected areas rather than on more integrated approaches to land-use. The latter may be more suitable for countries such as the UK where the majority of the landscape is managed. Due to this, there is a strong emphasis in the UK on the integration of agri-environment payments under the CAP and conservation action in protected sites. However that is not the case in some other states where the CAP is more significant in terms of maintaining farming communities. Shifting more of the CAP support to environment would benefit both the UK and conservation across the EU more widely.

European legislation could usefully build on the increasing understanding of ecosystem services by including references to this concept in future directives. This approach is recognised in the Resource Efficient Europe initiative<sup>18</sup>. In general, further reform of directives is required if biodiversity loss is to be halted and ecosystem services restored.

## **5. How far do you think the UK might benefit from the EU taking more or less action on the environment/climate change?**

EU legislation helps to ensure that the UK implements and upholds environmental policies. Additionally, the fact that the EU can prosecute and hold the UK accountable for circumstances when it breaches legislation helps to safeguard the UK environment for the future.

This is also important in the context of the current global economic climate and restricted national budgets – EU legislation helps to make sure that the environment still receives funding for research, projects and protection. Without the overarching EU legislation, the UK could fall into the trap of choosing between habitats when putting forward proposals for housing or infrastructure projects. This could lead to environmental ‘losers’ – habitats that are destroyed or degraded much more, as they are ‘cheap’ and easy to convert. In practice, many of the measures in the Water Framework Directive and climate mitigation are funded through general end-user water and energy bills rather than the public purse, and EU directives need not always represent a central cost.

There is no evidence to support the assertion that directives place costs on businesses and impede development but in the absence of the safeguards that these provide there is a high probability that a catastrophic loss of natural capital will occur.

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<sup>18</sup> [www.ec.europa.eu/resource-efficient-europe/pdf/resource\\_efficient\\_europe\\_en.pdf](http://www.ec.europa.eu/resource-efficient-europe/pdf/resource_efficient_europe_en.pdf)



## 6. Are there any alternative approaches the UK could take to the way it implements EU directives on the environment and climate change?

As a result of climate change, species have or will move their ranges<sup>19</sup>. In light of this, current protected areas (SPAs, SACs, SSSIs) set up to protect particular species may find that such species move away from these areas. In addition, new species may arrive in these areas. If the Habitats Directive is fully upheld, it could make the UK accountable for such losses, with little consideration for species of conservation concern that do arrive in the protected site. As such, it may be appropriate for the way that areas are designated to be a more flexible process that emphasises functional connectivity<sup>20</sup> and assesses whether a site is deteriorating based on species diversity rather than on the disappearance of one particular species.

## 7. What future challenges or opportunities may we face on environmental protection and climate change?

Climate change is one of the greatest threats to both the UK and global environment. Changes in the environment will result in species range shifts, which could present problems for designation of conservation status to species and protection of particular habitats<sup>21</sup>. With changing climates, the UK could become increasingly important in providing for species that move further northward with suitable habitat<sup>22</sup>. This presents a number of issues: there need to be suitable habitats for species to move into; protected areas need to be more flexible to allow for changes in species presence; and there needs to be closer monitoring of areas to ensure species are protected if their ranges do change.

With climate change, water scarcity could be an increasing problem for many areas. Several criteria within the Water Framework Directive will play an important role in ensuring water resources are managed effectively, to the benefit of both people and the environment. Continued monitoring of the impact of abstraction will be vital to prevent damage to the environment and the ecosystems and communities within.

The number of extreme events, such as flash floods and droughts, are also expected to increase with climate change<sup>23</sup>. Understanding the potential impacts of this on UK ecosystems is crucial to aid future mitigation planning. By better protecting the environment against extreme events, key ecosystem services that people depend upon can be

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<sup>19</sup> Pateman R. 2013. [The effects of climate change on the distribution of species in the UK](#). Terrestrial Biodiversity Climate Change Impacts. Report card technical paper 6.

<sup>20</sup> See also the recommendations of *Impacts of climate change and selected renewable energy infrastructures on EU biodiversity and the Natura 2000 network* [www.unep-wcmc.org/impacts-of-climate-change-and-selected-renewable-energie-infrastructures-on-eu-biodiversity-and-the-natura-2000-network-906.html](http://www.unep-wcmc.org/impacts-of-climate-change-and-selected-renewable-energie-infrastructures-on-eu-biodiversity-and-the-natura-2000-network-906.html)

<sup>21</sup> Gillingham, P. (2013) [4. Implications of Climate Change for SSSIs and other Protected Areas](#). Terrestrial biodiversity Climate change impacts report card technical paper, LWEC

<sup>22</sup> Pateman, R. (2013) [6. The effects of climate change on the distribution of species in the UK](#). Terrestrial Biodiversity climate change report card technical paper, LWEC

<sup>23</sup> IPCC (2013) Managing the risks of extreme events and disaster to advance climate change adaptation.

maintained. Approaches that balance the need to protect people and property from flooding against the need to protect freshwater ecosystems can provide 'win-win' benefits for both people and the environment. These include Sustainable Drainage Systems (SUDs) and Natural Forest Management<sup>24</sup>. Ensuring that plant communities remain diverse can help to provide insurance against outright collapse<sup>25</sup>; diversification of plant species allows for improved productivity<sup>26,27</sup> which will be a key tool in dealing with climate change in temperate regions<sup>28</sup>.

The destruction, fragmentation and degradation of habitats are increasingly likely in the future as further pressure from populations is placed on the environment. This could result in less lockdown of carbon<sup>29</sup>, poorer quality forage for livestock<sup>30</sup>, fewer pollinator refuges<sup>31</sup>, and less diverse plant genetic resources<sup>32</sup>.

### *Opportunities*

The advance of spring could be advantageous to terrestrial systems<sup>33</sup>. A longer growing season could affect acid grasslands by offering more opportunities for germination and growth, therefore C lockdown. Extra winter rainfall predicted by climate change can buffer ecosystem functions particularly respiration in the face of summer drought. In addition,

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<sup>24</sup> These are discussed in The Impact of Extreme Events on Freshwater Ecosystems [www.britishecologicalsociety.org/wp-content/uploads/small\\_single-pages.pdf](http://www.britishecologicalsociety.org/wp-content/uploads/small_single-pages.pdf)

<sup>25</sup> Mischkolz, J.M., Schellenberg, M.P., and Lamb, E.G. 2013. Early productivity and crude protein content of establishing forage swards composed of combinations of native grass and legume species in mixed-grassland ecoregions. *Canadian Journal of Plant Science* 93:445-454.

<sup>26</sup> Schellenberg, M.P. and Banerjee, M.R. 2002. The potential of Legume-shrub Mixtures for Optimum Forage Production: A Greenhouse Study. *Canadian Journal of Plant Science* 82:357-363.

<sup>27</sup> Schellenberg, M.P., Biliget, B. And Iwaasa, A.D. 2012. Species dynamic, forage yield, and nutritive value of seeded native plant mixtures following grazing. *Canadian Journal of Plant Science* 92:699-706.

<sup>28</sup> Castellanos, E., McClain M., Alvarez, M., Brlacich, M., Calvo-Alvarado, J.C., Coutinho, H.L.C., Jimenez-Osomio, J.J. and Schellenberg, M. 2008. Chapter 4: Conservation to sustain ecological processes and services in landscapes of the Americas. In: *Applying Ecological Knowledge to Landuse Decisions* (eds.) Holm Tiessen and John W. B. Stewart. SCOPE, the Scientific Committee on Problems of the Environment, IAI Inter-American Institute for Global Change Research SCOPE publication and IICA, the Inter-American Institute for Cooperation on Agriculture. Pages 23-33. ISBN:9788599875049

<sup>29</sup> Zhang, L., Wylie, B.K., Ji, L. Gilmanov, T.G., Tieszen, L.L. & Howard, D.M. 2011. Upscaling carbon fluxes over the Great Plains grasslands: sinks and sources. *Journal of Geophysical Research: Biogeosciences*, **116**: G00J03.

<sup>30</sup> Harmens, H., Mills, G., Hayes, F. & Norris, D. 2011. Air Pollution and Vegetation. ICP Vegetation Annual Report 2010/2011.

<sup>31</sup> Jauker, B., Krauss, J., Jauker, F. & Steffan-Dewenter, I. 2013. Linking life history traits to pollinator loss in fragmented calcareous grasslands. *Landscape Ecology*, **28**: 107-120.

<sup>32</sup> Jadarat, A.A. 2010. Genetic resources of energy crops: biological systems to combat climate change. *Australian Journal of Crop Science*, **4**: 309-323.

<sup>33</sup> Menzel, A., Sparks, T. H., Estrella N., Koch, E., Aasa, A., Ahas, R., Alm-Kübler, K., Bissolli, P., Braslavská, O., Briede, A., Chmielewski, F. M., Crepinsek, Z., Curnel, Y., Dahl, Å., Defila, C., Donnelly, A., Filella, Y., Jatczak, K., Måge, F., Mestre, A., Nordli, Ø., Peñuelas, J., Pirinen, P., Remišová, V., Scheifinger, H., Striz, M., Susnik, A., van Vliet, A. J. H., Wielgolaski, F.-E., Zach, S. & Züst, A. 2006. European phenological response to climate change matches the warming pattern. *Global Change Biology*, **12**: 1969–1976

smaller rainfall pulses could offer an opportunity to delay succession in grassland and allow more wildflower meadows to thrive<sup>34,35,36</sup>.

## **British Glass Manufacturers Confederation**

**Q7** EU ETS, Targets, Climate Change: In general the ETS rules are set at an EU level, although the Regulations have been transposed into UK law and in the past there has been a tendency to gold-plate these in the UK in order for the Regulator. This is improving and practice is slowly standardising. In this case, setting the rules at EU level is a good thing as it harmonises GHG costs across EU competitors. Any differences in approaches from the member states will only set up distortions and should be avoided. That said, the decision of the UK government to compensate for the indirect costs of the EU ETS is welcome in principle, although differences in the application between other members state schemes might further blur the picture. In being more ambitious than the EU on climate change targets, the UK disadvantages its own businesses in comparison with the EU and the rest of the world. For example, the carbon price floor means that UK manufacturing businesses have an extra carbon element in their electricity price compared to competitors in the EU / rest of world. Whilst the government has put aside some funds for compensation, the effect of the compensation has been highly overstated as they cannot be accessed by the majority of UK manufacturing businesses (only the most electro-intensive). The compensations / exemptions also require state aid approval (back to the EU) which is currently proving difficult and is unlikely in practice to be able to compensate for the first year of the scheme. This is a situation where the UK decision making has been shown to be disadvantageous to the UK manufacturing sector. Regardless of the source of environmental regulation, it is important that they are implemented predictably. Sudden changes would undermine the certainty required for environmental regulation where the operator is financially liable. Recent market interference in the ETS in the form of back-loading was unwelcome and sets a worrying precedent for the future. Whilst and EU approach is generally preferred, there are some problems with the EU policy making process. One such problems is comitology, which results in decisions that have a significant impact on the manufacturing community being made behind closed doors, precluding input from sectoral experts and wider consultation. Furthermore, the EU has a long track history of using consultants with little or no practical knowledge of the industry they are trying to create policy for or regulate. This often results in policy decisions which

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<sup>34</sup> Knapp, A.K., Fay, P.A., Blair, J.M., Collins, S.M., Smith, M.D., Carlisle, J.D., Harper, C.W., Danner, B.T., Lett, M.S. & McCarron, J.K. 2002. Rainfall variability, carbon cycling and plant species diversity in a mesic grassland, **298**: 2202-2205.

<sup>35</sup> Chimner, R.A., Welker, J.M., Morgan, J., LeCain, D. & Reeder, J. 2010. Experimental manipulations of winter snow and summer rain influence ecosystem carbon cycling in mixed-grass prairie, Wyoming, USA. *Ecohydrology*, **3**: 284-293.

<sup>36</sup> Fry, E.L., Manning, P., Allen, D.G.P., Hurst, A., Everwand, G., Rimpler, M. & Power, S.A. 2013. Plant Functional Group Composition Modifies the Effects of Precipitation Change on Grassland Ecosystem Function. *PLoS ONE*, **8**: e57027.

create unnecessary work for staff at sites. An example of this is the 'sub installation' definition in the EU-ETS for free allocation which considers different colours of glass as separate installations, even where they are made in the same furnace, introducing an extra layer of obligation and complexity for the operator. Industrial pollution, air quality: As with the ETS, pollution policies tend to originate from Brussels and are then transposed into UK law. There can be gold-plating and differences in the application of the directive in areas where discretion is allowed by the member states. For example, for derogations to BREF ELVs in glass, we understand that some Member States are considering 'blanket derogations' for glass sector NOx in certain circumstances, whereas the UK government / regulator will not. Differences in application can have an effect on relative competitiveness, however since pollution is likely to be a regional problem, Member States should retain some discretion to assess the impact of other local pollution sources and the wider picture in which plants sit. Waste: Policies on waste should come from Europe. The trading of recyclate is like any other raw material, it is a global commodity. Whilst the UK Packaging Regulations have been criticised by some due to issues regarding collection, the UK system is seen as being the cheapest in Europe, benefiting UK companies.

**Q15** Rising global population will result in increasing pressure on resources. Measuring environmental impact is a very complicated area; this science will need to be better understood and techniques will need to become more robust in order to enable reliable comparisons and decision making. There could be future challenges if there is not a greater collaboration between Government and businesses. Businesses can provide essential expertise and excellent ideas in the move towards a more sustainable and circular economy.

**Q18** EU ETS, Targets, Climate Change: In areas where the UK is disadvantaging itself by going beyond EU policies, more EU control would be advantageous. In areas where the UK has the choice of implementation, the UK needs to be making decisions that benefit UK manufacturing, rather than hindering it. Climate change costs need to be aligned as widely as possible in order to maintain a level playing field for UK manufacturers. Until a global agreement is made the UK and EU should prioritize protecting energy intensive industry from carbon leakage to the detriment of the economy and society.

### **British Plastics Federation**

The introduction of REACH (Registration, Evaluation, and Authorisation of Chemical Hazards) was an enormous tidal wave of extra bureaucracy and cost for plastics companies, particularly hitting SMEs from whom much innovation commences. When the UK held the UK Presidency we did get a few beneficial changes.

The European Chemicals Agency was founded in 2007 and with REACH set in stone it can be argued that it no longer needs to be its present size and many of its responsibilities could be devolved to national level.

Our Governments De-Regulatory policy on “two-out-one-in” is impossible to achieve with REACH!

### **British Ports Association**

This response is made on behalf of the British Ports Association which represents 50 ports in England. Apart from being a key part of the UK economy, ports are highly susceptible to the impacts of environmental legislation and are in themselves significant environmental managers, particularly of marine sites designated for special protection.

- 1(i) There are two main benefits for ports of EU Competence in the areas of both environment and climate change. The first is the issue of competition, already referred to in your supporting paper, but which is very critical to the ports industry. The fact that there are commonly accepted and legally based standards for all EU member states significantly reduces, but does not eliminate, the opportunity for individual countries to operate significantly divergent regimes which could undermine standards achieved in other member states. As environmental standards are closely linked to planning consents, we would be seriously alarmed at the prospect of significantly different regimes in other countries which could seriously undermine the competitive position of the UK. The second main benefit is that EU environmental legislation is a public expression of acceptable standards which have been consulted on and to which developers, NGOs and other interests and stakeholders have contributed. Although the standards can be controversial for both sides, they nevertheless represent a significant and often hard won outcome which should balance the interests of all those consulted.
  
- (ii) In contrast to the advantages outlined above, the main disadvantage is that regimes can be applied differently from member state to member state, partly through the intervention of governments, but also because different member states have different features and varying environmental strengths and weaknesses. An example of this is the application of the Water Framework Directive (WFD) which particularly impacts on those countries with major estuaries and long coastlines such as the UK. The costs of implementation are inevitably greater in the UK, but equally we can at least acknowledge that where the legislation is relevant, it will need to be applied elsewhere. There is a similar situation with marine SPAs and SACs where the UK will inevitably have a higher number of designated sites which may affect shipping

patterns and port development. Ports will be involved in the management of many of those sites and this will represent an additional cost for the UK industry.

- 2(i) It is difficult to see whether the national interest would be better served if those decisions currently made at an EU level were made at regional, national or international levels. It is for the EU to set out broad standards, preferably through Directives rather than Regulations, which can then be transposed into national legislation which operates in sympathy with national institutions and existing law as much as possible. Many of the issues come back to ones of competition and we have had an example recently where the creation of a network of Marine Conservation Zones (MCZs) which are largely based on a national initiative, has created major problems in the knowledge that other member states are not creating such an extensive network.
- (ii) We would be concerned if the kinds of decisions currently being made at EU level were made at international level; our influence at international level must inevitably be watered down; the IMO is an example of an international approach which has sometimes proved to be ineffective because of the need for agreement across such a range of countries and interests. Slow progress has led to intervention at EU level to fill the gap and has also resulted in weak implementation and compliance.
3. EU environmental standards are necessary for the proper functioning of the internal market; it is difficult to see how varying standards can be compatible with a single market.
4. Generally, we believe the balance is about right, but any legislation needs constant review to ensure that this balance is maintained as circumstances inevitably change over time. A restriction on development of an area which might be acceptable at one time can become extremely burdensome at another time. We support therefore the recent review of the implementation of the Habitats Directive whereby its effect on various schemes was assessed and advice re-written and modernized with a view to ensuring that commercial interests were adequately balanced against environmental interests. We believe that such a process could be applied to other major pieces of legislation such as the WFD and the forthcoming Marine Strategy Framework Directive.

- 5(i) Measuring outcomes is an area of particular difficulty for environmental legislation which is very long term, has different impacts in different situations and which can be complicated and costly to monitor. We believe that this is an area of weakness of EU environmental legislation and especially in its impacts on marine sites.
- (ii) We believe that the risk assessment and scientific evidence is particularly lacking for marine environmental legislation. It is widely accepted that there is nowhere near the volume of information available for marine as for land sites. The marine planning initiative currently underway by the MMO acknowledges this and will, for the first time and over a period of 10 years, draw up marine plans for each part of the UK coast. Yet this work is being prepared after major decisions on marine sites involving both Natura 2000 and MCZs have been made. The precautionary principle has been widely used for marine sites and we believe this can represent a serious imbalance between land and marine environmental legislation.
6. Now that the major pieces of legislation are probably in place (for ports these are the Environmental Impact Assessment Regulations, Natura 2000, the WFD and the Marine Strategy Framework Directive) we would hope to see the development of Codes of Practice and a partnership approach to environmental protection, avoiding the need where possible for further legislation. Although based on legislation the consultation on marine plans, for example, has shown how very varied interest groups can be pulled together and a reasonable outcome achieved. We should therefore wish to see a move away from legislation.
- 7(i) We believe the UK has a very good record on taking action on the environment/climate change. The development of offshore wind farms, for example, is something that ports are very much involved in and is an example of responding to climate change with extensive sites earmarked for development.
- (ii) N/A
8. We have nothing to add to the answers already provided.
- 9(a) There is always the concern that the UK view may not be sufficiently well represented.

(b) We believe this is important.

10(a) For us the future challenges are probably the same as the current ones, the main one being how to balance sustainable environmental protection with running a successful economy. As to opportunities, certainly ports and the maritime industry generally will benefit from green energy development and will develop further expertise in this field; there are commercial opportunities in developing techniques which provide environmental protection and can mitigate climate change impacts.

(b) We believe the balance is about right at the moment given the caveats set out above.

(c) N/A

11. No other comments.

### **British Standards Institution**

BSI (British Standards Institution) has read with interest the review of the balance of competences call for evidence with regard to Environment and Climate Change. We would like to make some general points about environment and climate change and EU action in this area. We have made a note in this letter where the response relates to the specific questions in the call for evidence. This response is that of BSI as the UK's National Standards Body and includes comments made by expert members of our standards committees.

We believe it is essential that appropriate regard is given to the development of international standards (Questions 2 and 10b). There are markets where industry is best served by global rather than national or European solutions. One example in the climate change area is that of greenhouse gas (GHG) quantification. Companies that measure and report on their GHG emissions in the UK will often have operations, suppliers and possibly business customers/consumers outside the UK. A national or European position is a good start but, in a global marketplace, the importance of free trade and related aspects means that we need to use commonly defined terms and apply them consistently. Where possible, BSI therefore seeks to promote the development of global standards as a precursor to European standards. We note the use of both ISO 14064 (quantification, monitoring and



reporting of organisation emissions and removals) and ISO/TS 14067 (carbon footprint of products) in this regard.

Nevertheless, we view the European Union as having had positive impacts on the environment and on climate change (Question 1). European policies and legislation act as a driver for environmental improvements, frequently supported by European standards. One example of this is the EU ETS (emissions trading scheme), where legislation, supported by standards, has had a positive effect across the 28 Member States by using a market-based approach.

Action at EU level brings a great advantage in terms of the combined impact and influence internationally of the 28 Member States working together and the economic integration of the EU internal market (Question 9, in general terms). This brings strength in foreign policy and trade negotiations, where the market access provided by the adoption of European standards is an important lever. The EU has the combined experience of its members to draw upon, including leadership examples such as considering the issue of climate change adaptation within standards, and resource efficiency.

European standards for voluntary use, developed by industry and other experts and coordinated by independent national and European standards bodies, play a major part in the EU internal market, including in the environmental area (Question 3). European standards must be adopted in an identical form by all National Standards Bodies of the EU Member States (plus EEA states and Turkey). This means that European standardization is an effective tool that can provide one of the best means of supporting the internal market. For example, the Packaging and Packaging Waste Directive achieves the joint aims of increasing recovery of used packaging and preventing national legislation creating trade barriers, thus ensuring a free internal market for packaged goods. The suite of harmonized European standards developed for demonstration of compliance with the Directive provides a very effective and efficient pan-European approach. This would have been impossible without EU legislation and the supporting CEN standards. A number of BSI's committee experts have stated that European standards are absolutely vital to the functioning of the internal market in the environmental area.

European standards should be used as an alternative to regulation wherever appropriate (Question 8). Voluntary European and international standards, developed by all interested parties, give a high level of legitimacy by means of their market acceptance and their robust development procedures that include all interested parties.

We would encourage UK Government officials to commit more to involvement in standards development procedures (Question 11). While BSI as the UK's National Standards Body is an influential partner in European standardization, there is an opportunity for UK interests to be included in the technical elements of standards. Broader engagement on the part of UK Government with standards development work would bring significant benefits, particularly given the potential role that standards will play in the implementation of the Resource Efficiency Roadmap 2020 and other climate-related policy (covering products as well as organizations).

Although BSI's experts have also recognized downsides to EU action – such as slow and sometimes less effective decision-making, the compromises that sometimes have to be made, and the rather slow and complex nature of some procedures – the prevailing view was that advantages greatly outweigh the disadvantages.

To summarize, we encourage the development of solutions at the appropriate level, which in our view would often require international agreement and standards, but also support EU action on environmental and climate change issues, where possible through the use of European standards.

### **Background on BSI**

BSI is the UK's National Standards Body, incorporated by Royal Charter and responsible independently for preparing British Standards and related publications. BSI has 112 years of experience in serving the interest of a wide range of stakeholders including government, business and society.

BSI presents the UK view on standards in Europe (to CEN and CENELEC) and internationally (to ISO and IEC). BSI has a globally recognized reputation for independence, integrity and innovation ensuring standards are useful, relevant and authoritative.

A BSI (as well as CEN/CENELEC, ISO/IEC) standard is a document defining best practice, established by consensus. Each standard is kept current through a process of maintenance and reviewed whereby it is updated, revised or withdrawn as necessary.

Standards are designed to set out clear and unambiguous provisions and objectives. Although standards are voluntary and separate from legal and regulatory systems, they can be used to support or complement legislation.

Standards are developed when there is a defined market need through consultation with stakeholders and a rigorous development process. National committee members represent their communities in order to develop standards and related documents. They include representatives from a range of bodies, including government, business, consumers, academic institutions, social interests, regulators and trade unions.

### **Brussels and Europe Liberal Democrats**

BRUSSELS AND EUROPE LIBERAL DEMOCRATS SUBMISSION  
Balance of Competences Review

Environment & Climate Change

Call for Evidence

## Advantages and disadvantages

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

It is self-evident that environmental problems are not constrained by national boundaries - very few environmental issues are truly local.

There is some evidence that establishing EU standards for environmental pollutants have produced significant health benefits (EEA & WHO data).

It is true that for particular companies higher environmental standards can be negatively correlated with employment. However, a range of micro-economic case studies have indicated that overall the greening of industry (driven by EU environmental standards) has resulted in positive economic effects.

ii. disadvantaged the UK / your sector?

To our knowledge (our BELD member contributing to this report<sup>37</sup> having worked in the field for the European Commission for some years), there is no evidence of negative impacts on the UK resulting from EU competence in these fields. The possible exception to this general statement concerns the EU legislation on GMOs where strong pressures from some Member States and NGOs have resulted in a very low take-up of this technology.

Where should decisions be made?

2. 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?)

These various levels of action are not mutually exclusive. Subsidiarity should be the guiding principle. In the case of climate change, the response should be at the international level but to drive this forward effectively the EU (regional) level is the optimum action level for such market actions as carbon trading.

ii. currently made at another level were instead made at EU level?

EU rules allow higher standards where these are justified. We can see no reasons for lower standards.

Internal market and economic growth

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

Common environmental standards are fundamental for the operation of a single market – otherwise market forces would drive standards down.

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<sup>37</sup> Our member was formerly the Adviser on Science and Ethics of the European Commission President's think-tank – the Bureau of European Policy Advisers (BEPA). Please see: [www.ec.europa.eu/bepa/about/](http://www.ec.europa.eu/bepa/about/)

4. 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?

There is a clear global need for rules which replace free market competition with a balance between the three Es (environment, economy and equity). The EU (which aims at the common good) may not produce optimum regulatory responses to this drive but it is better than lowest common denominator politics between individual states.

#### Current legislation

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

- i. focused on outcomes (results)?

The carbon trading scheme is clearly focussed on results. To the extent that the results perhaps do not meet the expectations, the policy can be changed.

- ii. based on an assessment of risk and scientific evidence?

The dioxin rules (the Seveso legislation) are clearly based on risk assessment and evidence. There are many similar examples (Rhine monitoring, fish stocks, REACH chemicals legislation, etc.).

#### Doing things differently

6. 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?)

We believe that the European Environmental Agency (EEA) should cease being an environmental advocate (for which it is clearly unsuited – see for example the latest round of “Late Lessons from Early Warnings”) and should focus totally on the important task of environmental monitoring. We believe that the monitoring should use the most advanced techniques (using the Joint Research Centre and/or Member States' laboratories where necessary and cost-effective) and present the time series results in a way which encourages good regulatory responses.

7. How far do you think the UK might benefit from the EU taking:

- i. More action on the environment/climate change?

As already stated, environmental problems are almost invariably trans-border in nature and this being the case the UK would clearly benefit from more EU action. However, this should be based on better information from the EEA (6 above).

- ii. Less action on the environment/climate change?

This is not supported by the evidence.

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

Stop the enormous effort involved in the so-called “gold plating” of EU Directives. The UK is directly involved in the development of EU Directives and - having been involved - should just implement them as they are.

9. a. 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?

On balance, this would be an advantage. The Commission initiates and drafts EU legislation and constitutes the EU centre of excellence (with its European Commission DG ENV team supported by DG JRC IES & IPTS). This expertise would underpin a greater negotiating role.

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

It is very important.

Future challenges and opportunities

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

We believe there is misuse of the precautionary principle in the management of perceived new risks: this should be robustly challenged on the basis of the 2000 Communication on the Precautionary Principle.

10 b. 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?

As argued above, the policy thrust should be at EU level, supported by appropriate actions at UK and international level.

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

Since there is no doubt that nearly all the serious environmental issues require an EU wide approach, focussing regulatory action at the EU level should reduce costs and increase benefits.

Anything else?

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

No.

## **CBI Minerals Group**

We are pleased to submit this response on behalf of the CBI Minerals Group.

The CBI Minerals Group represents the minerals extraction industry within the United Kingdom including all major non-energy minerals and coal. The Group represents 500 mineral extraction and related companies either directly through being members of the Group or indirectly through member trade associations.

The UK Minerals Industry typically produces about 350 million tonnes of minerals per annum, directly contributes over £10 billion a year to the economy, provides direct and indirect employment to over 80,000 people and is essential to provide the raw materials on

which many important industries depend. Minerals are the largest material flow in the country.

Minerals are essential for sustainable economic growth and sustainable development is only achievable by ensuring an adequate and steady supply of all minerals. Adequate supplies are crucial for meeting the Government's growth agenda and in particular its aims for investment in new infrastructure, such as the new generation of nuclear power stations and high speed rail.

This response to the call for evidence represents the views of the CBI Minerals Group and focuses only on those issues of particular concern to the minerals sector and therefore we focus on answering those questions listed in the review which address those concerns.

Question 4. 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?

The review highlights that land use planning is a key example of the few remaining areas that remain within the competence of member states and we welcome the acknowledgement in paragraph 14 of the review which is highlighted below that there are an increasing number of EU requirements affecting planning and development.

14. Much of the UK's environment and climate change policy is now agreed at EU level, with comparatively few areas remaining exclusively within the competence of Member States. A key example of remaining national competence is land use planning, although there are an increasing number of EU requirements affecting planning and development. These include not only environmental impact assessment, strategic environmental assessment and public participation in decision making, but also other requirements relating to habitats, water, etc. Another example of national competence is the protection and management of soils, an area also relevant to planning and development. A proposal for a soil framework directive remains stalled at EU level.

The report also acknowledges in paragraph 18 as highlighted below that difficult decisions have to be made to balance economic needs with environmental protection.

18. The broad policy focus on growth and the development of infrastructure that EU leaders have endorsed means that difficult decisions may have to be made to reconcile economic needs with environmental protection while avoiding unnecessary burdens on business, industry and development. At the same time, establishing strong foundations for sustainable economic growth may support the emergence of new technologies, products and services to help realise the benefits of more efficient management of resources. These new developments may also help to improve the security of supply of key resources.

While our members believe it is essential for the UK Government to ensure that all new EU environmental legislation should achieve the right balance between economic needs and environmental protection, this is not their present overriding concern.

Their overriding concern is about the procedures and practices that have been adopted in this country on which to make these judgements. The correct forum for making decisions on balancing economic needs with environmental protection is the land use planning system. However our members report that increasingly the primacy of land use planning is being eroded. The planning authority should balance economic and environmental issues in their decision making; however, our members frequently encounter a “tick box” approach to making planning decisions whereby, for example, an objection from the Environment Agency results in an automatic refusal.

The need to achieve the correct balance between economic development and environmental protection is all the more critical in the case of mineral extraction, because, unlike other forms of development, minerals can only be worked where they naturally occur in economic quantities. The underlying geology dictates that these minerals often occur in environmentally sensitive areas. Examples of nationally important minerals occurring in sensitive areas include industrial grade limestone in the Peak Park and specialist ‘ball-clays’ in the Bovey Basin in Devon.

Referring to paragraph 23 of the review document, the industry supports proposals for biodiversity offsetting as a tool to help achieve the correct balance between economic development and environmental protection:

23. Another area where work is being done is exploring more radical market-based approaches, e.g. looking at a biodiversity offsetting system whereby the ecological impacts of development are offset by the creation or restoration of habitat elsewhere.

The industry has achieved an excellent record in making a major contribution to biodiversity as illustrated below:

- Biodiversity: making a significant contribution to UK targets and uniquely placed to do more
- SSSIs: over 700 have their origins in mineral extraction
- Trees: one million planted over the past five years

Source: The mineral products industry’s contribution to the UK published by the Mineral Products Association

While supporting the use of biodiversity offsetting in achieving the right balance between economic development and environmental protection, our members strongly believe that decisions regarding the use of such “radical market- based approaches” must fall squarely within the land use planning regime.

Question 1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

ii. disadvantaged the UK / your sector?

We believe that Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from the extractive industries is a good example of EU legislation that has disadvantaged our sector, with no significant environmental benefit. Following on from the Aberfan mining waste disaster in the 1960's, the UK developed a sophisticated mine safety legislative framework, which we believe more than adequately addresses the matters covered by the Mining Waste Directive.

The impact of the Directive on the sector was made additionally burdensome by its transposition through the Environmental Permitting Regime with the Environment Agency as the regulator. The industry lobbied hard for Mineral Planning Authorities to be regulator, as this would have avoided duplication and confusion, but to no avail. As a result, the industry is now disadvantaged by having to obtain environmental permits from the Environment Agency for operations also regulated under the mines and quarries legislation and planning legislation. The financial burden of the process has been minimised by constructive procedures agreed between the CBI Minerals Group and the Environment Agency on the determination of what materials constitute mining waste. Nevertheless, it remains an unnecessary piece of legislation implemented (uniquely) in this country in a unnecessarily burdensome manner.

We believe that the Mining Waste Directive would make an excellent case study to illustrate the benefits/disadvantages of an area of EU competence and how it has been transposed and we would be very happy to assist in such a study.

Question 6. How could the EU's current competence for the environment be used more effectively? (e.g. better ways of developing proposals for and/or use of impact assessments, greater recognition of national circumstances, alternatives to legislation for protecting/improving the environment)

The current review of the Environmental Impact Assessment Directive is being promoted by the Commission as 'smart regulation' and, while some of the proposed changes are supported by the industry, many of the changes would, if adopted be additionally and unnecessarily prescriptive.

- Industry needs clear environmental planning rules to push ahead with industrial and infrastructure projects.
- We have concerns that many proposals in the Environmental Impact Assessment directive will lead to considerable delays, increase administrative costs and greater chances of legal uncertainties.
- On the contrary, revision of the directive should be used as an opportunity to streamline and to reduce burdens associated with the existing provisions

Source: Business Europe Position Paper dated 20 March 2013



Most mineral extraction developments in this country are supported by an Environmental Impact Assessment and the industry believes that the administration of the regulations through the land-use planning system has worked well since 1999. It is recognised that there are some areas of the Directive that need updating, but the major amendments as currently proposed swing the balance too far towards EU level control. We therefore strongly support the UK Government's efforts to secure less proscriptive amendments.

Government should resist moves by the Commission, as in this case, to set out detailed matters, such as procedural timelines, and specifying procedures for accrediting experts at an EU level. EU legislation should focus on setting minimum standards.

## **Centre for Ecology & Hydrology**

The following submission of evidence has been prepared by the Centre for Ecology & Hydrology (CEH), a public sector research establishment and a wholly owned component Centre/Survey of the UK Natural Environment Research Council (NERC). CEH undertakes basic and applied research on issues related to the land surface (soil-water-vegetation-air) and human interactions with the natural environment. CEH is involved in research to deliver the solutions to some of the greatest challenges facing human kind – enabling a health economy and society while maintaining the ecosystem services upon which we depend for survival. CEH has been involved in EU research since the 1980's, and has close working relations with other European research establishments, the EC and European industry groups

## **Advantages and disadvantages**

### **1. What evidence is there that EU competence in the area of environment and/or climate change has:**

#### **i. benefited the UK / your sector?**

#### **ii. disadvantaged the UK / your sector?**

i. Very important benefits to the UK (and European) environment have been achieved with reductions in concentrations, deposition and effects of air pollutants on human health and ecosystem health. There is significant difficulty in quantifying the economic impacts<sup>1</sup> However, it is possible to demonstrate the magnitude of current air pollution impact: the average loss of human life expectancy attributable to exposure to fine particles is 7.4 months; the loss in European wheat production due to ozone is expected to reduce by 10 million metric tonnes from 2000 to 2020 saving some €2billion<sup>2</sup>.

The achievements have been strongly supported by scientific research and monitoring (atmospheric pollution, intercountry exchange of pollutants and their effects). The EU research Framework Programmes have enabled the best European research groups to work together, and the advances made have placed the European groups as world leaders,

with the UK leading in some areas. Prof. M.L. Williams, Chairman of the Executive Body for the CLRTAP with UNECE, who said: '*CEH is one of the leading institutions in the world in this area. The work on vegetation impacts and on nitrogen from CEH provides CLRTAP with a science base of extremely high quality and credibility, and provides an excellent foundation on which to base CLRTAP policy decisions.*' The research is used for policy development directly and has led to substantial improvements in UK air quality and reduction in effects of UK pollutants in other European countries. The evidence is contained in the reports of EMEP and by research papers and synthesis reports for Defra<sup>3</sup>. RoTAP 2012.

ii The disadvantages are small relative the health and environmental benefits.

1. **Defra (2006)** Damage Costs for Air Pollution, AEA technology 2006, Defra report ED48796
2. **Reis et al (2012)** pp1153-1154, Science,v338, 30 Nov 2012
3. **RoTAP (2012)** Review of Transboundary Air Pollution: Acidification, Eutrophication, Ground level Ozone and Heavy Metals in the UK Contract report to the Department for Environment, Food and Rural Affairs. Centre for Ecology and Hydrology

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

### **2. 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?**

i The control of air pollutants which readily cross international boundaries needs to be controlled by international processes. For many short lived pollutants (less than two days), the appropriate scale for the UK contribution to these problems is European. So the EU or UNECE is appropriate. National regulations need to be coupled somehow to other contributors to the European atmosphere to share the burden of controls. Currently the directive that is relevant is the European National Emission ceiling Directive ([Directive 2001/81/EC](#), [www.ec.europa.eu/environment/air/pollutants/ceilings.htm](http://www.ec.europa.eu/environment/air/pollutants/ceilings.htm)). This directive is parallel to the Gothenburg Protocol (the Convention on Long-Range Transboundary Air Pollution) which was agreed between Member States, and Central and Eastern European countries, the United States and Canada ([www.unece.org/env/lrtap/multi\\_h1.html](http://www.unece.org/env/lrtap/multi_h1.html)). It should be noted in the absence of EU legislation, then exactly equivalent legislation would be required in all relevant countries as this issue is cross boundary.

For long lived pollutants, (e.g. CO<sub>2</sub>, N<sub>2</sub>O or CH<sub>4</sub>, the greenhouse gases), the appropriate international forum needs to be global, such as the UNFCCC. So it could be argued that the European controls are a model for other regions of the planet which experience similar air pollution problems.

## **Internal market and economic growth**

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

**4. 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?**

3. For all costs, including those to public good, then EU Environmental standards are essential for proper functioning of the internal market: The production of goods and services should be evenly burdened by environmental regulations across the countries of the internal market because the export of goods, and their benefits should not be accompanied by a disproportionate contribution of pollutant exports. Otherwise, pollutants produced in other countries manifest as costs in the UK (and vice versa)

4. Research over the last decade has steadily decreased the threshold at which pollutants are known to damage human health and ecosystems. Gradually the scale and cost of effects is increasing and the benefits of control measures are growing, justifying further control measures. The EU legislation provides a framework to implement changes cross all countries simultaneously so that the balance of protecting the environment and the wider UK economic interest can be changed to reflect the latest research without disadvantaging the UK.

#### **Current legislation**

**5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

**i. focused on outcomes (results)?**

**ii. based on an assessment of risk and scientific evidence?**

i) For the large combustion plant directives and Air Quality legislation (European National Emission ceiling Directive ([Directive 2001/81/EC](http://Directive%202001/81/EC), [www.ec.europa.eu/environment/air/pollutants/ceilings.htm](http://www.ec.europa.eu/environment/air/pollutants/ceilings.htm)); Gothenburg Protocol (the Convention on Long-Range Transboundary Air Pollution) ([www.unece.org/env/lrtap/multi\\_h1.html](http://www.unece.org/env/lrtap/multi_h1.html))) the legislation is based on expected outcomes and is well supported by monitoring networks as well as risk assessment evidence for most of the pollutants.

ii) For Climate change policy the assessment is based on risk and scientific evidence

**6. 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?)**

By providing an opportunity for National assessments and or proposals in response to intended specific actions, EU proposals would be challenged by a range of views and

analyses and subject to a useful range of alternatives. A consequence would be the need to develop National teams to take advantage of this opportunity.

**7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change?**

**ii. Less action on the environment/climate change?**

i) Two major issues requiring action are

(a) Reducing emissions of particulate matter and their precursors would deliver a substantial reduction in the number of people who die prematurely due to particulate matter in the atmosphere.

(b) Emissions of nitrogen compounds are still much too large, with widespread effects on human health and ecosystems. The greatest benefits and smallest costs would be delivered by taking more action on agricultural sources, across Europe.

Both these issues are transboundary issues and hence there should be more EU action. For (a) significant production of particulate matter is from transport; Given that manufacturers are multi-national, then it need a multi-national i.e. EU response

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

**9. a. 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?**

**b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

a) Those issues which are greater in scale than Europe (e.g. ozone) are an important contributor to effects on human health and crops would benefit from a control strategy covering all countries of the northern hemisphere...we share the same air and ozone is currently a major pollution issue for the USA, China, India, Europe and Japan. Any control strategy to be fully effective needs at least these countries involved....currently they have different legislation and ambitions.

b) Very important; UNFCCC seeks to address, is a cross boundary, global challenge which can be addressed by countries acting in concert.

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

**b. 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?**

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

- a) Climate change policies need to be global to be effective
- b) Most Air Quality issues are transboundary. Therefore, EU and UNECE for short lived pollutants (less than two day lifetime) and including SO<sub>2</sub>, NO<sub>x</sub>, NH<sub>3</sub>, metals (except mercury), volatile organic compounds. For Greenhouse Gases and for Ozone there needs to be global scale control
- c) Based on the experience of the National Emissions Ceiling Directive and the Gothenburg Protocol, the benefits would exceed the costs for the UK if the short lived pollutants were controlled as currently through UNECE and the EU. For climate change and greenhouse gases the EU offers more leverage globally, but is unable to solve the problem without the other major players.

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

**Centre for European Reform**

**Advantages and disadvantages**

- 1. What evidence is there that EU competence in the area of climate change has:
  - i. benefited the UK?

EU competence on climate has benefitted the UK on renewables and energy efficiency. It should in future benefit the UK on infrastructure.

On renewables, see:

*'How to meet the EU's 2020 renewables target'*

[www.cer.org.uk/publications/archive/policy-brief/2009/how-meet-eus-2020-renewables-target](http://www.cer.org.uk/publications/archive/policy-brief/2009/how-meet-eus-2020-renewables-target)

*'How to expand renewable energy after 2020'* [www.cer.org.uk/publications/archive/policy-brief/2012/how-expand-renewable-energy-after-2020](http://www.cer.org.uk/publications/archive/policy-brief/2012/how-expand-renewable-energy-after-2020)

On energy efficiency, see:

*"Delivering energy savings and efficiency"*

[www.cer.org.uk/publications/archive/policy-brief/2011/delivering-energy-savings-and-efficiency](http://www.cer.org.uk/publications/archive/policy-brief/2011/delivering-energy-savings-and-efficiency)

*'Energy efficiency: Made in Denmark, exportable to the rest of the EU?'*

[www.cer.org.uk/insights/energy-efficiency-made-denmark-exportable-rest-eu](http://www.cer.org.uk/insights/energy-efficiency-made-denmark-exportable-rest-eu)

*"The EU should be much bolder on energy efficiency"*

[www.cer.org.uk/insights/eu-should-be-much-bolder-energy-efficiency](http://www.cer.org.uk/insights/eu-should-be-much-bolder-energy-efficiency)

On infrastructure, see:

*'Connecting Europe's energy systems'*

[www.cer.org.uk/publications/archive/policy-brief/2012/connecting-europes-energy-systems](http://www.cer.org.uk/publications/archive/policy-brief/2012/connecting-europes-energy-systems)

ii. disadvantaged the UK

There is no evidence that climate policy being made at EU level has disadvantaged the UK.

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

2. 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?)

Greenhouse gases, like other pollutants, do not respect national frontiers. So the UK's national interest would not be better served if climate policy was made at national level.

A global climate policy would in theory be better than an EU policy. However, 21 years after the signing of the UN Framework Convention on Climate Change and 16 years after the signing of the Kyoto Protocol, there is no meaningful international agreement. If UNFCCC negotiations proceed as planned (which is not likely) an agreement will only become operational in 2020. This is too late. So the EU should strengthen its climate policies.

See:

[www.cer.org.uk/publications/archive/policy-brief/2011/eu-climate-policies-without-international-framework](http://www.cer.org.uk/publications/archive/policy-brief/2011/eu-climate-policies-without-international-framework)

iii. currently made at another level were instead made at EU level?

The EU should co-ordinate – though not harmonise – renewable energy subsidies.

See David Buchan's CER Policy Brief, 'How to create a single European electricity market and subsidise renewables'.

[www.cer.org.uk/publications/archive/policy-brief/2012/how-create-single-european-electricity-market-and-subsidise-r](http://www.cer.org.uk/publications/archive/policy-brief/2012/how-create-single-european-electricity-market-and-subsidise-r)

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

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

For traded goods, EU environmental standards are essential for the Single Market. Otherwise such standards would constitute non-tariff barriers. For non-traded goods, they are less essential. However, if one member-state allowed much more pollution, this would benefit industry located in that country. This would constitute an unfair competitive advantage.

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

This question poses a false dichotomy. As HMG's Stern Review concluded, it is in the UK's economic interest to take early and substantial action on climate change. A better formulation of the question would be to ask whether there are aspects of EU climate policy which should be changed to improve the impact on the UK economy.

The EU has sole competence over trade. Border tax adjustments should be introduced on goods imported from countries that do not have a carbon price similar to the EU's. The EU should follow the UK lead and adopt a rising price floor for the ETS.

See:

*'How to confront the carbon crunch'*

[www.cer.org.uk/insights/how-confront-carbon-crunch](http://www.cer.org.uk/insights/how-confront-carbon-crunch)

*'Saving emissions trading from irrelevance'*

[www.cer.org.uk/publications/archive/policy-brief/2012/saving-emissions-trading-irrelevance](http://www.cer.org.uk/publications/archive/policy-brief/2012/saving-emissions-trading-irrelevance)

More information on the general case for EU involvement in climate policy can be found in CER's submission to the Foreign Policy Balance of Competences review. See:

[www.cer.org.uk/publications/archive/review-article/2013/eu-and-climate-change-policy](http://www.cer.org.uk/publications/archive/review-article/2013/eu-and-climate-change-policy)

### **Chartered Institution of Wastes Management (CIWM)**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

- i. benefited the UK / your sector?
- ii. disadvantaged the UK / your sector?

The four national governments of the UK have adopted very different objectives and strategies in sustainable resources and waste management. Wales has adopted a national sustainability objective (the first in the world) and waste prevention and recycling targets beyond those required by EU directives. Scotland, although not yet matching Welsh waste performance, is also prepared to aim beyond EU requirements in matters as diverse as diversion of biodegradable waste from landfill, food waste separation and recycling targets; Northern Ireland is mid-strategy development and likely to adopt higher than directive targets. England on the other hand has strategies for waste management and waste prevention aimed only at meeting minimum directive standards at the latest possible date for compliance. In the case of England, therefore, EU competence in waste and resource management has proven to be essential. Without it our national performance in many areas of waste/resources policy would be less advanced than it is now.

As a result of pressures on the UK through EU directives, the value of this industry has continued to rise even through the 2008 to present economic downturn.

i) The EU directives on waste have provided a common standard for the permitting of waste facilities, and common objectives for waste management across the EU. This has facilitated development of cross EU working, where larger waste companies operating in the UK have expanded their operations to incorporate activities in other EU member states and enabled EU-based waste operating companies to expand their activities to encompass UK operations. In general the EU driven legislation has speeded up the modernisation of



the waste industry in the UK and has improved the environmental impacts of waste when looked at in the round through the enhanced levels of materials recycling and environmental protection. It is debatable as to whether the UK would have implemented similar levels of environmental improvements if the EU legislation had not been in place.

For example, the UK has had the fastest recycling rate increase in the last 10 years. This is due to EU influence, via Landfill Directive targets and Waste Framework Directive requirements. The Landfill Directive set out requirements for improving the environmental impact of gas emissions from landfill, as well as leachate control, along with identification and separation of hazardous, non-hazardous and inert wastes in landfill. The exclusion of tyres and strict diversion of biodegradable municipal waste from landfill has moved these and other materials (organic municipal wastes) to recycling and recovery streams.

The Waste Framework Directive has resulted in the implementation of the waste hierarchy that encourages the prevention of wastes and the reuse, recycling and recovery of resources.

The UK has gained a stronger voice in Europe; the UK has allied with other Member States over End-of-Waste issues. The UK has benefited through its 'Team EU' role.

EU legislation has helped steer the UK in relation to meeting household/municipal waste targets but there is still much to do with regards to commercial and industrial waste.

ii) The UK was successful in negotiating a four year derogation in Landfill Directive targets which has resulted in knowledge and technology development in other EU members states but NOT in the UK (e.g. anaerobic digestion), leaving UK businesses at a disadvantage in a rapidly growing global market for equipment and expertise. This is not a criticism of the EU competences but demonstrates that national decisions to delay implementation can harm future domestic markets and export opportunities.

There has been a variable EU Member State adoption of various waste and resource related directive requirements leading to a two-tier or even three-tier EU, in terms of infrastructure, services and performance. The UK has taken a prescriptive view on adopting some Directives, whereas other Member States have been more interpretive. A lack of consistent definitions and standards for monitoring and reporting across the EU has also dis-benefited the UK by under-reporting our performance compared to some other Member States, for example the varied approach to incinerator bottom ash in recycling statistics has introduced variability and inconsistent reporting across the EU. CIWM will be urging stronger EU action in standards and reporting as part of the review of landfill, waste framework and packaging and packaging waste directives.

2. 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?

i) CIWM can think of few advantages in decisions currently made at an EU level being made instead at a national, regional or international level. EU directives rightly concentrate on outcomes - e.g. under the Landfill Directive - leaving EU Member States to determine how best to achieve required diversion of biodegradable MSW from landfill; or absolute requirements e.g. exclusion of tyres from landfill. EU regulations such as the Transfrontier Shipment of Wastes Regulations are also vital in imposing a common regulatory system and outright bans for exports of many waste materials. National standards and regulation across the EU would allow inconsistency and unfair competition.

ii. In the interests of fair competition and pan-EU improvement in resource efficiency and wastes management some currently-national led policy would be better delivered at EU level, e.g:

minimum product standards

minimum recycled content in products

variable VAT to encourage use of secondary materials

targets for waste prevention

life cycle assessment

landfill diversion/recycling targets for industrial and commercial wastes

EU standard definitions, data collection and reporting.

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

CIWM believes that EU environmental standards are necessary for the proper functioning of the internal market - both in terms of the standards to which our industries are required to operate, and because environmental pollution respects no national boundaries. Poor emission standards in one EU Member State can impose economic, social and environmental costs on other EU Member States.

CIWM has recently published a report exploring the EU market in 'solid recovered fuel' and 'refuse derived fuels'. One of our conclusions was the need for EU-wide standards for these materials coupled with robust and evenly applied regulation of the market. The

international nature of this and other secondary materials markets, needs common standards and enforcement AT LEAST at a European level.

4. 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?

EU legislation on the environment provides the right level of balance between protecting the environment and allowing the UK economy to benefit from such protection. UK expertise and knowledge in environmental protection allows the UK economy to benefit from selling such a service to other Member States and the international market.

In the short term there may be cost impacts for businesses arising through EU environmental legislation but in the long term the drive towards energy and resource efficiency and security can bring significant business advantages. However, consistent interpretation and implementation/enforcement across all EU Member States is essential to prevent unfair competition from non-compliant states or businesses.

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

ii. based on an assessment of risk and scientific evidence?

i) CIWM believes that the majority of EU directives relevant to this industry are appropriately outcomes-focused either through performance targets (e.g. collection and recycling or extended producer responsibility) or through reduced biodegradable waste to landfill - leaving individual member states to introduce their own requirements to achieve those objectives.

ii) Increasingly EU legislation does reflect risk assessment and scientific evidence. However, some concepts such as the precautionary principle and proximity principle do not stand close scrutiny or are inadequately explained or enforced. Similarly the Landfill Directive pre-treatment requirement is variously interpreted and enforced across the EU having no scientific basis or standards to perform against. The EU should be wary of 'imposing' such concepts without clear expectation or enforcement. There is an urgent need for common approaches to whole life cycle assessment across the EU both for products and services and for plans and strategies to allow consistent reporting and adoption of lowest overall environmental cost solutions.

6. 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?)

More effective input from the UK as a Member State in the negotiating period would improve ways of developing proposals and/or impact assessments as well as increasing the recognition of national circumstances. This entails better liaison/consultation with industry via its representative bodies and trade associations. Some trade associations have a voice through to the EU via their own EU trade body whilst others would be relying on government to include them in wider and more encompassing consultations.

EU legislation should be outcomes-focused. Waste prevention for example would benefit from pan-EU targets leaving national governments to adopt solutions appropriate to local circumstances - e.g. voluntary agreements, economic instruments, incentives, etc.

Measuring and reporting against required outcomes of EU legislation must be standardised and enforced to prevent unfair competition.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

ii. Less action on the environment/climate change?

i) If the EU took more action on the environment this would benefit the UK, especially in England where major waste/resources strategies are based on last minute minimum requirement satisfaction of relevant directives' requirements. More action by the EU would drive green growth in UK businesses with both domestic and export advantages. Global standards driven through the EU on behalf of its Member States would give the UK a business advantage.

Another benefit would be certainty in long-term direction giving confidence in long-term investment. A circular economy will not happen at Member State level alone, it needs EU drive.

ii) The EU cannot reduce its action on climate change or environment, this would be a dis-benefit to the UK. Less action at EU level would undermine regulatory stability and investor confidence. In the international market the UK may have a voice in relation to climate change or environment but the EU has a stronger voice.

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

The UK record for implementing directives has not been consistent. The UK was not one of the first movers under the Landfill Directive, so we do not have the expertise of those such as Germany for AD or most other Member States, when it comes to technology. There are definitely first mover advantages in skills and technology which the UK missed out on.

The use of 'cut and paste' for transposition of EU Directives into UK legislation cannot be the best way to implement unless this is a standard imposed across the EU. The UK should not be afraid to interpret, as long as it takes into consideration free market trade and other key aspects of EU principles, it will not then be challenged.

Engaging with industry, stakeholders and citizens early on in the process to ensure that UK interests are taken account of could help with forming directives, as well as their subsequent implementation. This is also true for EU regulations, more so because once the regulation has passed the UK has no way to change anything, until the next update/review.

9. a. 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?

There is an advantage in the EU having a stronger voice internationally; any impact from climate change is not just on one country or one river, it has an impact on the whole EU. Although the UK may not be joined physically to the rest of the EU, the impact on UK trade and economy could be substantial.

The EU being able to influence the global market in international agreements could also bring better economic advantage to the EU and/or UK.

There would also be an advantage in the EU influencing eco-design and the circular economy.

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

CIWM is aware that our role in Team EU has been very beneficial. The UK has a lot of experience and expertise, so we should not give up our voice lightly. Examples of where Team EU has been influential, is in the context of international waste shipments and development of 'end-of-waste' criteria.

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

The EU has recognised many of the future challenges in its 7<sup>th</sup> Environmental Action Plan. However, CIWM members identify key new challenges as:

more emphasis on measurement and reporting of resource conservation or waste prevention - as apposed to recycling. CIWM members wish to promote standardised reporting of residual waste production as apposed to recycling, in future reviews of relevant directives.

resource efficiency - including energy, water, food, land and physical resources

consistent life cycle assessment and reporting to identify lowest environmental cost solutions

consistent interpretations, definitions, data standards and reporting to allow fair comparison in performance, between member states

resource security - the identification of strategically important resources and pan-EU strategies for their protection and careful conservation as a vital industrial input.

planning for development, infrastructure and services that will improve adaptation to climate change as well as manage-down climate change impact contribution.

b. 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?

National governments/industry/third sector and local authorities all have a vested interest in securing resource efficiency/waste prevention and resource security as a business advantage or continuity issue. However, some actions can only be conducted at an EU or international level:

international standards and agreements are best negotiated by the EU rather than individual Member States, including issues such as emissions targets, product design and global market standards

resource security should be assessed and planned for at an EU level - demand for rare materials as an industrial input does not arise evenly across Europe so consistent recovery of these materials by all Member States could be a strategically important input to industries in only a sub-set of States

concepts such as carbon trading can only operate meaningfully at an EU level

development of industry standard definitions, data collection and reporting at an EU level are vital to avoid market distortion and the EU must retain oversight and enforcement of compliance across all Member States - even if that means agreeing state-specific objectives and targets to take account of the capabilities of some under-performing Member States. None of this can be conducted at a national level.

Individual governments should be free to identify the best mechanisms within their country to achieve EU objectives. Examples include the various extended producer responsibility systems, environmental taxes and incentives.

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

The Commission has made estimates of the jobs and European benefits and the UK has indicated similar. In the UK if we increase our recycling rate to 70% this could provide up to 50,000 additional jobs. The global carbon market is valued at £3-4 trillion and waste legislation could reduce Member State spending by €70 billion and create 400,000 jobs.

There are likely to be significant benefits by addressing these issues via the EU, through improved standards, for example. These issues are likely to come with greater risks and increased costs, if tackled at the UK level, outside of the EU.

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

Within the UK CIWM members believe there is opportunity for endorsing the role of Chartered environmental professionals (such as Chartered Waste Manager) in approving either voluntary scheme proposals or statutorily required individual plans - including compliance plans, pro-active tools such as site waste management plans, etc.

## **Chartered Institution of Water and Environmental Management**

CIWEM welcomes the opportunity to provide comments to Defra and DECC on the Review of the Balance of Competences, call for evidence: Environment and Climate Change. Our comments reflect the views and experiences of a range of our technical members working across the environment and climate change sectors.

The Chartered Institution of Water and Environmental Management (CIWEM) is the leading professional and qualifying body for those who are responsible for the stewardship of environmental assets. The Institution provides independent comment, within a multi-disciplinary framework, on the wide range of issues related to water and environmental management, environmental resilience and sustainable development.

### **Introduction**

Competence in this context, set out by the Government, covers everything deriving from EU law that affects what happens in the UK. The environment was added specifically as a legal EU competence in the *Single European Act* of 1986, and energy in the Lisbon Treaty of 2008. The environmental principles enshrined in the Single European Act are now central to EU environmental law.

The environment and energy are two key areas of competence where either the EU or Member States may act. This is a very complex area which covers a wide range of issues, most of which are interlinked in a number of ways. For example, climate change, biodiversity, natural resources, environment and health are themselves interconnected but they are also inextricably entwined with other policies such as agriculture, energy and

transport which are also subject to EU competence, and to principles such as the free movement of goods in the internal market.

## **Summary**

In summary, CIWEM believes strong EU competency is important to provide a clear path towards environmental sustainability that encourages investment in green jobs and growth, and to create a level playing field to avoid distortions in industrial competitiveness. Without EU competence there is a risk that political short termism and an overemphasis on economic growth at all costs could undermine investment, skills and progress in the UK.

As many of the environmental pollution issues that occur are transboundary in nature, they require regional standards to be set and cooperation between Member States to mitigate them.

There may also be disbenefits of EU competence if areas of policy are not properly coordinated. CIWEM believes the current system works well as it strikes a balance between regional and national interests; yet more could be done nationally to review all existing legislation, remove any anomalies and avoid conflicting legislation. We consider there also needs to be better implementation across the breadth of the EU.

## **Call for evidence – questions**

### **Advantages and disadvantages**

#### **1. What evidence is there that EU competence in the area of environment and/or climate change has:**

##### **i. benefited the UK / your sector?**

EU law has accelerated action on environmental protection, through for example the Birds and Habitats Directives, which protects designated areas from development and the Urban Waste Water Treatment Directive which has limited the discharge of raw sewage into rivers or the sea. In the UK we now have cleaner rivers with more diverse ecology. Air quality and waste are also largely led by the EU with emissions limits, the Ambient Air Quality Directive and targets for recycling and reducing waste to landfill. These have clearly benefited the UK by putting environmental issues at the heart of policy development where it needs to be.

Movement towards compliance with the Water Framework Directive has had visible benefits to the environment and hence all our lives. Under the Water Framework Directive there are various working groups linked to Ecological Quality Objectives and Flooding which have focussed on harmonising implementation of the legislation across Europe and helped with the exchange of best practice.



The EU has had a good track record on promoting climate change adaptation and mitigation activities. The Climate Change Adaptation White Paper has been a significant step forward as it has encouraged strategic thinking about the issue across the Member States and sets out four key pillars to focus on. It has also encouraged better cooperation with neighbouring countries to the EU. In addition there are Strategic Steering Groups such as that for Water and Climate which coordinate thinking on incorporating climate change into River Basin Management Planning, again sharing best practice and producing guidance documentation to support River Basin Management Planning implementation.

There is a general sense that without a strong EU competency, the UK would probably not be very proactive in either environmental protection or climate change. Principal evidence of this would be the current Government's National Planning Policy Framework, the intended forestry 'sell off' and the closure of its independent scrutiny body the Sustainable Development Commission; these actions run counter to environmental protection and managing climate change.

The current UK government is obsessed with economic growth at all costs, whereas the EU may be better placed to consider a new model based on well being and sustainability. Strong EU competency is important to provide a clear path towards environmental sustainability that encourages investment in green jobs and growth, and to create a level playing field to avoid distortions in industrial competitiveness. Without EU competence there is a risk that political short termism could undermine investment, skills and progress in the UK.

## **ii. disadvantaged the UK / your sector?**

There have been known to be disadvantages from not joining up policies at the EU level. For example, the very laudable target for 20% of transport fuels to come from renewable sources by 2020 has led to an over-reliance on high yield, high water using crops which can have two harvest periods in a year. This has forced the EU to set out amendments to existing legislation to limit the land area that can be used to generate such biofuels<sup>38</sup>. This is damaging because the initial target was not coordinated properly with the environmental legislation and with DG Environment and has led to water and land use problems; this reinforces the view that environmental thinking should be at the heart of all EU legislation. In the future changes to existing EU legislation on waste, the soils directive and others that limit or stop controlled disposal of sewage sludge to land would be detrimental and be a retrograde step.

The fruit and vegetable specifications as set out in EU guidelines and used by food retailers to stipulate the size, shape and skin finish of produce is causing whole fields of crops to be rejected creating organic waste and its associated wasted water and fertiliser. This does not appear to be a joined up policy.

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

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<sup>38</sup> [www.ec.europa.eu/energy/renewables/targets\\_en.htm](http://www.ec.europa.eu/energy/renewables/targets_en.htm)

## **2. 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?)**

The EU sets out the framework for Environmental Legislation and each Member State implements the articles under its own legislative framework using subsidiarity as appropriate. CIWEM believes this system works well as it strikes a balance between regional and national interests. To make decisions at the sub regional level would likely encourage a race to the bottom in terms of environmental protection.

**ii. currently made at another level were instead made at EU level?**

CIWEM believes the EU should set the framework for a tradable permits system across Europe by setting an overarching Environmental Quality Objective for Europe. The operational structure for such a system at the national level is flawed and ignores the transboundary impacts of pollution.

A key example of a remaining national competence is land use planning (although there are increasing numbers of EU requirements affecting planning and development). In this case, where it has been left to the national level, the UK's stance on sustainable development is out of date and contradictory to sound environmental protection. CIWEM considers this could be improved if a more regional approach was taken.

## **Internal market and economic growth**

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

EU environmental standards are absolutely essential for a fairly operated functioning of the internal market. They create a level playing field which prevents the watering down of standards and they ensure that markets across the EU align. Countries also suffer environmental impacts from the activities of other countries so environmental legislation is essential to the proper functioning of the internal market.

Many studies demonstrate that the cost of cleaning up pollution 'after the event' has a greater financial burden and a much higher health impact than preventing pollution in the first place. Setting proper environmental controls rather than burdening organisations is actually a major benefit for organisations and industry, leads to reduced environmental damage, ensures that resources are not over exploited and reduces economic problems (such as access to water).

In order to tackle the overarching big issues we face, such as the transformation towards a circular economy, we will need a policy framework where conditions are predictable and take place in a less disruptive and costly way. Fortunately the EU has already realised that this is the case.

#### **4. 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?**

A safe and diverse environment is essential for our long term survival and prosperity. EU legislation strikes a balance but in many ways it does not go far enough. The UK's economic interest is affected by poor implementation of environmental legislation across the EU and if the focus was more on effective implementation of all the existing environmental legislation this would be a major benefit for all of Europe.

Better implementation would lead to a growth in demand for green technologies and act as a catalyst to green jobs and growth which would be of benefit to the UK.

#### **Current legislation**

#### **5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

##### **i. focused on outcomes (results)?**

Taking the Water Framework Directive as an example, it is highly focused on outcomes that are of value. It offers the best example in relation to broader environmental aims and now that there is a focus on climate change it offers an excellent framework. The key is to coordinate the objectives with all other environmental legislation, for example the Urban Waste Water Treatment Directive where the drive for centralised sewage treatment systems based around population equivalents can conflict with objectives that are better served by more localised community based solutions. The coordination with the implementation of the Flooding Directive offers a good example of the benefits of a more joined up approach to legislation.

##### **ii. based on an assessment of risk and scientific evidence?**

To some extent the Flooding Directive is also based on a good assessment of risk issues. The Water Framework Directive however, whilst based on scientific evidence, may lead to additional expenditure which may not be entirely necessary under a risk based approach, for example it installs drivers for carbon-intensive water treatment.

The precautionary principle, whilst a good preventative approach, is not a risk-based and scientific approach. The focus of legislation should be "what do we need to do to get success" rather than "what can go wrong"; the two are quite different.

#### **Doing things differently**

#### **6. 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?)**

There are no alternatives to legislation that can reliably protect the environment. Better implementation would lead to a growth in demand for green technologies and act as a catalyst to green jobs and growth which would be of benefit to the UK.

## **7. How far do you think the UK might benefit from the EU taking:**

### **i. More action on the environment/climate change?**

More action is essential. A safe and diverse environment is essential for our long term survival and prosperity. The UK is well placed to build a strong green economy and greater impetus from the EU on environment and climate change might help to drive this forward more quickly, where arguably the present Government has held back.

### **ii. Less action on the environment/climate change?**

This would represent a negative and retrograde step. Changing weather patterns such as an increase in flooding events are already impacting on the economy and the insurance industry is recognising the changing and increasing patterns of risks. Less action would increase not decrease risks for the UK, at its simplest more properties will be a risk of flooding in 20 years time and this is not just a location issue.

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

The UK should review all existing legislation, remove any anomalies and avoid conflicting legislation. It should also take on board the advice of scientific and technical stakeholders rather than just that of the construction and development sectors.

The UK could take a leadership role where the EU is working on legislation for 'difficult to tackle areas'. For example, the UK is currently doing a lot of work on biodiversity and the way the environment is valued, this could be used to drive forward the agenda and therefore the way we develop and implement legislation.

## **9. a. 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?**

As a larger body than individual nations, with the influence to deliver action, the EU can negotiate more effectively and efficiently internationally. Inconclusive negotiations are far too common. The EU can use its ability at policy, negotiating, research and drawing together actors to become a leader in global negotiations. At the same time, the EU needs to streamline its processes for arriving at negotiating positions and ratifying agreements made.

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

For the UK to be part of Team EU at the UNFCCC is absolutely essential as a changing climate cannot be discussed properly and solutions developed when the focus is political

and therefore driven on a country-by-country basis. CIWEM as an institution is part of the Water & Climate Coalition, a grouping of organisations that have pushed for greater discussion around the issue of water at the UNFCCC discussions.

Water is the face of the changing climate through floods, storms, droughts and with between 40-50% of the world's population living in transboundary river basins there needs to be a regional focus to the UNFCCC discussions. Europe is already experiencing a changing climate, it is also urbanising rapidly, has a high density of people and highly stressed river systems, diffuse pollution is increasing and so are agricultural demands. To not have a Team EU focus would undermine the UK as the current fragmented approach is not working. However the UK needs to show some leadership and implement a decarbonisation target nationally.

### **Future challenges and opportunities**

#### **10a. What future challenges or opportunities might we face on environmental protection and climate change?**

A rising human population is driving demand for food, water, energy and consumer goods. The rapid depletion of minerals, such as rare earths, is jeopardising our ability to benefit from future technological developments, and continued exploitation of fossil fuels puts us on a path of global temperature rise and extreme weather events that we may not easily adapt to or mitigate for. Despite 50 years of awareness, very limited progress has been made in terms of living on a more sustainable footing.

We live in an interconnected world with resources, energy and the movements of goods and in many cases pollutants all being globally connected. Hazardous waste, pollutants and greenhouse gases all harm the environment and its ability to restore itself. The uncertainties involved in climate change predictions are a major challenge, affecting the viability of investments in mitigation measures and, to a lesser extent, ongoing environmental protection measures.

There are opportunities to be found in using resources, water and energy more efficiently. Defra estimates that UK businesses could save more than £20bn per year by simple steps to use resources more efficiently.

#### **b. 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?**

There needs to be a hierarchy structure and an approach linked to a proper process of implementation. The Framework should sit at the top, followed by cooperation, then multilateral agreements and subsidiarity. This system would ensure consistency and predictability which is the key to success at the 'industry level'.

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

As stated earlier, the costs of not addressing the challenges at the EU level would be much higher and the impacts more damaging. The transboundary nature of pollution events,

international trade, changing weather patterns and that we live in a shared system necessitate a regional approach. Efficiencies can also be made by working together to address future challenges. We cannot afford in the long term to avoid or defer environmental protection or climate change mitigation and adaptation measures, or try to pass the responsibility on to others, in the interests of short term profit.

## **Anything else?**

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

The need to protect our global environment, for its own sake as well as our long-term survival, is urgent and increasing. Legally binding obligations are the only reliable way forward, creating the demand for appropriate technologies and generating the economies of scale which will make them affordable. The UK is a world leader in its development of environmental ideas and technologies and these ought to be exploited for the good of the environment. There are benefits in being at the forefront of technologies that will become essential throughout the world. For example the level of knowledge and expertise in the area of urban drainage in the UK is unrivalled. This should be supported and enhanced to show the UK as a world leader in this area.

In tackling climate change the UK government should develop Blue and Green growth strategies for the country and avoid the fragmented approach that exists now. There should also be an appreciation that resilience has a much greater traction in terms of environmental protection, economic growth and social protection than the concept of sustainable development as defined by UK government.

The UK should ensure that it is a leader at the European level. Currently in terms of renewable energy sources, the UK lies 26<sup>th</sup> out of 28 Member States. The UK share in renewable energy sources in final energy consumption lies at 3.8%, with the EU average at 13%. The UK also has poor performance when compared to the rest of the EU on household food waste and water consumption. We need to set our own house in order and set the environment at the heart of the UK education system and the heart of policy development.

CIWEM has produced a range of policy reports that elaborate on many of the points made in this response. These are available from: [www.ciwem.org/reports](http://www.ciwem.org/reports)

**Microbes to Mountains** – understanding and debating the role of ecosystem services in environmental management

**Clearing the Air** – priorities for reducing air pollution in the UK

**A Blueprint for Carbon Emissions Reductions in the Water Industry**

**Less is More** – a lifecycle approach to waste prevention and resource optimisation

**Reframing Sustainable Development** - a critical analysis

**Integrated Water Management**

### **Chartered Quality Institute**

**Q1** Environmental initiatives by government. Progressive policies by public companies , membership of Institutes promoting Environmental concerns and academic research and study.

**Q2** Still a strong degree of scepticism on manmade causes and lack of resource into natural causes

**Q3** The IK should have its own active national strategy and policy deployment plans. These can be shared with our European colleagues to develop European strategy. Secondly, we need to be running practical examples of remedial activity in UK cities and towns jointly financed by government and Industry.

**Q4** Either provide a lead or contribute to European policy

**Q5** Important to the medium to long term, not seen as of immediate urgency. There are many who see them as a constraint to productivity. and unnecessary cost. Where ever possible they should be self financing or funded out of research programmes.

**Q6** Seen as interfering with the UK's national economic interest. WE should have a responsible evidence based position

**Q7** based on environmental priorities

**Q8** Yes

**Q9** all of these thing.

**Q10** Difficult to say, not much of it is of short term value. As a principle we should leave Europe in a better environmental condition and not like the barren southern hills of Greece, Cyprus and Spain or the Amazon rain forests



**Q11** 100 % progress on preventative actions and affordable progress on remedial action

**Q12** Set up practical model in UK Cities and towns and learn from the outcomes.

**Q13** Britain has always enjoyed leading the way on innovation.

**Q14** Major player

**Q15** The un - knowables

**Q16** There is no such thing as right balance. We should be addressing risk, base our actions on factual data and have long term goals.

**Q17** 'You don't have to do these things survival is optional' Dr Deming

**Q18** Very good questionnaire.

## **CHEM Trust (Chemicals, Health and Environment Monitoring Trust)**

### EU CHEMICALS POLICY

Some chemicals used by industry and found in commercially available products have been shown to be dangerous to the environment and human health and therefore have to be controlled. Any restrictions on marketing and use, or labelling requirements, affect trade and therefore are made at EU level in order to maintain the integrity of the EU internal market. If the UK ceased to be a member of the EU it would still be bound by EU standards for products that it exported to the EU. It would also have less say when chemicals are controlled in the future.

EU chemicals policy has evolved in a series of steps starting in the 1970s and was revised and largely consolidated in 2006 into a single Regulation 1907/2006 known as REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals). REACH is still developing, but the EU now has in place a maturing regime for controlling chemicals which is providing a model for countries outside the EU.

Chemicals policy effectively started when the OECD called on its member countries in 1973 to place restrictions on PCBs in response to a number of incidents including poisoned rice oil in Japan and appalling bird deaths in the Irish Sea. This prompted the UK to introduce powers to control the marketing and use of chemicals in the Control of Pollution Act 1974 and the EU to do the same in Directive 76/769. Over the years, the marketing of many substances were restricted in the EU under that Directive including: asbestos, lead in paint, marine anti-fouling paint, cadmium, and fire retardants. These powers have been subsumed into REACH.



In the early 1970s a debate developed in both Europe and the USA about the need for an 'early warning' system for new chemicals. This led to the Toxic Substances Control Act 1976 (TOSCA) in the USA and to EU Directive 79/831. This Directive was original in the sense that nothing like it existed in any Member State or elsewhere. It required information on tests to be exchanged between Member States and once clearance was granted in one, access to the whole EU market was ensured. It worked well. Industry supported it because they could see that a single system was more efficient than having to go through different hoops in different countries. They were also concerned that rules being made in the USA under TOSCA could be used to discriminate against European exports to the USA and wanted a system that would give the EU greater strength to negotiate with the USA than say, Germany, UK or France negotiating on their own. This is an example of synergy between trade and environmental objectives. The argument applies to REACH today.

The next step, dealing with the more difficult problem of the many thousands of chemicals already on the market, was initially less successful. The Existing Substances Regulation 793/93 involved manufactures sending existing data to the Commission; the drawing up of priority lists of chemicals needing attention; and work on risk assessments being shared among the Member States. It worked so slowly that eventually it became obvious that reform was required. This led to REACH. It is worth noting that the allocation of risk assessments between the Member States was very uneven. By 2003 it was as follows: NL 5, UK 4 (+ 1 shared with F), D 2, and one each for I, SP, F, A, DK). REACH attempts to solve this problem by placing responsibility on the manufacturers to carry out tests and assessments and on a new European Chemicals Agency (ECHA) to evaluate them. Member States remain free to carry out their own evaluations but the burden has been lifted off their shoulders by ECHA which should offer economies of scale. If the UK left the EU it would either have to create a new bureaucracy or continue to rely on ECHA while having little or no control over it.

REACH is the longest, most complicated and contentious item of EU environment legislation. The costs are large and so should be the benefits. The Commission ed a White Paper and consulted widely before making its proposal. During negotiations there were inevitable conflicts between industrialists and environmentalists which were reflected in the debates in the European Parliament. There were also conflicts between Member States in Council and between Directorates-General of the Commission and between Committees of the Parliament. Member States with important chemical industries (Germany's is by far the largest in the EU) have different interests from those with smaller industries and for whom maintaining the Baltic or the Rhine unpolluted is a high priority.

During negotiations a joint letter was sent to the Commission by the German Chancellor (Schroeder) the French President (Chirac) and the British Prime Minister (Blair) setting out certain ideas on the way forward. This was unprecedented. In the UK, both the Houses of Parliament held inquiries and ed reports as did the Royal Commission on Environmental Pollution. The UK, jointly with Hungary, made a proposal to simplify the registration

procedure which was incorporated into the Regulation. The UK held the Presidency of the Council during an important stage in the negotiations and helped influence the outcome.

REACH, whatever its faults, has gone through an intensive process of gestation in which many compromises have been made to reconcile different interests. This is as it should be. The result is a more robust regime than exists anywhere in the world. It is hard to imagine any Member State on its own developing such a regime. The Commission in its recent review of REACH has concluded that no changes should be made just yet. REACH is still evolving and will doubtless be reviewed again. The registration process is not yet complete, the process of evaluating registrations needs to be intensified, enforcement action for non-registration or inadequate data submissions have yet to be undertaken, the issues of criteria for endocrine disruptors, and how to deal adequately with assessing mixtures of chemicals still have to be resolved. These are all issues to which the UK should continue to be actively contributing with a view to protecting the environment and human health and ensuring a prosperous chemicals industry.

### **Chemical Business Association**

**Q3** National and EU legislation can drive the transfer of industry to less restrictive regions. The main issue is the implementation of similar legislation across relevant trading territories. In the absence of EU legislation, other international regulations would give a common framework.

**Q5** EU standards provide a level playing field across the internal market, so long as they are implemented in the same manner across the EU.

**Q6** EU legislation should aim to protect the environment at an acceptable economic cost. As economic circumstances change or if the expected environmental benefits do not materialise, then the EU legislation is inflexible and does not allow for a re-balancing.

**Q7** The REACH regulations have focussed on the registration of chemicals in Europe, but underestimated the cost and the burden to the chemical industry in Europe, sufficient to require a separate EU project to look at the impact on SMEs.

**Q9** The EU should improve the quality of Impact Assessments. The REACH regulations were anticipated to cost the European Chemical industry 2.6 Billion Euros over 11 years. By the end of 2012, ECHA statistics confirm that the industry has already spent in the region of 2.1 Billion Euros, with the majority of registrations still to occur.

**Q10** Any future EU legislation should be proportionate, pragmatic and sustainable.

**Q12** The UK should use intelligent copy out in the transposition of EU Directives into UK regulations. The UK should avoid gold-plating, but use the transposition process to take account of UK economic interests.

**Q13** The EU does not have sufficient expertise on technical matters; this resides at national level. Implementation and enforcement should also reside at national level.

## **Chemical Industries Association**

The chemical industry in the UK:

- contributes £75 million every day to the UK economy
- spends over £5 billion each year on research and development
- invests almost £2 billion a year in capital expenditure
- generates a trade surplus of £5 billion every year
- provides employment for over half a million people in well-paid jobs, particularly in the North of England and Central Scotland

and is the nation's number one manufacturing exporter.

The importance of the European Union as a market for UK manufacturers cannot be overstated. Over 50% of our exports go to Europe. On-going

uncertainty over our membership of the Union is not helpful for trade and investment decision-making. Respecting the democratic process, we hope the debate and decision can be concluded as quickly as possible.

Chemicals are subject to many rules at EU level, whether in terms of how to characterise them or how and where to use them. Manufacturing chemicals in addition is also subject to legislation aiming to ensure that production is done safely and without damaging the environment and the people working and living nearby plants.

Europe is the most regulated area of the world. As chemical manufacturers operate at a global level, EU legislation has a tendency to put EU based companies at commercial disadvantage compared to others when it comes to supplying non-EU markets. We do not want a legislation-free business environment. Chemicals and the chemical industry should work within a regulatory framework. Government and the EU should consider why legislation already in place to address given issues is not delivering. European legislation needs to be better implemented and enforced across all Member States. If the proposal for a 7th Environment Action Programme is anything to go by, the European Commission appears to have come to that realization. It is imperative that the UK government maintain the necessary pressures on Europe to ensure that this trend continues.

Allowance should also be made for local and national needs and a degree of freedom should be allowed for Member States to interpret legislation as they see fit to achieve their objectives. A perfect example is the Industrial Emissions Directive. The Environment Agency has implemented the requirements of previous legislation very effectively for many years considering what actions had to be taken on a site-by-site basis. Chemical production plants tend to grow organically as business develops so none is exactly the same. The same applies to the environment surrounding those sites. Until recently, Member States authorities were reasonably free to implement emissions control legislation as they saw fit to meet overarching targets set up by EU legislation. The European Commission is now trying to implement a one size fits all for given sectors not taking into consideration that sites even when producing the same chemical can be very different and require different controls to achieve the same level of protection of the environment. This change in approach to enforcement tends to get in the way of the pragmatism and common sense that the UK has always tended to follow when it comes to environment and human health protection.

With the view of understanding what effects chemicals could have and how they should be used safely for both people and the environment, the European Commission introduced in 2006 a new piece of legislation Regulation 1907/2006 for the Registration, Evaluation, Authorisation and restriction of Chemicals (REACH). REACH demands from companies to develop a full hazard profile for chemicals, ascertain where the chemicals might and might not be used, how to control those hazard through risk assessment and risk mitigation and to communicate those findings to their customers. Chemicals are pretty much used in every sector so responsibilities do not stop at chemical manufacturers and suppliers. Companies up and down supply chains also have responsibilities, including retailers. This is the largest environmental regulation ever produced by the European Commission and companies up and down the supply chains as well as the authorities are still coming to grip with what REACH should mean in practice.

From a chemical manufacturer's point of view, we see REACH as a positive development and support its principles. It has made many businesses outside our sector realise that they do in fact use chemicals every day and that they also have to comply with controls. For us, this is an important step towards achieving safe chemical management and we support the scope and objectives of the legislation as a consequence. We believe that the legislation does work as it stands and does not need to be revised. However, interpreting the legislation is proving extremely complex, more than it needs to be, and there would be some benefits in considering how the guidance that have been produced to help companies comply could be simplified so that the objectives of sound management outlined in REACH can be achieved in a more cost effective way for companies along entire supply chains.

To protect the environment and ensure growth of the chemical sector in the UK it is absolutely crucial to maintain a risk-based approach to environmental legislation. This is to avoid both site closures and an adverse impact on the environment. The UK therefore needs to be fully engaged in the revision of the BREF (Best available techniques

REFerence) documents which set European emissions limits for a number of industrial processes operating under an environmental permit ( Industrial Emissions Directive). A 2012 CIA member survey (being currently updated) on current BREF documents indicates a potential significant cost to the industry (of the order of several £100 Millions) with expected site closures.

The recent adoption of very low standards for a number of pollutants in the EQS (Environmental Quality Standard ) for water directive has also the potential to be highly costly to implement with no environment benefit. The revision of the European waste legislation will also need to be carefully monitored to avoid the setting of restrictions on the Waste hierarchy which could jeopardize the sustainability of UK businesses.

Operating within Europe is critical for our sector in terms of trade. Prior Informed Consent (PIC) operates within an international network of signatory countries of the 1998 UN Rotterdam Convention. The Convention sets up a global framework to monitor the import and use of dangerous chemicals. It covers pesticides and industrial chemicals that have been banned or severely restricted for health or environment reasons by Parties and which have been notified by Parties for inclusion in the PIC procedure. One notification to the UN Secretariat from each of two specified regions triggers consideration of addition of a chemical to Annex III of the Convention. Severely hazardous pesticide formulations that present a hazard under conditions of use in developing countries or countries with economies in transition may also be nominated for inclusion in Annex III. The UK ratified the Convention on 17 June 2004.

There are currently 43 chemicals listed in Annex III of the Convention and subject to the PIC procedure, including 32 pesticide formulations and 11 industrial chemicals. The Conference of the Parties decides on the inclusion of new chemicals. More chemicals are expected to be added in the future. However, the EU implementing Regulation adds additional chemicals, requires extra compliance requirements (see below) and requires explicit consent of the importing country whether or not that country is Party to the Rotterdam Convention.

The rationale behind the EU notification procedure covered by Regulation 689/2008 (to be usurped by Regulation 649/2012 on 1 March 2014) is to prevent the “undesired” export of dangerous chemicals. No chemicals banned or severely restricted within the Community that meet the Convention criteria or that are covered under the international PIC procedure should be exported unless the explicit consent of the importing country concerned has been sought and obtained within 60 days. This affects 79 chemicals whether or not that country is a Party to the Convention. 165 chemicals of concern fall under an EU export notification procedure. Thus the EU regime goes way beyond what is required under the Rotterdam Convention.

Certain countries do not recognise the EU’s authority to impose extra-Convention trade controls and often do not respond to the EU request for confirmation that the export may proceed. Most requests to non-OECD countries remain unanswered after 60 days which

means that such exports to such countries cannot proceed unless the EU issues one-off waiver that is valid for one year. The EU has taken the decision that subsequent shipments on expiry of an annual waiver will be automatically blocked unless and until an explicit consent from the receiving country has been received.

This process not only applies to the 43 chemicals approved by the Rotterdam Convention process but also to the additional 36 chemicals that have been unilaterally added to the PIC process by EU regulation 689/2008. More chemicals are going to be added every six months by the EU and this process is likely to be accelerated as a result of the REACH authorisation process and a new biocides regulation.

The UK is under no obligation under the Rotterdam Convention to use the EU's import/export PIC authorisation process but of course does so because it has not opted out of the EU Regulation. If an opt out was obtained the UK could continue with its own national PIC licensing system without reference to Brussels. It could also reduce the scope of the PIC scheme to cover only the chemicals that are explicitly covered by the Convention, shorten processing time as well as drop the requirement for companies to submit export notifications. This would reduce bureaucracy, exempt many chemicals from de facto embargoes and put UK exporters on more even playing field in the global chemicals supply market.

One of our biggest challenges is the cost and availability of energy. We want to make sure that both energy and feedstocks (the raw materials for chemical manufacturing) are available, affordable and environmentally optimal. Chemistry provides the key enablers for renewable energy, low emission transportation, energy efficient homes and businesses, and sustainable agriculture. It is at the heart of the UK's development of a 'green economy'. Parts of the chemical and chemistry using industries are energy intensive. However, for every tonne of carbon emitted, we save 2 tonnes, as evidenced by a July 2009 McKinsey report 'Innovations for Greenhouse Gas Reductions – A life cycle quantification of carbon abatement solutions enabled by the chemical industry'. To be successful, manufacturers need competitive and secure supplies of energy and feedstocks (raw materials). This means striking an affordable balance in the energy mix between natural gas, clean coal, new nuclear and renewable sources. And manufacturers also need a level playing field with respect to climate policy costs. It is therefore important that Government's assessments of the competitive implications of new proposals for energy and climate policies take into account the cumulative impact of existing measures.

New sources of feedstock can make a significant contribution to both growth and 'greening' of the economy:

- Although quantification of recoverable reserves is not yet available, the UK potential for unconventional gas could be equivalent to twice that of North Sea (conventional) gas – reducing dependence on imported gas and improving the business case for investment in UK chemical capacity.

- Biofuels and waste recycling also offer sources of feedstock and a route to lower carbon emissions from production, for example: mechanical recycling of plastics uses 25-60% less energy than that required to produce primary polymers as feedstocks.
- With carbon capture there is potential to reuse and generate value from CO<sub>2</sub> emissions by converting them into hydrocarbons. Much greater research is urgently required on the potential for commercialisation.

US experience of shale gas shows that the community benefits from developing such resources can be significant. The establishment of the new UK Office of Unconventional Gas and Oil is a good step towards ensuring UK communities gain as much as possible from any shale gas development in their area, while protecting the environment and safeguarding the public. Shale gas can also be a valuable chemical feedstock, as well as a cheaper energy source. The current US debate about a possible ban on exporting Liquefied Natural Gas (LNG) made from shale gas illustrates the ongoing uncertainty and changes in the global landscape. UK policies need to ensure UK companies

stay competitive; encouraging the liberation of indigenous natural resources will reduce or eliminate dependence on imported energy or feedstocks.

Using more fossil fuels in the form of unconventional gas for power generation is, in our view, not inconsistent with greening the economy, because gas is the cleanest burning fossil fuel. The positive impact of replacing coal (and oil) with gas for electricity production is therefore significant. Gas also has capital and operating cost advantages for power generation. And it offers a flexible complement to intermittent renewables. In the medium term, revenues from the use of UK unconventional gas can

help pay for growth in renewables and important future technologies such as the 'hydrogen economy'. Support is needed for the production and safe handling of hydrogen, and to advance current research into different materials that could be used for efficient hydrogen storage and fuel cell technology. We support the work of the Government to look at the commercial challenges for this market that could help shape the direction of this area. A recent report Chemistry-fuelled growth for the UK economy demonstrates these points.

For this to work we of course need an appropriate political, legislative and regulatory framework. Much of this agenda is, if not EU-set then at the very least EU-heavily influenced. In our view the huge misallocation of resources to renewable technologies which are not actually capable of providing reliable power is driven by the EU-wide 20-20-20 slogan with commitment to 20% of energy from renewables by 2020. Although the UK was granted a lower target of 15%, in recognition of our low starting point. Direct subsidies to wind and solar are pushing up costs of energy to industry and domestic users alike. In trying to meet the target, we have given subsidies to promote the burning of wood in power stations, despite the known lack of any forestry resources of necessary scale in the UK. As a result, manufacturers of wood products (furniture, building components) are being forced out of business, and we are felling mature trees in the US for pelletisation and shipment to

the UK. Tallow was subsidised for use in biodiesel, killing off the UK's oleochemicals sector. We are diverting food and feed grains into making bioethanol for transport fuel. The more inefficient the technology, the bigger subsidy is offered (householder solar panels, subsidies for small-scale hydro.) Some of the negative impacts/unwanted outcomes are recognised – as with the CAP – and this then leads to ever more convoluted compensation schemes.

While we see Europe, and indeed the European, as an important part of the business agenda and critical to our trade through the e single market, there is much that could and should be done for the better. We believe this would not just benefit the UK, but also help to ensure the economic, social and environmental sustainability of Europe and the EU itself.

### **Chief Planning Inspector at the Planning Inspectorate**

We have in the UK taken seriously the issues required under the EU legislation and have evidence based processes that are intended to meet the objectives that they seek to achieve. Whilst we can always improve practice (and PINS has aimed to assist in that with clear advice on proportionality and relevance for example) we would support a response that says that we have the balance about right and that over-complication (such as Germany in relation to OFW) or under resourcing (as has been argued occurs in some countries not taking the obligations as seriously) are both wrong. Certainly our experience in terms of reviewing impacts for protected areas and species for example (OFW, Thames Tunnel etc) has been of clearly reasoned and evidenced decisions which are appropriately precautionary but certainly not 'gold plated' as is sometimes alleged.

### **Civitas - The Institute for the Study of Civil Society**

**Q1** Civitas would like to submit the following documents, all of which are pertinent to EU climate and environment competences:

- [www.civitas.org.uk/economy/electricitycosts2012.pdf](http://www.civitas.org.uk/economy/electricitycosts2012.pdf)
- [www.civitas.org.uk/economy/GreenMirage.pdf](http://www.civitas.org.uk/economy/GreenMirage.pdf)
- [www.civitas.org.uk/pdf/CO2-1Emissions.pdf](http://www.civitas.org.uk/pdf/CO2-1Emissions.pdf)
- [www.civitas.org.uk/economy/IdeasFEG2.pdf](http://www.civitas.org.uk/economy/IdeasFEG2.pdf)

### **Clean Air in London**



Only the EU has competence to set Europe-wide product standards and environmental limits

75% of UK respondents to a recent Eurobarometer survey on 'Attitudes of European towards air quality' think that the EU should propose additional measures to address air quality problems. Only 16% of UK respondents said this is not EU competence

Free movement of goods and services requires the standardisation of products to deliver economies of scale and benefits to citizens. Contrary to Government assertions, an investigation by Clean Air in London shows failures by successive Governments have dwarfed any by European engine emission standards (which never anyway set specific limits for nitrogen dioxide (NO<sub>2</sub>))

Scientifically based health and environmental limits, backed by deadlines and enforcement, protect the public and the environment and underpin and drive innovation and efficiency. London still has the highest levels of NO<sub>2</sub>, a toxic gas, of any capital city in Europe

Free markets without product standards and environmental limits would be inefficient, increase inequalities and lead to anarchy. Rights must be matched by responsibilities

CAL is a company limited by guarantee which campaigns to achieve urgently and sustainably full compliance with World Health Organisation guidelines for air quality throughout London and elsewhere.

CAL is independent of any government funding, has cross-party support and a large number of supporters, both individuals in London and organisations. CAL provides a channel for both public concern and expert opinion on air pollution in London and elsewhere. This document provides both general and expert comments in response to the Consultation.

## Background

The review of the balance of competences is a UK Government initiative. For the purposes of this review, the Government is using a broad definition of competence saying "Put simply, competence in this context is about everything deriving from European Union (EU) law that affects what happens in the UK".

In areas of shared competence, such as the internal market, environment and energy, either the EU or the Member States may act, but the Member States may be prevented from acting once the EU has done so.

The environment is given an important place in the EU Treaties. For example:

- Article 3(1) of the Treaty on European Union makes protecting and improving the environment a key objective of the internal market;

- Article 11 of the Treaty on the Functioning of the European Union (TFEU) states that all EU policies must take into account the needs of environmental protection; and
- Article 191(2) TFEU also sets out some significant principles which govern EU environmental policy.

Where the EU has laid down internal harmonising rules relating to environmental protection, the Member States will no longer have the competence to enter into international agreements affecting those rules. However, where the EU has only laid down minimum standards relating to environmental protection, Member States retain the power to enter into international agreements establishing other standards provided that these are not incompatible with the EU ones.

The Environment and Climate Change Report states inter alia on pages 12, 18 and 19:

- “Some argue that targets should be set as political aspirations, others that they should be based on evidence. **Where adopted EU standards prove insufficient to meet existing EU targets (e.g. failure of the technical standards regulating vehicle emissions to achieve air quality limit values) this can also be controversial.** But given that this is a widespread problem among EU Member States it may also be an indication of unwillingness to make the necessary societal adjustments and/or investments.” Page 12. **CAL emphasis**

- “[**Air pollution/air quality**] has to be tackled as a cross border and wider international issue. **Setting health and ecosystem protection targets and emission controls for key polluting sectors at a European level therefore makes sense, as does working on wider international agreements...**” Page 18. **CAL emphasis**

- “**But the deadlines and levels of ambition for the health based limits have not always been well aligned with those for key EU source control legislation. Furthermore no provision was made to account for the possibility of significant underperformance of key EU source control legislation. The result is now widespread non-compliance across Member States with both air quality standards and emissions ceilings.** The European Commission is currently undertaking a review of EU air quality policies, expected to conclude in autumn 2013.” Pages 18 and 19. **CAL emphasis**

In summary, existing EU law is based on fundamental principles that the right of access to the internal market – free movement of goods and service – comes with responsibilities to protect and improve the environment and public health. Further, as Defra and DECC acknowledge, air pollution has common sources and impacts across the EU.

## **Response**

Only the EU has competence to set Europe-wide product standards and environmental limits.

The free movement of goods and services requires the standardisation of products to deliver economies of scale and benefits to citizens. Scientifically based health and environmental limits, backed by deadlines and enforcement, protect the public and the environment and underpin and drive innovation and efficiency.

Free markets without product standards and environmental limits would be inefficient, increase inequalities and lead to anarchy. Rights must be matched by responsibilities.

CAL submits the following specific evidence to the Review:

## 1. Health

The Environment and Climate Change Report (the Report) highlights emission reductions since 1970 (page 18) but fails to highlight that the 'known' health effects of air pollution have risen much faster than air pollution has reduced (or changed from visible coal smoke to invisible diesel exhaust particles). In a sense, in health terms, we are back where we 'thought' we were 60 years ago with air pollution [still] the biggest public health risk after smoking. Please see CAL's guide (Exhibit 1).

Please also reference the World Health Organisation classifying diesel exhaust as carcinogenic for humans in June 2012 (Exhibit 2).

Please note that the Department of Health is wrong to suggest from the Global Burden of Disease research ranks air pollution ninth as a public health risk because inter alia:

- Table 2 in the attached Lancet article (Exhibit 3) shows that air pollution was ranked ninth only because it was excluded from the main assessment (see the second paragraph of Method and the opening paragraph of Results). The rankings also add to more than 400% by mixing 'apples and oranges'. CAL's guide and attachments show the Government's own estimates (Exhibit 4) ranking air pollution, on a like for like basis, second after smoking. See also:

[www.cleanairinlondon.org/health/clean-air-in-cities-index/](http://www.cleanairinlondon.org/health/clean-air-in-cities-index/)

[www.cleanairinlondon.org/health/guide-to-health-impacts-invisible-air-pollution-is-the-biggest-public-health-failing-or-cover-up-for-decades/](http://www.cleanairinlondon.org/health/guide-to-health-impacts-invisible-air-pollution-is-the-biggest-public-health-failing-or-cover-up-for-decades/)

[www.cleanairinlondon.org/solutions/directors-of-public-health-and-health-and-wellbeing-boards-urged-to-act-on-air-pollution/](http://www.cleanairinlondon.org/solutions/directors-of-public-health-and-health-and-wellbeing-boards-urged-to-act-on-air-pollution/)

- The effect of air pollution is not just short-term or respiratory as in the Great Smog. The WHO's latest REVIHAAP report on air pollution (Exhibit 5) explains, on pages 12 and 13:

'While acute and long-term effects are partly interrelated, the long-term effects are not the sum of all short-term effects. The effects of long-term exposure are much greater than those observed for short-term exposure, suggesting that effects are not just due to exacerbations, but may be also due to progression of underlying diseases.'

- Exhibit 6 shows that the World Health Organisation's Non-Communicable Diseases model excludes environmental exposures other than tobacco smoke.
- Please see also a benefits slide showing air pollution in the context of other public health risks (Exhibit 7).

## 2. Emission standards

The Environment and Climate Report explicitly and implicitly makes much of alleged failures of EU engine emission standards.

CAL submits the following evidence:

- CAL media release dated 3 April 2013 (Exhibit 8)
- CAL report titled 'Reducing exhaust emissions of nitrogen oxides (and particles) from diesel vehicles' dated 3 April 2013 (Exhibit 9)
- 'Remote sensing of NO<sub>2</sub> exhaust emissions from road vehicles' by Carslaw and Rhys-Tyler dated 16 July 2013 (Exhibit 10)
- Presentation titled 'New findings from vehicle emission remote sensing in London' (Exhibit 11)
- Presentation titled 'Emissions and Modelling: Remapping London's air pollution' (Exhibit 12)

Contrary to the Government's claims, an investigation by CAL shows failures by successive Governments have dwarfed any by European engine emission standards. Ignoring 10 years of warnings, Governments are responsible for **more than doubling** primary NO<sub>2</sub> emissions from diesel vehicles – even **after** allowing for the increase in NO<sub>2</sub> emissions as a percentage of NO<sub>x</sub> emissions from around 5% to over 20%.

## 3. London has the highest levels of nitrogen dioxide of any capital city in Europe

London has the highest levels of nitrogen dioxide (NO<sub>2</sub>) of any capital city in Europe. See CAL's investigation dated 1 June 2013 (Exhibit 13).

## 4. Public confidence

A recent Eurobarometer survey on the 'Attitude of Europeans towards air quality' (Exhibits 14, 15 and 16) dated January 2013 found inter alia:

- 72% say that public authorities are not doing enough to promote good air quality;
- 49% of Europeans think that the challenges of air pollution can best be addressed at the European level, while 23% think these challenges are better addressed at the national level and 24% think the local level; and

- 75% of UK respondents think that the EU should propose additional measures to address air quality problems. Only 16% of UK respondents said this is not EU competence.

Please see also:

- Letter from over 60 NGOs responding to the EU consultation on the ‘Year of Air’ dated 4 March 2013 (Exhibit 17)
- Part I: Main Results from first EU consultation on the ‘Year of Air’ dated 29 May 2012 (Exhibit 18)
- Part II: Detailed results from first EU consultation on the ‘Year of Air’ dated 29 May 2012 (Exhibit 19)
- Report on second EU consultation on the ‘Year of Air’ dated 18 June 2013 (Exhibit 20)

The EU is more trusted to protect the environment and public health than the UK Government.

## 5. Other

CAL points the Review team to numerous reports by the European Environment Agency into need for and success of air pollution policies.

### Exhibit 1

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-1\\_186-guide-to-health-impacts-v2/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-1_186-guide-to-health-impacts-v2/)

### Exhibit 2

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-2\\_iarc-pr213\\_e/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-2_iarc-pr213_e/)

Exhibit 3: A comparative risk assessment of burden of disease and injury attributable to 67 risk factors and risk factor clusters in 21 regions, 1990–2010: a systematic analysis for the Global Burden of Disease Study 2010

### Exhibit 4

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-4\\_238-update-app\\_230513\\_final-short-version/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-4_238-update-app_230513_final-short-version/)

### Exhibit 5

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-5\\_221-revihaap-final-technical-report/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-5_221-revihaap-final-technical-report/)

Exhibit 6

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-6\\_238-who-ncd-draft-report-311012/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-6_238-who-ncd-draft-report-311012/)

Exhibit 7

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-7\\_208-presentation-to-public-health-presents-271112\\_benefits-slide-only/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-7_208-presentation-to-public-health-presents-271112_benefits-slide-only/)

Exhibit 8

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-8\\_227-update-diesel-nox-and-no2\\_030413/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-8_227-update-diesel-nox-and-no2_030413/)

Exhibit 9

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-9\\_227-reducing-nox-emissions-from-diesel-vehicles\\_030413/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-9_227-reducing-nox-emissions-from-diesel-vehicles_030413/)

Exhibit 10

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-10\\_carlaw-defra-remote-no2-sensing-report\\_final-160713/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-10_carlaw-defra-remote-no2-sensing-report_final-160713/)

Exhibit 11

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-11\\_david\\_carlaw\\_new\\_findings\\_from\\_vehicle\\_emission\\_remote/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-11_david_carlaw_new_findings_from_vehicle_emission_remote/)

Exhibit 12

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-12\\_david\\_dajnak\\_emissions\\_and\\_modelling\\_remapping\\_londons\\_air\\_pollution/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-12_david_dajnak_emissions_and_modelling_remapping_londons_air_pollution/)

Exhibit 13

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-13\\_241-update-on-eea-2011-data\\_010613-v2/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-13_241-update-on-eea-2011-data_010613-v2/)

Exhibit 14

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-14\\_eurobarometer-survey-fl\\_360\\_en/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-14_eurobarometer-survey-fl_360_en/)

Exhibit 15

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-15\\_fl\\_360\\_sum\\_en/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-15_fl_360_sum_en/)

Exhibit 16

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-16\\_fl\\_360\\_fact\\_uk\\_en/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-16_fl_360_fact_uk_en/)

Exhibit 17

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-17\\_231-ngo-joint-position-paper-with-logos-050313/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-17_231-ngo-joint-position-paper-with-logos-050313/)

Exhibit 18

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-18\\_survey-aqd-review-part-i-main-results-290512/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-18_survey-aqd-review-part-i-main-results-290512/)

Exhibit 19

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-19\\_survey-aqd-review-part-ii-detailed-results\\_290512/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-19_survey-aqd-review-part-ii-detailed-results_290512/)

Exhibit 20

[www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-20\\_tsap-consultation-report\\_second/](http://www.cleanairinlondon.org/legal/eu-much-more-competent-than-uk-government-on-air-quality/attachment/cal-247-exhibit-20_tsap-consultation-report_second/)

## **ClientEarth**

ClientEarth is a non-profit organisation working to create practical solutions to key environmental problems. We are activist lawyers working at the interface of law, science and policy and employ leading European environmental law experts to undertake this task. ClientEarth is, therefore, well placed to comment on the application of European environmental law in the United Kingdom and the European Union's involvement in British environmental affairs.

## **Overview**

In general, ClientEarth supports the current balance of shared competence between the UK and the EU in respect of the environment and climate change, as reflected in primary EU law.

Given the nature of environmental challenges, it is absolutely critical that actions are taken at all levels of governance to ensure effective results. Shared competence on the environment enables appropriate action to occur at the appropriate level, and the competence of the EU reflects the frequently regional and/or global nature of environmental issues. Internationally, the EU is regarded as an environmental leader and the UK has helped to shape and guide EU environmental policy. The UK has benefitted greatly from its ability to leverage the economic and political strength of the EU and this has and will be critical to the UK achieving positive environmental and climate change results.

It is estimated that over 80% of the environmental legislation currently in force in the UK, is derived from European law.<sup>39</sup> However, the UK is not a passive recipient of EU environmental law; it actively engages in its development and has been instrumental in the design and structure of EU environmental law.

The examples and evidence provided in this consultation response will highlight how the UK and EU balance of competence has brought about greater and more positive environmental and climate change results than would have occurred otherwise. There are also considerable economic and social benefits that are created as a result of the single market measures which include environmental protection objectives.<sup>40</sup>

A withdrawal from the EU by the UK would have significant implications for reputation, influence, and environmental protection. If the UK chooses to withdraw as a member of the EU, and consequently disengages from the body of EU environmental law the UK would undoubtedly suffer reputational damage, with many actors on the international stage viewing such a move as a regression by the UK from addressing environmental and climate change matters in a spirit of collective solidarity. Withdrawal would also exclude the UK from the EU law making process - even if in practice the UK would need to ensure compliance with equivalent environmental protections in order to access EU markets. Withdrawal would also imply a major set-back for valuable environmental protections in the interests of short term political expediency.

The UK faces numerous and significant environmental challenges in the near and long term. Anthropogenic pressures on the planet are well documented, as is the gravity of resulting interlocking pressures.<sup>41</sup> These pressures create numerous threats to the UK's security and well being with implications for human health, economic stability, social cohesion and national security.

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<sup>39</sup> [www.jncc.defra.gov.uk/page-1372](http://www.jncc.defra.gov.uk/page-1372).

<sup>40</sup> See for example: [www.archive.defra.gov.uk/environment/natural/documents/UKNEA\\_SynthesisReport.pdf](http://www.archive.defra.gov.uk/environment/natural/documents/UKNEA_SynthesisReport.pdf); See <http://www.teebweb.org/publications/>

<sup>41</sup> See Rockström *et al.*, 'Planetary Boundaries: Exploring the Safe Operating Space for Humanity', *Ecology and Society* (2009 )14(2): 32.



ClientEarth's response to the UK Government's consultation on the environment and climate change in relation to the Government's review of the balance of competences between the UK and the EU includes an eclectic mix of examples provided by ClientEarth staff according to their programme areas and expertise and is not intended to be a comprehensive response covering all areas of EU environmental law and policy. The response should be read in this context.

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

### **Benefits**

#### **Overview on EU competence on the environment**

The EU's competence in the areas of environment and climate change has been most recently confirmed by the Lisbon Treaty.<sup>42</sup>

The EU and the UK have a shared competence in respect of the environment.<sup>43</sup> In practice, primary EU law provides considerable scope for flexibility and for the balancing national and EU action and interests on the environment.

The European Commission has the power to propose legislation on the environment within the terms of the Treaty. However, it does so within political and legal parameters: it will generally act where it considers it has political legitimacy among Member States (within the Council), and it must also be able to justify EU action in terms of subsidiarity and proportionality. This assessment will affect both the decision of the EU to act and the choice as to the form of intervention. Intervention may take a variety of legal forms (for example regulations, decisions, directives<sup>44</sup>) which enables a balance to be struck on how an issue is regulated. As a result of this flexibility, EU environmental law is a dynamic area with considerable variety in how this competence is expressed in practice, according to the nature of the subject matter.

In any legislative decision making process, the UK will also be directly involved within the EU institutional settings of the Council and the European Parliament.

Once the EU has enacted legislation on environment, the UK must act in accordance with such legislation and the role of the UK is to implement and enforce such legislation. However it is a fundamental characteristic of European environmental policy that the UK can (provided that the UK respects the Treaties and does not distort the market) adopt more stringent environmental protective measures it deems necessary.<sup>45</sup>

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<sup>42</sup> Treaty of Lisbon [2007] OJ C 306, 17.12.2007.

<sup>43</sup> Article 4(2) Treaty on the Functioning of the European Union (TFEU).

<sup>44</sup> Art. 288 TFEU

<sup>45</sup> Article 193 TFEU.

In addition to the environment chapter, other legal bases may be applicable to action related to the environment (for example energy, fisheries, internal market), and the nature of competence varies according to the legal basis for EU action. Again, this dynamic creates flexibility in decision making and in the nature of appropriate interventions, and results in diversity within the body of EU environmental law.

From the beginning, the UK gave political support for European law making in the environmental field.<sup>46</sup> This was formalised through decisions within the European Court of Justice<sup>47</sup> and also the EC/EU Treaty amendments. The UK has been an active participant in Treaty amendments and negotiations since the UK joined the European Community; and EU environmental standards have evolved over the past 50 years or so.

The Lisbon Treaty made a number of institutional changes through amendments to the Treaty on European Union (TEU) and consolidating what was the EC Treaty and re-naming it to the Treaty on the Functioning of the European Union (TFEU). The Lisbon Treaty also introduced a new shared competence on energy policy. However, with the exception of an explicit mention of climate change<sup>48</sup>, the provisions for EU environmental policy remain largely unchanged by the Lisbon Treaty.

Through the development of the EU's competence on the environment, the UK has contributed to the development of the principle of subsidiarity, and to the development of mechanisms to ensure that subsidiarity is respected in practice.

In response to the UK's requests and arguments relating to subsidiarity, the following additional checks and balances have developed within EU environmental law making

A Protocol is now attached to the Lisbon Treaty which requires that 'draft legislative acts' (including proposals from the Commission) go through an appraisal process to check that the principle of subsidiarity is satisfied;<sup>49</sup> and

There has been a shift in EU environmental regulation from the use of directives towards 'framework directives'. Framework directives, instead of setting rigid rules, set out a broad framework of objectives for each Member State.<sup>50</sup>

Not only is the competence of the EU to act in the field of environment enshrined in the Lisbon Treaty, but also the integration principle provides that environmental protection (or sustainable development) must feature in the design and formulation of EU laws and policies in all other sectors including for instance energy, agriculture, fisheries, transport.<sup>51</sup>

EU competence in the area of the environment has distinct benefits as follows:

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<sup>46</sup> See Commission Sixth General Report (1972), p.8.

<sup>47</sup> See for example Case 240/83 Procureur de la Republic .

<sup>48</sup> Article 191 Consolidated Version of the Treaty on the Functioning of the European Union [2010] OJ C83/79.

<sup>49</sup> Protocol on the Application of the Principles of Subsidiarity and Proportionality , which should be read alongside the Protocol on the Role of National Parliaments in the European Union.

<sup>50</sup> For example: IPPC Directive, Strategic Environmental Impact Assessment Directive, Air Quality Framework Directive, Water Framework Directive, Marine Strategy Framework Directive.

<sup>51</sup> Treaty of Lisbon [2007] OJ C 306, 17.12.2007, Article 11.

for the UK's political influence given the UK's significant influence on the development of EU environmental competence and laws;

in terms of environmental outcomes, benefits have accrued to UK environment, society and economy.

### **The UK's influence in the EU**

The UK has played a key role in shaping EU environmental laws.

In addition to influencing how environmental policy and legislation is implemented across Europe, the UK has exported many environmental concepts to the EU. The UK has been influential in advocating for the EU to take an outcomes based approach through framework directives. For example, the UK expanded its own national model of Integrated Pollution Control (IPC) to the EU leading to the adoption of the 1996 IPPC Directive (now the Industrial Emissions Directive<sup>52</sup>). Rather than setting standard emission controls, which the UK traditionally opposed, the IPPC Directive took a more flexible approach, yet focused on effective control linked to continuing assessment of emerging technologies and on sensitivities of the local environment. The extension of the UK approach was effective in providing a more level playing field for industry across the EU, in particular benefiting the UK since some Member States were operating at a much lower standard of industrial regulation than the UK.

The concept of “exposure reduction commitment” for PM2.5 was also largely a UK idea that was originally set out in the 2007 UK Air Quality Strategy before being incorporated into the revised Ambient Air Quality Directive.<sup>53</sup> Defra officials are active and vocal participants in stakeholder expert meetings relating to air quality and the UK is highly influential in negotiations on EU legislation in this area. Similarly, UK scientists are highly respected and make important contributions to the scientific evidence base that informs EU policy and legislation.

### **Benefits in terms of environment, society and economy**

As well as asserting a high degree of influence over the development of EU environmental law, the UK has experienced improved environmental outcomes as a result of EU competence in the area of the environment and climate change.

This is because current UK environmental protection laws, for the most part, originate from EU measures; without EU competence in this area, the UK would not have had the benefit of the following environmental protections:

#### **i) Access to environmental justice: Giving UK citizens and civil society concerned about the environment at all scales a voice**

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<sup>52</sup> Directive 2010/75/EU on industrial emissions (integrated pollution prevention control).

<sup>53</sup> Directive 2008/50/EC on ambient air quality and cleaner air for Europe.

The Aarhus Convention<sup>54</sup> is an international convention on access to information, public participation in decision-making and access to justice. The convention is of central importance to the environment because it links environmental rights with human rights.

The EU has played an important role in embedding the Aarhus Convention rights into European law. This has been achieved through the introduction of the Public Access to Environmental Information Directive<sup>55</sup>, the Public Participation Directive<sup>56</sup> and extensive public participation obligations across EU law generally and amendments of key directives (such as the Environmental Impact Assessment Directive<sup>57</sup> (EIA Directive) and the Industrial Emissions Directive) on access to environmental justice.

The result of this has been to substantially improve democratic environmental decision making and ensure the legitimacy of environmental governance at a time of unprecedented pressure on the environment.

In 2011, the Aarhus Compliance Committee found the UK in breach of Articles 9(4), 9(5) and 3(1) of the Convention concerning costs and injunctive relief.<sup>58</sup> The Committee recommended the UK review its system for allocating costs in environmental cases within the scope of the Convention and undertake practical and legislative measures to ensure that such procedures are fair and equitable and not prohibitively expensive and also provide a clear and transparent framework.

In 2013, the Civil Procedure Rules were amended in respect of costs and environmental cases. As of 1st April, adverse costs liability for unsuccessful claimants in environmental judicial reviews is capped at £5,000 for individuals and £10,000 for 'all other cases'. Costs protection will apply from the time the application is made to the court (unless contested by the defendant). However, successful claimants will also be subject to a 'cross-cap' (i.e. their ability to recover legal costs in the event that they are successful will also be capped). The present cap in England and Wales is £35,000 inclusive of VAT.

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.

It is too early to judge the benefits of these shifts but it is clear that citizens and civil society will benefit from better access to justice and greater compliance with the principles of the Aarhus Convention.

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<sup>54</sup> UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

<sup>55</sup> Directive 2003/4/EC on public access to environmental legislation.

<sup>56</sup> Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

<sup>57</sup> Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

<sup>58</sup> ACCC findings available at [www.unece.org/fileadmin/DAM/env/pp/compliance/C2008-33/Findings/C33\\_Findings.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2008-33/Findings/C33_Findings.pdf).

## ii) EIA: Improved assessments of environmental impacts of development and better integrated decision making

The EIA Directive<sup>59</sup> forms the basis of the UK environmental impact assessment practice. The EIA Directive has been implemented through detailed national regulations which relate to the requirements for planning permission<sup>60</sup> and analogous regulations covering activities falling outside the planning system.<sup>61</sup>

In the UK, some environmental considerations were taken into account in development decisions prior to the introduction of the EIA Directive. However, the Directive has contributed to making mitigation measures compulsory and for developers to take more responsibility for compensating development with environmental measures.<sup>62</sup> The EIA Directive integrates environmental concerns into general decision making<sup>63</sup> and has therefore generally improved and formalised the process for assessing environmental impact of development projects in the UK.

The EIA Directive has also improved transparency, accountability and participatory democracy in respect of environmental decision making.<sup>64</sup>

## iii) High level of biodiversity protection while allowing sustainable development of necessary infrastructure

The Habitats Directive<sup>65</sup> is undoubtedly the most important European law that achieves biodiversity conservation across Europe. The Habitats Directive has provided an additional regulatory protection for biodiversity conservation in the UK, beyond that provided in previous national legislation.

In England, protected sites under the Habitats and Birds Directives cover around 6% of land and nearly 23% of English inshore waters.<sup>66</sup> In addition, nine plants, twelve individual animal species, plus all species of bats and cetaceans and five species of marine turtles are protected under the strict species protection obligations within the Habitats Directive.<sup>67</sup>

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<sup>59</sup> Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

<sup>60</sup> Such as the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 SI 999/293.

<sup>61</sup> Bell, S. McGillivray, D., Pedersen, O. (2013) Environmental Law. Oxford University Press.

<sup>62</sup> GHK and Technopolis (2008) Evaluation on EU legislation - Directive 85/337/EC (Environmental Impact Assessment, EIA) And Associated Amendments, Final Report submitted by GHK, Technopolis within the framework of ENTR/04/093-FC-Lot 1, 15 January 2008.

<sup>63</sup> Bell, S. McGillivray, D (2008) Environmental Law. Oxford University Press; pp467.

<sup>64</sup> COWI (2009) Study concerning the report on the application and effectiveness of the EIA Directive. European Commission, DG Environment.

<sup>65</sup> Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7.

<sup>66</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf).

<sup>67</sup> Article 12 Habitats Directive.

The Habitats Directive upholds a high level of environmental protection and incorporates the precautionary principle (see response to question 5 for further details).

In a report of the Habitats and Birds Directives Implementation Review undertaken by the UK Government, the key finding from the range of evidence and views submitted was that the Habitats and Birds Directives ensured maintenance and restoration of a high level of environmental protection across the UK, while at the same time allowing sustainable development of key infrastructure.<sup>68</sup>

### **iii) Air quality: A European approach to a transboundary problem affecting human health and the environment**

Air pollution is a key example of an environmental problem that does not respect national boundaries. It is therefore one of the earliest examples of international co-operation on environmental issues (through the UN-ECE Convention on Long-Range Trans-boundary Air Pollution) and one of the main areas of focus in the early years of the EU's environmental programme.

A series of directives in the 1980s set emission limits from point and mobile sources and established limit values for concentrations of pollutants in ambient air. Emission limits for road vehicles have delivered major reductions in PM, NO<sub>x</sub>, CO and lead, contributing to substantial improvements in ambient air quality in EU towns and cities throughout the 1980s and 1990s. Similarly, industrial emissions legislation has been successful in tackling acidification from sulphur pollution.

These improvements would not and could not have been achieved without EU legislation. Even had the UK independently developed similar standards (which until the mid 1990s it largely did not), this would not have dealt with pollution from other EU member states.

The future challenges the UK and the EU face in respect of air pollution is further discussed at question 7.

### **iv) Managing toxic chemicals within a market framework to promote innovation and competition**

Increasingly, the EU has used regulations, rather than directives, to govern the placing on the market and use of different types of chemical substances (in particular REACH<sup>69</sup>, Plant Protection Products<sup>70</sup> and Biocides<sup>71</sup>). These measures are expressly structured to achieve a high level of protection for the environment, as well as for human health. This regulatory approach recognises that such substances and products potentially have adverse environmental effects wherever they are used; their control cannot be left to a patchwork of national measures implementing a generally framed outcome driven directive. As a result,

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<sup>68</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf), pp13.

<sup>69</sup> Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.

<sup>70</sup> Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market.

<sup>71</sup> Regulation (EC) No 528/2012 concerning the making available on the market and use of biocidal products.



increasingly stringent measures are leading to the cessation of use of harmful chemicals. The use of European level agencies (particularly ECHA and EFSA) provides a supranational expert regulatory structure whilst retaining ultimate Member State involvement through substance approval and regulation and national enforcement mechanisms. Equally, where appropriate, subsidiarity is also respected through directives (eg Sustainable Use Directive<sup>72</sup>).

## Disadvantages

EU competence in the area of environment and climate change has, on the whole, not disadvantaged the UK generally nor disadvantaged the environment in the UK.

**2. 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? ii. currently made at another level were instead made at EU level?**

Please refer to our answer to 10(b).

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

Environmental standards are a well accepted practice within a modern complex economy, and EU environmental standards are imperative to ensuring the proper functioning of the internal market. Environmental issues are inextricably linked with economic activity (see answer to question 4 for more detail) and therefore the internal market must reflect environmental principles through the operation of the integration principle.

Creating a single European market was the core objective for the original 1957 Treaty on the European Economic Community (EEC Treaty).<sup>73</sup> The EEC Treaty brought about the free movement of goods, services, people and capital across European national borders for the first time. Today, the functioning of the single European market depends on a level playing field for industries across Europe.

The need for EU environmental standards is particularly demonstrated by the approach taken to the regulation of potentially harmful chemicals. These substances (and their derived products) represent an economically significant EU and international market. In order for their potentially adverse environmental effects to be controlled, Europe-wide standards are required which will apply wherever the product or substance appears on the market. In this way, the functioning and integrity of the internal market is preserved and competition and innovation encouraged.

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<sup>72</sup> Directive 2009/128/EC establishing a framework for Community action to achieve the sustainable use of pesticides.

<sup>73</sup> European Economic Community: Treaty of Rome [2002] O.J.C 325.

#### 4. 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?

EU environmental law and the UK's economic interest should not be, and are not in practice, mutually exclusive. Environmental and economic goals should be complementary to one another. As explained in our response to Question 1, the EU competence on the environment provides considerable scope for flexibility and for balancing different interests.

The Millennium Ecosystem Assessment<sup>74</sup>, the UK National Ecosystem Assessment<sup>75</sup> and The Economics of Ecosystems and Biodiversity<sup>76</sup> (TEEB) all demonstrate that a healthy environment provides us with a vast range of essential services which underpin all activities, including the economy. Failure to address serious environmental challenges such as climate change would entail massive avoidable costs to society and the economy (as demonstrated by the Stern review on the economics of climate change).

A recent report published by the European Commission estimates that the economic value of the flow of ecosystem services from the terrestrial Natura 2000 network alone, is between €200 and €300 billion per year.<sup>77</sup>

As a further example, EU energy policy which is now included in the energy chapter of the Lisbon Treaty, must be designed not only to 'have regard for the need to preserve and improve the environment' and to 'promote energy efficiency and every saving and the development of new and renewable forms of energy' but also to 'ensure security of energy supply in the Union' and in the context of the 'establishment and functioning of the internal market'.<sup>78</sup> EU energy law is therefore essential for the UK's economic interest in relation to energy security and also to ensure a competitive market as well as to the UK's interest in the environmental impacts of energy and to meeting the challenge of addressing climate change through the decarbonisation of energy.

In addition to this, regulatory impact assessments are now a requirement for every draft proposal formulated by the Commission. This ensures that the economic impact of each environmental law is considered. More often than not however, the impact assessments do not adequately take into the account the environmental benefits of proposals which are highlighted in the above listed studies, and the assessments place emphasis on costs over benefits.

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<sup>74</sup> See [www.millenniumassessment.org/en/Condition.html](http://www.millenniumassessment.org/en/Condition.html).

<sup>75</sup> See Defra Archive: [www.archive.defra.gov.uk/environment/natural/documents/UKNEA\\_SynthesisReport.pdf](http://www.archive.defra.gov.uk/environment/natural/documents/UKNEA_SynthesisReport.pdf)

<sup>76</sup> See <http://www.teebweb.org/publications/>.

<sup>77</sup> See "Estimating the Overall Economic Value of the Benefits provided by the Natura 2000 Network" (2013) available at [www.ec.europa.eu/environment/nature/natura2000/financing/](http://www.ec.europa.eu/environment/nature/natura2000/financing/) and 'Assessing Socio-economic Benefits of Natura 2000 – a Toolkit for Practitioners' (September 2009 Edition) available at [www.ec.europa.eu/environment/nature/natura2000/financing/docs/benefits\\_toolkit.pdf](http://www.ec.europa.eu/environment/nature/natura2000/financing/docs/benefits_toolkit.pdf).

<sup>78</sup> Article 194 of TFEU.



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

### **5.1 To what extent does EU legislation on environment and climate change focus on outcomes?**

Given the dynamic nature of EU competence on the environment, there is considerable variety in the extent to which EU legislation on the environment and climate change focus on outcomes. This will mainly be influenced by the choice of legal instrument and the design of any regulatory intervention. However, the trend in recent years and the dominant form of regulatory approach in the environmental field is towards achieving outcomes or results. This is demonstrated most clearly in the environment field by the use of directives and increasingly, framework directives where a directive specifies a result to be achieved and Member States must implement the directive in order to achieve the specified result.

In some areas of environmental law, a mixed approach can be found where different policy goals are recognised to be met by different approaches:

Chemicals: In REACH a regulation is applied to enable a more centralised approach to regulation of chemicals on the European market. The European Chemicals Agency (ECHA) was created to coordinate implementation of REACH but Member States retain an active role both within ECHA and via member state competent authorities. For pesticides, an outcomes focused approach was taken under the sustainable use directive.

In the climate change context, a market based approach, the EU emissions trading scheme, has been favoured for regulating emissions from some sectors of the economy over a results or outcomes based approach. The UK has supported this approach from the outset. This approach gives flexibility to market actors as to how to achieve reductions rather than to Member States as to how to achieve a result. In other areas of climate policy, the UK has flexibility to achieve the desired result established under the EU decision or directive (examples include the effort sharing decision on non-ETS sectors<sup>79</sup> and the renewable energies directive<sup>80</sup>).

### **5.2 To what extent is EU legislation on environment and climate change based on an assessment of risk and scientific evidence?**

Fundamentally, effective environmental law must be based on scientific evidence and consideration of environmental risks and uncertainty in respect of environmental impacts and unknown impacts and probabilities. EU law aims to achieve a high level of protection

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<sup>79</sup> Decision 406/2009/EC on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emissions reduction commitments up to 2020.

<sup>80</sup> Directive 2009/28/EC on the promotion of the use of energy from renewable sources.

for the environment, and such a result must be founded in a science and evidence based approach. The degree to which EU law succeeds in this respect is highly variable.

The precautionary principle is one of the guiding principles of EU environmental law. Article 191(2) TFEU requires that European environmental policy must be based on the precautionary principle and on the principle that preventative action should be taken. The precautionary principle is therefore one of the foundations of the high level of protection pursued by European policy on the environment.

In a report published by the European Environmental Agency, the precautionary principle was stated to be 'an overarching framework of thinking that governs the use of foresight in situations characterised by uncertainty and ignorance and where there are potentially large costs to both regulatory action and inaction'.<sup>81</sup>

The degree to which the precautionary principle is expressly incorporated into EU environmental legislation varies.

The Habitats Directive is an example of a European Directive which incorporates the precautionary principle. Article 6(3) of the Habitats Directive requires that in deciding whether a 'plan or project' can be approved in a designated special area of conservation (SAC), the plan or project may only be granted permission to proceed if it can be 'ascertained that it will not adversely affect the integrity of the site concerned'. The European Court of Justice, in the Waddenzee judgment, was unequivocal in its application of the precautionary principle to the approval of a plan or project in accordance with Article 6(3) and confirmed there must be no reasonable scientific doubt that a plan or project will not have an adverse effect on the integrity of the site, before it can be approved.<sup>82</sup> If such doubt remains as to the absence of such effects, then the plan or project must not be approved.

Application of the precautionary principle is also applied alongside the use of best available scientific evidence. Again under Article 6(3) of the Habitats Directive, competent authorities are required to undertake appropriate assessments and make their decisions on the basis of best scientific knowledge available.<sup>83</sup> In respect of the designation process for SACs, this is predicated on the relevant scientific criteria set out in Annex III of the Habitats Directive. Designation of SACs must use the best available evidence each Member State has available, and lack of full scientific certainty would not be a valid reason for postponing designation.

In other areas of environmental law, current regulation is not even close to scientific indications, for example climate change.

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<sup>81</sup> European Environmental Agency: 'Late lessons from early warnings: the precautionary principle 1896-2000' Environmental issue report No 22/2001:

[www.eea.europa.eu/publications/environmental\\_issue\\_report\\_2001\\_22](http://www.eea.europa.eu/publications/environmental_issue_report_2001_22)

<sup>82</sup> See Case C-127/02 Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse vereniging tot Bescherming van Gogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij (Waddenzee); relevant to Article 6(2) and 6(3), Habitats Directive, para 56 and 57

<sup>83</sup> Para 54.

## Risk-based approach

ClientEarth has recently become aware of pressure from some British industry to move environmental regulation away from application of the precautionary principle towards a 'risk-based approach'. This approach is not only detrimental for environmental management but is at odds with the principles of good governance, international environmental law and good environmental management.

In the regulation of toxic chemicals through REACH, the EU clearly aims to, first of all, use science to identify the hazardous nature of chemical substances and products; a socio-economic and risk assessment of use is made only when this initial characterisation has been established. It is taking sometime for this approach to be accepted by industry, especially as it reflects a completely different approach to established practice (particularly in the US).

### **6. 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?)**

Our response to question 1 establishes that protection of the environment is now accepted as an integral legal component of the EU constitution reflected in the Lisbon Treaty. In addition to this, the EU has provided flexible mechanisms for balancing national and EU interests.

An example of this stems from the early 1990's, at which time there was concern within Member States about 'over-regulation' from Europe. Business in particular argued that excessive regulation from Europe across a whole range of issues was making European businesses less competitive in an increasingly global market. In response, the Commission committed to what it refers to as 'better regulation'. This policy shift has resulted in an EU commitment to use market mechanisms and an approach based on economic incentives or deterrents to achieve environmental objectives.

Examples of EU measures reflecting this use of market mechanisms include:

Charges for the administrative costs of operating regulatory systems such as the introduction of full cost-recovery charging which is required through the Water Framework Directive.

Subsidies and grants to farmers via the EC Common Agricultural Policy to adopt more environmentally sound agricultural practices

The creation of a market in pollution credits or "emissions trading" such as the development of tradable permits for carbon dioxide.

REACH encourages innovation in chemical substances so less harmful products can be substituted for those of high concern.

## **7. How far do you think the UK might benefit from the EU taking: i. More action on the environment/climate change? ii. Less action on the environment/climate change?**

The UK would benefit from the EU taking more action on the environment and climate change in a number of areas. These include:

The European Commission acting to ensure better compliance with EU law across the EU.

Further legislative action in areas where laws require revision, where parts of the environment are not currently regulated (eg soil), and where new problems and challenges require a coherent approach (eg resource efficiency).

### **Better compliance of EU law required across EU Member States**

The UK benefits from environmental law when all Member States and actors comply with environmental law and are held to account for failures to comply. This ensures a level playing field and realises the benefits of environmental legislation in securing the desired environmental outcomes and benefits.

Within the EU, the environmental field suffers from very high levels of complaints about non-compliance and has higher levels of enforcement action by the Commission. The European Commission has a central role under the Treaty to act as guardian of the Treaty and ensure implementation and enforcement. At the same time, the Commission has signalled a retreat from its central role in monitoring and enforcing EU environmental law. It is instead now focusing on (a) how to support Member States in delivering better compliance and (b) how to mobilise civil society to take a more central role in collaborating in the compliance monitoring and enforcement roles.

The UK should support more EU action to ensure better compliance with EU environmental law including:

Support for the EU to show leadership and proactively use enforcement powers. The enforcement process is often perceived by Member States to be too slow and too politicised. Changes within Lisbon Treaty should help.

Call for the EU to comply with the principles of the Aarhus Convention. That is, to ensure access to information, public participation and access to justice for citizens in environmental matters at the EU institutional level. This would address the accountability gap for EU institutions by virtue of the inability for citizens and NGOs to take a judicial review before the European Court of Justice to challenge the legality of EU law itself. This is something which could be rectified.

Recognise and actively support the role of citizens and civil society in participating in environmental decision making and in enforcing environmental law (for example, by fully implementing the Aarhus Convention in the UK) (see also question 1).

Consider the option of direct enforcement action against Member States where the UK considers another country is in breach of EU law. This function has almost never been used.

Provide greater opportunity for civil law action for non-compliance with regulatory requirements instead of depending on resource constrained regulatory bodies or judicial review to deal with enforcement.

### More EU action required

The UK would benefit from more EU action in areas where laws require revision, where parts of the environment are not currently regulated (eg soil), and where new problems and challenges require a coherent approach (eg resource efficiency).

We see specific need for action in the following areas:

Air quality; and

Climate change.

### Air-quality

Despite significant progress, air pollution continues to be one of the major environmental challenges facing the UK and the EU. In particular, progress on ambient air quality has slowed in the last decade, due to a combination of the failure of EU regulations for diesel vehicles, the growth in diesel as a share of the EU transport fleet, and lack of action at local and member state level.

Consequently, air quality still exceeds EU standards for NO<sub>2</sub>, particulate matter and ozone throughout the EU, and EU standards lag behind WHO guidelines. There is growing evidence of the damage caused by air pollution to human health, biodiversity and crops. Air pollution is estimated to cause 420,000 premature deaths annually in the EU, with 29,000 of these deaths occurring in the UK. All the evidence suggests that the EU needs to set stricter standards.

A co-ordinated EU response to these problems is essential. The ongoing review of EU air pollution, which will see a proposal for a revision of the national emissions ceilings directive together with some sectoral policy in Autumn 2013, is a major opportunity to drive long-term reductions in air pollutants across the EU, as a prelude to tightening ambient air quality standards in 2017/20-18 to align with the latest health evidence. However, the UK's current resistance to ambitious measures and fixed, legally binding limits in favour of "flexible" approaches risks derailing progress.

### Climate change

In respect of climate change, there is little doubt that increased ambition by the EU in the context of climate governance would present substantial benefits to the UK. First and

foremost, conferring greater powers to the EU to make law and policy on the forging of an integrated European energy market would enable the UK (and other EU Member States) to unlock the most cost-effective route to decarbonisation of the energy sector for 2050. Collaborative action in this context would reduce the necessity for national investment in energy self-sufficiency and thus represent potentially vast cost-savings.

More ambitious action at EU level on climate change - for example, the creation of an ambitious and legally binding climate law framework for 2030 and structural reform of the ETS system - would underpin the regulatory stability necessary to unlock investment in low carbon technologies and energy efficiency/demand side management and thus stimulate the evolution of a burgeoning green economy in Europe. Meaningful structural reform of the ETS would enable a functioning carbon price and thus force energy intensive industries to invest in low carbon alternatives and drive divestment in carbon intensive energy sources.

Greater action at EU level will also protect the UK from being exposed to the consequences of being a first mover in the development of more rigorous carbon governance at national level. At present the UK is the only EU Member State subject to long-term and legally binding greenhouse gas emission reduction obligations for 2050 and thus is arguably exposed to risks of carbon leakage from the UK economy. More concerted action at EU level will drive equivalent action to the UK across Europe and also intensify pressure for a binding global deal on greenhouse gas emission reduction. This in turn will drive the creation of a more level European and global competitive playing field for climate mitigation and significantly underpin investment in the green economy, which in turn will unlock economic opportunities for the UK.

Less European action on climate change will substantially weaken the chances of effective global action on climate change, which in turn would represent a profound threat to all countries across the world. Lord Stern's analysis of the catastrophic economic and social costs of ineffective action on climate change provides a stark warning to all governments and is, if anything more valid today as carbon concentrations in the atmosphere reach unprecedented levels. It is impossible for any individual country to take meaningful action on climate mitigation, thus a retreat by the EU from this context would pose deeply regressive impacts for the global community and deny European countries a cost-effective route towards decarbonisation.

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

Most fundamentally, the UK should commit to EU membership by actively and fully implementing EU law on the environment and climate. To this end, the UK should desist from its traditionally minimalist approach to implementation, which often tends to become embroiled in a defensive focus on avoiding so-called 'gold-plating' rather than a discussion of how best to optimise environmental and climate outcomes. In effect, UK central government should provide strong national leadership on the political, economic and social value of timely and complete implementation and also urge less mature devolved administrations such as Northern Ireland, to ensure full discharge of its equivalent obligations in this regard.



### **9. a. 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?**

One of the advantages to the UK of the EU negotiating and entering into international agreements on behalf of the UK is that often where Europe acts as a bloc, its international negotiating position is much stronger and more influential than when countries act in isolation. The UK as a participant in global negotiations has therefore gained more influence through its position in the EU and the EU has been able to achieve better environmental solutions than would have occurred if Member States had acted individually.

### **9. b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

The UK maintains a position of leadership on climate change issues when compared to many other nations within the EU and the world. In regards to international climate change negotiations under the UNFCCC, it is clear that the UK will retain greater negotiating influence as part of 'Team EU' than on its own. This is partly due to the fact that while the EU bloc represents a major emitter in terms of current and historical attribution of global climate forcing emissions, the UK is not on its own a major emitter on the world stage. Its individual positions are therefore less likely to be 'deal breakers' or deal makers. Despite the fact that it is one of the nations with the highest per capita historical responsibility for climate change, its negotiating influence as an individual signatory, or by joining other alliances within the negotiating process, will likely be less than the positive influence it can have on raising EU negotiating positions. In part this is due to the role of environmental law in the EU. While the UK has a domestic Climate Change Act, it also has the ability to raise the ambition of EU legislation impacting GHG emissions. As an example, the UK has recently called for an EU GHG reduction target of 50% reductions on 1990 levels by 2030. While this is likely inadequate, it is higher than EU milestones previously agreed and may help raise the ambition of future EU legislation ultimately adopted. This in turn would support and lend credibility to the EU's negotiating position within the UNFCCC.

The Department for Energy and Climate Change (DECC) also supports using other forums outside the UNFCCC to deliver climate action in specific sectors, such as the Montreal Protocol<sup>84</sup>, International Maritime Organisation, and International Civil Aviation Organisation as a supplement to critical action under the UNFCCC.<sup>85</sup> For treaties with a majority of the nations of the world as signatories (such as the Law of the Sea Convention) similar dynamics are likely to apply, underscoring that the UK can in general achieve more for global climate change action as a Member of the EU than on its own.

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

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<sup>84</sup> Montreal Protocol (on Substances that Deplete the Ozone Layer).

<sup>85</sup> see House of Commons

report [www.publications.parliament.uk/pa/cm201213/cmselect/cmenergy/88/88.pdf](http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenergy/88/88.pdf) .

The UK faces, together with all Member States of the European Union, significant environmental and climate change threats in both the near and long term. A large body of solid scientific evidence pointing to the gravity of such threats has been well established for many years.<sup>86</sup> This science demonstrates that anthropogenic pressures exceed the carrying capacity of the planet across a range of elements necessary to support humanity to operate within a safe operating space.

Due to the diffuse nature and impacts of many of these environmental and climate change threats, action at international level will continue to be necessary if they are to be tackled effectively. The EU has an admirable record as an environmental leader on the world stage. The UK as a key Member State of the EU has helped shape and guide EU environmental policy over the past four decades in dealing with these threats, either by regulation at EU level or through international environmental agreements.

Such action has brought immense positive benefits to the UK and its people, in terms of improvements in public health and quality of life, positive perception of the UK internationally as well as economic opportunities and employment arising from innovation driven by environmental policy.

Continued engagement in the development of regional and international environmental policy is critical for the future stability of the UK economy. Notably in relation to climate change impacts, the Stern Review<sup>87</sup> demonstrated the gravity of the risks to the international economy from a failure to take decisive action in the near term to mitigate anthropogenic climate change. It found that the costs of such action, is vastly outweighed by the costs of a failure to act appropriately.

#### **10. b. 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?**

Given the nature of the environmental challenges faced by the UK it is absolutely critical that actions are taken at all levels to ensure effective results. Such multi-level action is crucial to ensuring successful results in addressing diffuse environmental problems such as climate change or ocean acidification.

The UK has benefited immensely from its ability to leverage its membership of the EU, in order to address environmental impacts within the UK and globally. There are numerous examples of how the UK's engagement as a Member State of the EU has led to positive environmental and climate change results. The ability of the UK to leverage the economic and political strength of the EU has been critical to such success.

An example of the use of such leverage is the UK's engagement with the issue of tropical deforestation. The UK government has had a long-standing commitment to addressing the

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<sup>86</sup> See Rockström *et al.*, 'Planetary Boundaries: Exploring the Safe Operating Space for Humanity', *Ecology and Society* (2009) 14(2): 32.

<sup>87</sup> See Stern, Nicholas, 'The Economics of Climate Change: The Stern Review', (2007), Cambridge University Press.



issue of the deforestation of tropical forests, which is currently expressed through its Forest Governance, Market and Climate (FGMC) programme. This programme has been instrumental in facilitating and guiding the development of the EU's Forest Law Enforcement Governance and Trade (FLEGT) Action Plan.

That Action Plan represents a unique innovation in terms of international efforts to address the drivers of deforestation encompassing measures on both the supply-side and demand-side which drive tropical forest loss. For example, Voluntary Partnership Agreements entered into between the EU and tropical timber producer countries as part of the FLEGT process, provide economic incentives for producer countries and their timber industries to ensure that the harvesting of timber is conducted in compliance with comprehensive legislative protections, ranging from laws governing forestry management to the rights of indigenous people and worker protection. Thus action by the UK in cooperation with the EU is ensuring that positive actions are being taken internationally to address the root causes of one of the most serious global environmental and climate change challenges.

In tandem with the Voluntary Partnership Agreements, the EU has also recently introduced the EU Timber Regulation which prohibits illegally logged timber from being placed on the EU market. A central objective of the Regulation is to reinforce the attractiveness of Voluntary Partnership Agreements by allowing timber harvested in compliance with such Agreements to be freely placed on the EU market. The Regulation applies to both domestic and imported timber and timber products, and consequently requires action by both the UK government and UK industry to ensure its effectiveness. UK industry has been supportive of measures such as the Timber Regulation, seeing it as a very useful tool to help establish a level-playing field in timber supply chains across the EU, and contributing to their efforts to support more sustainable forestry practices upstream. Furthermore, there is potential for UK industry to benefit from innovation in the timber products sector driven by regulatory reforms such as the Timber Products, through the development of new wood products and technologies, as markets seek to divest from high risk timber.

The EU's FLEGT process therefore is a good example of the synergies that are created through the UK governments' engagement in action on its own account both at national and international level, UK industry action at national level and through the UK's engagement with EU-led initiatives. As such the FLEGT process illustrates what can be achieved through the right balance of actions taken at international, EU, UK and industry level to address the challenges and opportunities presented by environmental degradation and climate change. While it is too early to quantify the impacts of the FLEGT Action Plan on rates of deforestation, there can be little doubt that the UK is achieving more through its active engagement with the EU's FLEGT programme, than would be the case were the UK to be acting alone.

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

Traditional metrics for assessing value such as GDP are inappropriate to assess impacts of human activity on the environment. A cost-benefit analysis using traditional indicators of environmental and climate change impacts is inherently difficult. Notwithstanding those

difficulties, useful work is being conducted on measuring the value of ecosystem goods and services. The explicit recognition of the true value in ecosystem goods and services necessitates a shift away from the dominant paradigm of mainstream economic thought over the past number of decades. A true valuation of costs and benefits must entail a long-term perspective which seeks to go beyond the dominant current conception of the relationship between the economy and the environment.

While a long-term cost-benefit analysis based on traditional GDP metric is likely to overwhelmingly demonstrate the advantages to the UK economy of continued engagement at the EU level, a more holistic approach to cost-benefit analysis, encompassing non-financial valuation of eco-system goods and services would undoubtedly show the merit in continued engagement in addressing environmental and climate change problems at the EU level.

It should also be noted that if the UK did decided to exit the EU, States that are members of the European Free Trading Association<sup>88</sup> (EFTA) must still comply in full with EU environmental standards in order to have access to the internal market, but with little or no influence to shape the EU environmental standards and policies.

### **Co-Chairs of the Liberal Democrat Environment Parliamentary Party Committee**

This submission highlights the compelling evidence that the EU plays a vital role in safeguarding U.K. interests in the areas of:

- International Climate Change agreements
- Genetically Modified Organisms (GMOs)
- Food
- Emissions Trading Scheme (ETS)
- Waste
- Biodiversity
- Water

Further, it also suggests how the EU could improve in these areas.

### **International Climate Change**

#### **Background**

It is widely accepted that real steps to combat climate change can only be achieved through a concerted international effort. To this end, the United Nations Framework Convention on Climate Change (UNFCCC) came into force in 1994, with 195 countries now having ratified the convention. It set out the principles of combating climate change.

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<sup>88</sup> EFTA Members: Norway, Switzerland, Iceland and Lichtenstein .

However, it was soon realised that it did not go far enough, and legally binding targets were adopted in the Kyoto Protocol in 1997, the first commitment period for which was 2008-2012. We are now in the second period, which started in January 2013 and will end in 2020. A Conference was held in Durban in 2011 to address what would happen after this period ends in 2020; there has been renewed resolve to reach a universal agreement on it by 2015.

## **The U.K. and international climate change**

The U.K. is, rightly, proud to be at the forefront of international talks on Climate Change. Being one of the first industrialised economies, the U.K. bears a portion of historical responsibility for Green House Gasses. However, we have led the way on setting decisive, challenging targets to combat this for the long-term benefit of the world's environment and humanity.

We are building a stronger, greener economy and future growth must be sustainable environmentally as well as fiscally. To be successful, there needs to be international policy stability, at least insofar as commitment to targets and combating climate change. The EU has been instrumental in driving our agenda at an international level, providing us with much greater leverage than we would have had otherwise. The current EU approach sets binding targets for 2020 of a 20% reduction in greenhouse gas emissions, 20% of energy from renewables as well as an indicative target of a 20% improvement in energy efficiency. This undoubtedly provides some credence in international talks.

## **Improvement**

But we need to be more ambitious. If we intend to build a strong, sustainable economy based on green jobs, our position for the universal agreements in 2015 needs to be stronger too. Binding EU targets of a 50% reduction in greenhouse gas emissions and decarbonising electricity by 2030 will not only help ensure a meaningful outcome in 2015, but also lay the foundations for green growth at home.

## **Food**

### **Horsemeat scandal, a case study**

The horsemeat scandal dented public confidence in the quality of food and its supply chains. It showed a weakness in EU regulation (the current body of EU legislation covering the food chain consists of almost 70 pieces of legislation), which was complex and clearly didn't deliver in this instance.<sup>89</sup>

However, assuring complex international supply chains and holding different parts of those chains to account would be near impossible on a national scale.

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<sup>89</sup> [www.ec.europa.eu/dgs/health\\_consumer/pressroom/animal-plant-health\\_en.htm](http://www.ec.europa.eu/dgs/health_consumer/pressroom/animal-plant-health_en.htm)

As at May 2013, the UK exported almost £500m in meat products to the EU, compared to importing over £1.2bn. We therefore clearly benefit from laws that ensure the quality and safety of food supply chains in Europe, which would be unenforceable nationally.<sup>90</sup>

On 6<sup>th</sup> May 2013 a new package of measures was adopted and will enter into force in 2016. It will simplify the legislation down to 5 pieces, with the effect of reducing bureaucracy through the supply chain from producers through to processors and distributors. It will give the U.K. the tools with which to check that the legislation is being complied with on the ground, as well as the confidence that anti-fraud checks have been integrated into the national plans of other member states.

Considering the level of imports to the U.K., the current system of fees places the burden of cost outside of the U.K., whilst offering what will be an effective assurance of food quality.

## **Genetically Modified Organisms (GMOs)**

### **Background**

The approach to Genetically Modified Organisms (GMOs) in the EU balances a system of scientific assessment of health and environmental risks, with the freedom of Member States to act in accordance with their own national, regional or local issues. Rather than imposing on Member States, the EU offers a legal framework whereby members are authorised to legislate based on their specific conditions.

### **The U.K. and GMOs**

The U.K. is free to send applications for GMOs to the European Food Safety Authority (EFSA), which will clear crops that, according to scientific assessment, do not pose a threat to human health or the environment. Member States have the ultimate decision on whether GM crops are to be grown. Therefore any intention in the U.K. to grow GMOs would not be hindered if comprehensive data is made available to the EFSA and it is deemed scientifically safe.

The EFSA has rejected several applications for GMOs on the basis of insufficient evidence, such as maize 3272. Most recently, on 29<sup>th</sup> July 2013, an application made by the Competent Authority of the United Kingdom - submitted by Monsanto – for Cotton MON 88913. It was deemed that “interactions with the biotic and abiotic environment were not considered to be an issue,” however, there was not sufficient information made available “due to the use of an outdated toxin database for bioinformatic analyses.”<sup>91</sup> Rather than presenting an onerous burden in these instances, the EFSA is assuring that the EU is

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<sup>90</sup> [www.uktradeinfo.com/Statistics/EUOverseasTrade/Pages/EuOTS.aspx](http://www.uktradeinfo.com/Statistics/EUOverseasTrade/Pages/EuOTS.aspx)

<sup>91</sup> [www.efsa.europa.eu/en/efsajournal/pub/3311.htm](http://www.efsa.europa.eu/en/efsajournal/pub/3311.htm)  
[www.efsa.europa.eu/en/publications.htm?entity=gmo&scdtype=opinionop&p=10](http://www.efsa.europa.eu/en/publications.htm?entity=gmo&scdtype=opinionop&p=10)

protected from dangerous GMOs that could pose a threat to member states by applying rigorous but fair scientific methods.

However, applications such as for maize GA21 made by the UK (submitted by Syngenta Seeds), where there has been sufficient information made available, have been duly approved as safe by the EFSA, which further makes recommendations on crop management to prevent “environmental harm under certain conditions.”<sup>92</sup>

It is therefore clear that the U.K.’s interests in the development of GMOs are reinforced through the assurance of the EFSA. Through the application of rigorous scientific assessment to all submissions, the U.K. benefits from the ability to develop and utilise sound GMOs without being undercut or endangered by crops elsewhere that do not meet such high standards. Although individual member states can veto Europe-wide approval of a crop once it has been deemed safe, if after considerable efforts consensus has not been achieved, the Commission is able to approve the crop unilaterally.

## **Improvement**

The EFSA serves the U.K.’s interests in its scientific assessment of GMOs. However, the dissent of several EU countries such as Austria and Hungary, which have banned GM crops on non-scientific grounds, is technically in breach of EU law. Although flexibility for individual member states is important, a consistent and scientific approach should be applied across the EU to protect the interests of all member states, including the U.K.

## **Emissions Trading Scheme (ETS)**

### **Background**

The EU Emissions Trading System (EU ETS) is Europe’s flagship tool to meet its carbon mitigation objectives. It remains the largest example of emissions trading in operation today. The scheme is mandatory for large energy-intensive industrial installations with over 10,000 installations throughout the EU covered by the scheme, accounting for nearly 50 per cent of the EU’s total CO<sub>2</sub> emissions <sup>93</sup>.

The ETS is key to achieving the EU’s climate change target of reducing emissions by 20% by 2020.

While the ETS is a good example of the move towards a harmonisation of rules across the EU, which recognises a strong internal market, it does have some serious limitations which we believe should be addressed.

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<sup>92</sup> [www.efsa.europa.eu/en/efsajournal/pub/2480.htm](http://www.efsa.europa.eu/en/efsajournal/pub/2480.htm)

<sup>93</sup> Centre for Climate Change Economics and Policy, ‘Assessing the effectiveness of the EU Emissions Trading System’, 2013, [www.cccep.ac.uk/Publications/Working-papers/Papers/120-129/WP126-effectiveness-eu-emissions-trading-system.pdf](http://www.cccep.ac.uk/Publications/Working-papers/Papers/120-129/WP126-effectiveness-eu-emissions-trading-system.pdf)

## The UK and the ETS

The UK became the first country in Europe to auction allowances under phase II of the EU Emissions Trading Scheme, which ran until 2012. Excluding VAT, the price worked out at just £13.60 per tonne of CO<sub>2</sub>, well below the average for the year of £20. It is a price that is unlikely to make a significant difference to investment flows for low carbon technologies.

Despite this, the sums raised could contribute substantially to energy efficiency initiatives. Yet critics such as the Institute for Public Policy Research (IPPR) remained unhappy at DECC's refusal to follow Austria, the Netherlands and Hungary in hypothecating the funds for energy efficiency and relief of fuel poverty. – This is something which should be addressed. In order to combat climate change the UK needs to be investing in low carbon technology as well as reducing fuel poverty. This is a goal for the Coalition Government and the EU should show more leadership on this issue. Whilst it is up to the individual Member States how the funds which are created through the ETS are used, greater leadership should be shown to encourage Member States to invest in these areas.

## Limitations of the EU ETS

- **The Cap and Trade Mechanism –**

The Cap and Trade mechanism presents itself as a system designed to make it cheaper for corporations to reduce their carbon emissions. With governments giving out a limited number of permits to pollute, the scarcity of such permits should encourage their price to rise and therefore the resulting additional cost to industry and power producers should then encourage them to pollute less.

However, the empirical evidence presented in Carbon Trade Watch's report *Carbon Trading: how it works and why it fails*<sup>94</sup> suggests that the incentives created by the scheme work very differently in practice and suggests the awarding of profits to polluters and also encouraging continued investment in fossil fuel-based technologies, while disadvantaging industry focused on transition away from fossil fuels.

- **Surplus of allowances –**

Largely due to the economic down turn there is currently a large surplus of allowances and the economic crisis depressed emissions more than was anticipated. An overall surplus of permits within the scheme, exacerbated by the ability to use large numbers of carbon off sets, has further inflated its 'cap' on emissions.

The Carbon Trade Watch report presents figures that show that the ETS consistently allocated more permits to pollute than the actual level of pollution taking place in its first phase. At the end of phase 1, emitters had been permitted to emit 130 million tonnes

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<sup>94</sup> Carbon Trade Watch, 'Carbon Trading – How it works and why it fails', November 2009, [www.dhf.uu.se/pdf/er/cc7/cc7\\_web\\_low.pdf](http://www.dhf.uu.se/pdf/er/cc7/cc7_web_low.pdf)



more CO2 than they actually did, a surplus of 2.1 per cent, which even the EU acknowledged its failure to reduce emissions.

Whilst the Commission has postponed the auctioning of some allowances as an immediate measure, it needs to make serious structural changes to the ETS to create a sustainable solution to the surplus in the long term.

- **Carbon Prices<sup>95</sup> –**

The global recession had a significant impact on the allowance price since 2008 and this was reflected in the auction prices achieved in the UK in phases 1 and 2.

Following the launch of Phase II carbon prices peaked at over €29 (£23.60) in July 2008. The general consensus is that a price of at least €30 is required to stimulate investment in low carbon technology. Since then prices have fallen significantly mirroring the fall in oil prices and have stayed around €15 per tonne. As a result predictions of future prices have been downgraded.

One of the key features of the ETS was that it would limit emissions and create revenue which could be invested in low carbon technologies to provide a diverse energy mix for future generations. This has not occurred and structural change to the ETS is needed to allow for the scheme to work more effectively.

- **Burden Sharing<sup>96</sup> –**

This was historically presented by the EU as a redistribution of obligations to help poorer countries grow their GDP while richer states bared the brunt of the reduction requirements. However, the inclusion of the 12 Central and Eastern Europe countries, which have joined the EU since the original Burden Sharing Agreement was made, have considerably eased the commitments required of Western European states.

These countries have considerably over-achieved their Kyoto targets as a result of the economic collapse and industrial restructuring that took place after the fall of the Berlin Wall in late 1989. The EU ETS serves to re-distribute this surplus (commonly called 'hot air', since it does not represent a reduction on the basis of proactive policy adjustments to tackle climate change), making it easier for countries in Western Europe, which have increased their emissions, to make the on-paper 'reductions' required of them.

- **EU-wide Cap<sup>97</sup> –**

Proponents argue that this makes the scheme more coherent, which should make it more effective. However, greater consistency is not necessarily a marker of greater

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<sup>95</sup> House of Commons Library Standard Note, SN/SC/5092, 'EU ETS: Phase II and III', May 2010

<sup>96</sup> Carbon Trade Watch, 'Carbon Trading – How it works and why it fails', November 2009, [www.dhf.uu.se/pdf/2009/11/09\\_cc7\\_cc7\\_web\\_low.pdf](http://www.dhf.uu.se/pdf/2009/11/09_cc7_cc7_web_low.pdf)

<sup>97</sup> Carbon Trade Watch, 'Carbon Trading – How it works and why it fails', November 2009, [www.dhf.uu.se/pdf/2009/11/09\\_cc7\\_cc7\\_web\\_low.pdf](http://www.dhf.uu.se/pdf/2009/11/09_cc7_cc7_web_low.pdf)

environmental effectiveness. Despite some variations, a few trends in how emissions allowances are allocated have been clear from the outset- the largest allocations have gone to what have historically been the worst polluters.

- **Allocation of allowances –**

Another key trend has been a more stringent allocation of allowances in the power generation sector than for the other industries covered by the scheme. The rationale for this is that energy companies can pass any cost incurred for the scheme on to their consumers, whereas other industries may face increased international competition from outside the EU if it imposes greater costs upon them. This cost ‘pass-through’ has proven to be highly profitable for the power companies and subsequently means that the allocations for other industries have been far more lax, awarding them more permits than they need to cover their actual emissions, and the ability to profit from selling this surplus.

- **Transfer of Permits –**

Proponents of the ETS argue that flexibility in transfers of permits across national boundaries within the EU and between different sectors is the fundamental strength of the scheme, providing the ‘flexibility’ for reductions to be achieved at the lowest cost. However, in practice this has offered an ‘escape hatch’ for companies in the wealthier nations to avoid making any reductions by buying permits that are over-allocated elsewhere.

The UK was the largest importer, with a net import of 17 per cent of its EUA permits, while Lithuania was a net exporter of 33 per cent of its surplus to other countries.<sup>98</sup> In the UK case, the ‘shortfall’ of permits amounted to a few of the largest and dirtiest power stations needing to reduce emissions or purchase extra allowances and as the figures above suggest, the UK universally chose the latter route.

In conclusion, phase 1 of the ETS saw too many permits in circulation as a result of over-generous allocations across the board. This problem seems to have been repeated in the second phase of the scheme, with the ability to trade emissions within the EU for offset credits. The free allocation of permits to the power sector, coupled with the ability to pass greater costs to consumers than have been incurred in purchasing permits, has resulted in significant profits, while ‘competitiveness’ concerns have seen polluting industries materially benefit from a scheme which, instead of capping their emissions, seems to offer them a new source of subsidies.

As the third phase of the EU ETS begins, some of these loopholes may have been closed, but the increasing complexity and international linking of the European carbon markets with other carbon markets means that others will be opened, potentially allowing emissions

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<sup>98</sup> R. Trotignon and A. Denny Ellerman, *Compliance Behavior in the EU-ETS: Cross Border Trading, Banking and Borrowing*, 2008, p.9



'reduction' permits to continue circulating without a significant need actually to reduce emissions domestically.

Whilst steps have been taken to improve the scheme and create a level playing field across the EU Member States, reform is needed to make sure that the original aims of the ETS are realised and the largest dirtiest power stations do not benefit whilst low carbon technologies are deprived of much needed investment.

## Waste

### Background

The European Environment Agency assesses that "Waste represents a problem and an opportunity. Currently, production, consumption and waste disposal patterns in the UK are incompatible with sustainable living."<sup>99</sup> In 2008 the UK generated an estimated 288.6 million tonnes of waste. This is a decrease of 6.0 per cent from 2006 (307.1mt) and 11.3 per cent from 2004 (325.3mt).

While the amount of waste we produce has been reduced by 11% between 2004 and 2008 in the UK, the quantities remain unsustainable. The EU [Directive 2008/98/EC](#) is therefore of critical importance, as it:

"Sets the basic concepts and definitions related to waste management, such as definitions of waste, recycling, recovery. It explains when waste ceases to be waste and becomes a secondary raw material (so called end-of-waste criteria), and how to distinguish between waste and by-products. The Directive lays down some basic waste management principles: it requires that waste be managed without endangering human health and harming the environment, and in particular without risk to water, air, soil, plants or animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest. Waste legislation and policy of the EU Member States shall apply as a priority order the following waste management hierarchy."<sup>100</sup>

### The U.K. and waste

This directive helps the UK government achieve its targets it set to reduce the amount of waste sent to landfill sites in the UK. The targets are:

- By 2010, the waste sent to landfills should be 75% of that sent in 1995
- By 2013, the waste sent to landfills should be 50% of that sent in 1995
- By 2015, the waste sent to landfills should be 35% of that sent in 1995

'Waste Strategy 2000' introduced the following targets for waste recovery.

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<sup>99</sup> [www.eea.europa.eu/soer/countries/uk/soertopic\\_view?topic=waste](http://www.eea.europa.eu/soer/countries/uk/soertopic_view?topic=waste)

<sup>100</sup> [www.ec.europa.eu/environment/waste/framework/](http://www.ec.europa.eu/environment/waste/framework/)

- Recover 40% of waste by 2005
- Recover 45% of waste by 2010
- Recover 67% of waste by 2015

The government has also published national recycling targets in 'Waste Strategy 2000'.

- 25% of household waste should be recycled or composted by 2005
- 30% of household waste should be recycled or composted by 2010
- 33% of household waste should be recycled or composted by 2015
- The recycling targets for individual local authorities is 30% by 2005/2006

The government has issued a 'Waste Performance and Efficiency Grant' of £260 million to aid local authorities in waste reduction, increased recycling and diversion from landfills.<sup>101</sup>

By setting the EU directive across the member states, it will assist the UK Environment Agency's targets to:

- Continuously improve air, land and water quality.
- Encourage conservation efforts regarding animals, plants and natural resources.
- Implement pollution control efforts.
- Reduce the amount of household waste by encouraging people to reuse and recycle.
- Improve standards of waste disposal.
- Educate and inform people about environmental issues.

## Biodiversity

'Biodiversity is essential to the existence of human life and the wellbeing of societies, both directly and indirectly through the ecosystem services it provides'<sup>102</sup>

The April 2013 EU biodiversity strategy to 2020 seeks to protect and conserve biodiversity in the development, implementation and funding of all other EU policies – including those on agriculture, forestry, fisheries, regional development and cohesion, energy, industry, transport, tourism, development, cooperation, research and innovation<sup>103</sup>.

The UK produced a similar document in 2012- 'Post-2010 Biodiversity framework' which aims to identify priority work at a UK level which will be needed to help deliver the Aichi targets. Therefore recognising its own areas of biodiversity degradation where it can, at a devolved level, enhance and preserve the natural environment, whilst being able to produce food sustainably to meet the needs of a growing population.

A target was set in 2010, as part of the European Environment Agencies 2010 report: "EU 2010 Biodiversity Baseline" after it made estimates suggesting that 25 per cent of marine

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<sup>101</sup> [www.recycling-guide.org.uk/targets.html](http://www.recycling-guide.org.uk/targets.html)

<sup>102</sup> [www.eea.europa.eu/publications/eu-2010-biodiversity-baseline](http://www.eea.europa.eu/publications/eu-2010-biodiversity-baseline)

<sup>103</sup> [www.ec.europa.eu/environment/nature/biodiversity/comm2006/pdf/EP\\_resolution\\_april2012.pdf](http://www.ec.europa.eu/environment/nature/biodiversity/comm2006/pdf/EP_resolution_april2012.pdf)

mammals, 15 per cent of terrestrial mammals, and 12 per cent of birds are threatened with extinction. It therefore set out the target of:

*'Halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss'.<sup>104</sup>*

In order to achieve this target the principles of increasing biodiversity are integrated throughout the Common Agricultural Policy, Common Fisheries Policy and Marine Protected Areas, as the EU, like the UK recognises that a balance between the need to produce food and protect wildlife needs to be met. As POST (Parliamentary Office of Science and Technology, 377) notes 'agriculture is highly dependent on benefits derived from nature, known as ecosystem services'. These ecosystem services include pollination, pest control and nutrient cycling.<sup>105</sup> In order to meet this, the UK uses a number of agri-environmental schemes and nature reserves which are rewarded through CAP funds, encompassing these areas within EU legislation:

- better protection for ecosystems, and more use of green infrastructure (GI);
- more sustainable agriculture and forestry;
- better management of fish stocks;
- tighter controls on invasive alien species;
- a bigger EU contribution to averting global biodiversity loss.

Natural England's 2009 report on the 22 year history of such schemes noted a number of successes and benefits to English farmers and to the countryside<sup>106</sup>:

- c. £400 million each year is paid to England's farmers and land managers through the schemes.
- Over 58,000 agri-environment schemes covering 66% of agricultural land in England – this is approaching the 70% target agreed between Natural England and Defra.
- Declining habitats are being protected and restored – 41 per cent of hedgerows are now managed through the schemes.
- Some threatened farmland birds are making a comeback – curlew pairs increased by 130 per cent from 1992-2003.
- More than 6,000 archaeological features on farmland are protected under the schemes, including more than half of all scheduled monuments and registered battlefields.
- More than 170,000 people made educational visits to farms through AES in 2008 and 99% said they enjoyed the visit.
- Sustaining up to 15,000 jobs and generating additional spending of as much as £850million per year.

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<sup>104</sup> Ibid

<sup>105</sup> <http://intranet.parliament.uk/briefing-papers/POST-PN-418>

<sup>106</sup> [www.naturalengland.org.uk/ourwork/farming/funding/aesireport.aspx](http://www.naturalengland.org.uk/ourwork/farming/funding/aesireport.aspx)

The success has been present EU wide – for example, the benefits generated by the European Union’s Natura 2000 network of protected areas alone are estimated to be worth EUR 200- 300 billion, with a total of about 4.5 to 8 million full-time equivalent jobs being supported directly from visitor expenditure in and around these sites.<sup>107</sup>

## Water

The sustainability of farming depends substantially on effective water management. Water is a critical part of the environment and essential for all forms of economic activity. The World Economic Forum’s Global Risks 2013 report highlights water security as one of the top five risks for business leaders over the next 10 years. Climate change has led to increasing pressure on water resources across Europe from increased demand at a time when rainfall is becoming more erratic.

Much of the UK legislation that applies to the water and sewerage sectors derives from EU law and in particular from a range of directives.

**Water law** is an area where it makes good sense to have matters decided at EU level, given the number of river basins which cross national frontiers. For a single country to legislate on, say, water quality in a particular body of water may be a fruitless exercise if the main influences on that water body lie outside the country in question. As the UK has already devolved this issue to Wales, Scotland and Northern Ireland from England, this directive assisted UK law as to how rivers and lakes that intersect borders can be managed. This applies equally to the protection of inland and coastal waters from diffuse pollution in urban and rural areas.

EU directives relevant to the water sector:

### Drinking Water

Personal human consumption has increased dramatically in recent years and competes with agricultural use for irrigation. EU figures estimated that by 2007 at least 11 % of Europe’s population and 17% of its territory had been affected by water scarcity; this includes areas of the South East of England. Land use such as pasture or crops in catchment areas significantly affects water flows and quality.

### Water Policy Framework

The current objectives of the EU Water Framework Directive include river basin management plans, which will review the impact of human activity. The electricity sector requires huge quantities of water as does the food and drink manufacturing sector, which makes such a large contribution to the UK’s GDP. The sector contributes £20.9 billion a year to the UK or 29% of GVA- Gross Value Added, and provides 14% of national employment (2011). With exports exceeding £12 billion, much of which goes to the EU.

- Urban Waste Water Treatment

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<sup>107</sup> [www.ec.europa.eu/environment/nature/natura2000/](http://www.ec.europa.eu/environment/nature/natura2000/)

- Bathing Water<sup>108</sup>
- Industrial Emissions

Various other directives also affect the water and sewerage sector including those on environmental liability and sewage sludge.

## **COGEN Europe**

**Q1** The European market is important to UK Manufacturers and service providers in the cogeneration sector. Historically managing 27 different national requirements across Europe adds cost to the products and discouraged innovation as the target specification for high sales across Europe remains fragmented. EU wide environmental legislation establishes a more level playing field, lowers product costs and lowers innovation risk. Increasingly the use of industry driven standards bodies as the technical reference for legislation is welcome. Hence having EU competence to set EU environmental standards within the structure of the European Union is broadly a positive for product manufacturing industry. Environmental standards have a role to play in the proper regulation of the European market. Uniform environmental standards based on the principle of the polluter pays "level the playing field" for businesses operating across Europe.

**Q9** The EU process for legislation can be cumbersome and always requires a high level of consensus. Requiring the impact assessment to be available at the time of consultation on legislation ( rather than at the time of publication) could facilitate a more transparent and fact based process. There is also a tendency for Europe to aim for stretch targets even beyond the current practice in the member states despite the big disparity between the current member state legislations. (An example of the problem is in the European Industrial Emission Directive legislation on emissions from combustion plant where some BREFs fiercely disputed as credible by industry.) Legislation which takes a more realistic approach, (particularly where an absolute limit is set) and which uses suitable reviews would build stronger consensus. The current tendency in EU legislation to include clear time scales and transparent review processes is to be welcomed and supported.

## **Combined Heat & Power Association**

The CHPA welcomes the opportunity to respond to the Call for Evidence for the Review of the Balance of Competences between the United Kingdom and the European Union.

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<sup>108</sup> [www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water/](http://www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water/)

The Combined Heat and Power Association (CHPA) is the leading advocate of an integrated approach to delivering energy services using combined heat and power and district heating and cooling. Our members operate in the United Kingdom and across Europe, operating industrial facilities, selling and operating energy assets, and providing energy services.

We are limiting our consultation response to Questions 1, 2 and 3. Our response:

1. Outlines the vital benefits an EU-wide framework for climate change and other environmental policy provides to UK industry
2. Notes some of the negative effects from the way EU environmental policy is designed and decided; and,
3. Provides three measures which would help to mitigate these specific problems.

The European market is integral to UK industrial sector, including UK energy goods and service providers. Historically, managing the 27 different national requirements added to final product cost and discouraged innovation. An EU-wide framework for climate change and other environmental legislation establishes a more level playing field, lowers product cost and innovation risk. The Energy Efficiency Directive, for example, will help create an EU-wide market for energy efficiency measures and establishes valuable principles across all 27 member states. These shared measures enable UK companies to prosper and benefit the UK even when the domestic market has struggled.

When UK policies are not in alignment with other European Member States, UK businesses can be disadvantaged. For example, while the EU Emissions Trading Scheme has faced significant challenges since its inception, the decision by the UK Government to create a UK-specific Carbon Price Floor policy has had a negative effect on our members' ability to compete across Europe and potentially discouraged UK investment opportunities. This is in addition to the significant differences in how the EU ETS and Carbon Price Floor policy are administered, layering on additional transaction costs to businesses for policies which should be in closer alignment.

Therefore, we strongly encourage the Government to:

- Maintain EU competence to set a framework for environmental policy within the structure of the European Union and
- Consider how existing climate change policies could limit existing differences between the UK and other Member States.

These steps would be very positive for UK industry's European competitiveness and would also help to reduce red tape and administrative costs.

There are, however, ways in which the EU could better set the framework for environmental policy. The current EU process for legislation is cumbersome and requires a high level of

consensus between Member States. Sometimes, targets can be stretched unrealistically beyond Member States' ability to achieve them. Some key ways these two problems could be mitigated include:

- Requiring European Commission policy to published impact assessments at the time of consultation, not at final legislation. This would allow both the European Commission and Member States to better understand the effect of EU policy from the start of the process, ensuring that overly-ambitious or strict targets are not agreed before their effects are fully understood.
- Require all legislation to have clear timescales and transparent review processes, increasing policy development transparency. This would allow Member States and industry to have a full understanding of the opportunities to affect and change legislation, potentially making the policy development process less cumbersome and less volatile.
- All policies must put in place absolute limits for targets and goals under environmental legislation, using rigorous tests to ensure those goals and targets are achievable and realistic. This would help avoid circumstances such as the Industrial Energy Directive legislation's targets for NO<sub>x</sub> emissions, where the chosen level remains without acceptable justification and remains a significant issue under the current review.

Thank you once again for the opportunity to respond to this consultation. Please do not hesitate to contact us if it would be helpful in further detail.

### **Confederation of Paper Industries**

The Confederation of Paper Industries (CPI) welcomes the opportunity to contribute to Defra/DECC's above Call for Evidence.

CPI represents the supply chain for paper, comprising recovered paper merchants, paper and board manufacturers and converters, corrugated packaging producers and makers of soft tissue papers. CPI represents 70 Member companies from an industry with an aggregate annual turnover of £5 billion, 25,000 direct and more than 100,000 indirect employees.

The paper industry is heavily regulated by EU Environment and Climate Change-related competencies, with a significant proportion of the key legislation identified in this particular Call for Evidence applying to UK mills and other paper/board-related facilities.

We estimate that such regulation has quadrupled over the last fifteen years, making it far more difficult for those sectors most affected to compete in international markets. We know that there is more to come – water, eco-labelling and in 2015 the Sulphur Directive.

CPI appreciates that energy issues are separately covered in the next semester of the overall Balance of Competencies (BoC) review. We note, however, that government invites/accounts for evidence on ‘cross-semester’ competencies and since Energy and Climate Change issues are inextricably linked, our comments below also encompass energy issues to some extent (although further energy-related evidence is likely to be provided in the next semester).

The UK Paper Industry recognises that it needs to act in an environmentally responsible way. Paper is now the most recycled of all household and commercial waste materials with 70% of recovered paper being used to make new paper products; it is an essential raw material – indeed in some plants the only raw material. The UK Paper Industry has also succeeded in reducing the amount of energy required to make a tonne of paper by 34% since 1990 and carbon emissions by 42% over the same period. In addition, £100ms have been invested in highly efficient Combined Heat & Power (CHP) plants. Today, half of Europe’s paper is produced using renewable sources of energy. Virtually all of its raw materials are sourced from managed woodlands or directly from the waste stream. Almost 90% of the water taken into the paper making process is returned directly to the environment after use – treatment means that water leaving the mill can be cleaner than when it came in.

This is a very creditable performance which we would argue is as much down to commercial pressures as to prescriptive EU legislation.

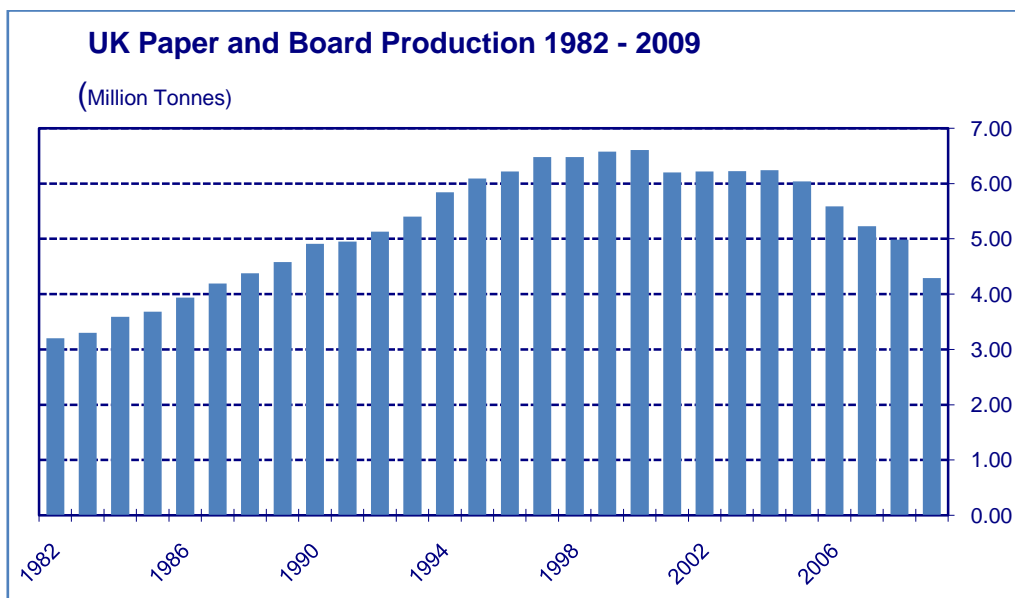
The EU’s 28 Member States vary enormously in their geography, climate patterns, eco-systems and energy mix. A “one size fits all” approach to environmental and climate change legislation is therefore bound to be based on compromise and complexity. For instance, the REACH legislation stretches to over 1000 pages, including annexes, as does the Paper Industry Bref document. The mind-blowingly complex (and poorly drafted) Timber Regulations is another example.

The cumulative impact and cost of EU environment and climate change (ECC) policy has been a key factor in the stark reduction in Energy Intensive Industry (EII) production in the UK. Evidence of the significant burden of ECC legislation can be seen through comparison of the number of factories that signed up to the first phase of Climate Change Agreements



(CCA) in 2001 and the number that signed up to the second phase this year. Over this period the number of paper mills has reduced from 100 to 50; glass factories down from 50 to 25, while there is now only one remaining aluminium smelter. Steel, cement and ceramics facilities have been similarly affected. The largest fall in manufacturing (as measured by % of GDP) occurred between 2000 and 2010 – down from 22% of GDP to 11%.

The graph below highlights how the reduction in UK paper and board production coincides with the initial CCA (clearly predating the economic downturn): It is worth noting that the UK now imports more paper than it produces.



Ownership of much of UK Paper Industry manufacturing has moved abroad and has resulted in increased competition for investment capital. There is no particular loyalty to 'UK PLC' on the part of a global Paper Industry, and future capital will go where the best returns are to be made. If costs rise in the UK to a level which makes the UK uncompetitive then that capital will not come here – and neither will the R&D.

EU and UK ECC policy does not take into account cumulative costs and their impact on investment cycles. Energy Intensive Industry investment cycles can be up to 30 years. Many facilities were built before EU requirements were enacted. It has often proven too costly to retrofit factories to meet new limits or targets, meaning they have had to close.

The EU has failed miserably to combat global climate change as it has failed to account for carbon consumption, whilst it focussed on carbon emissions. The EU has merely offshored its carbon emissions, sending its industry to third countries, while consumption has actually increased. EU and UK ECC policy increases the risk of carbon leakage and this raises competitiveness issues at an international level.

To focus purely on carbon reduction when only 15% of global emissions are covered by countries that have signed up to the Kyoto protocol, is a very risky policy. Even hardened environmental lobbyists admit that a global agreement is essential in order to maintain a level playing field. The long held assumption that “if we lead the rest will follow” has plainly not come to fruition and, in spite of wishful thinking on the part of some, it is very unlikely to materialise any time soon.

Here in the UK the Carbon Floor Price (CPF) mechanism is potentially a very expensive measure which could have very profound and adverse effects on the competitiveness of UK manufacturing – especially for the Energy Intensive Industries. It seems absurd that as a solely UK measure we cannot agree a compensation package for the EIs without seeking State Aid approval from Brussels – perhaps an indication of the stranglehold that the EU has over UK policy setting.

The UK Government has allocated £250m to be made available over two years to help offset the effects of the EU ETS and CPF. However, it is estimated that Germany has allocated an equivalent “subsidy” to its industry of €7bn annually, with household consumers meeting most of the costs of “decarbonising” the economy.

Competence for action to combat climate change should ideally be at an international level to maintain a level playing field and bring about global change. In the absence of global agreements, industry should be fully compensated for increases in costs. If that principle is accepted – along with a regime of derogations to suit investment cycles - then CPI does not object to EU legislation, providing that it is not “gold plated” either at EU level or when it is transposed into UK law.

Europe is not an island economy, divorced from the rest of the world. It needs to compete on a level playing field with the rest of the world. ECC legislative and regulatory regimes and compliance costs are now a significant factor in determining competitiveness.

The EU has played a major part in creating a single market for goods and services across Europe and has undertaken some good work in developing universal standards but in assuming responsibility for setting climate change and environmental policy targets, without fully assessing the competitive implications for its manufacturing base, it has left European industry (especially Energy Intensive Industry) woefully exposed.

### **Confederation of UK Coal Producers (CoalPro)**

**Q2** Specifically the Directive 2006/21/EC of the European Parliament and of Council on the management of waste from the extractive industries we consider to be superfluous for the UK. It has imposed additional costs of administration and also has a different regulatory authority now that the Environment Agency is the nominated body. The safety and security of mining wastes was adequately controlled by the Mines and Quarries Tips Act developed after the Aberfan disaster in South Wales in the 1960's. It now has a burdensome new directive which is not entirely appropriate and has occupied much of the EA and Industry's time in reaching agreement on the classifications of mining waste. In general the coal industry has been disadvantaged by the messages behind Climate Change legislation, although it is hard to decide whether the UK or the EU are more destructive in this sense. The Coal Industry has lobbied hard to try to ensure that Emissions Standards were set so that both gas and coal would require Carbon Capture and Storage (CCS) urgently. This would have energised the development of CCS and the ambition to lead the world in this field would have been achieved. Instead both the UK and EU have allowed gas to have a free ride to the detriment of CCS development.

**Q6** Your review highlights that (para 14) "A key example of remaining national competence is land use planning" and that (para 18) "The broad policy focus on growth and the development of infrastructure that EU leaders have endorsed means that difficult decisions may have to be made to reconcile economic needs with environmental protection while avoiding unnecessary burdens on business, industry and development". The sentiments here are correct and indeed land use planning should be dealt with by the UK system. However, our system is robust and does not need further imposition of e.g. an Environmental Impact Assessment conducted by an independent party for every scheme presented. Planning officers and Local Authority Planning Committees also have to recognise that where minerals (including coal) occur dictates where our operations can take place, in addition some of our restorations are now of such quality in creating new bio-diverse habits that they are recognised and accredited as SSSI sites. Schemes from our members assist in the creation of bio-diverse habitats and our restorations generally add value to the land in question.

**Q9** The draft revision of the Environmental Impact Assessment Directive is of major concern to our members. It is unnecessarily prescriptive and the proposals for the

screening procedure, a six months screening timetable, extending the content of individual schemes, 90 days for public comment and 6 months assessment period are all sources of significant delay to our industry. Site life for a surface mine is between 2.5 and 10 years and this would mean that obtaining replacement capacity was further delayed and even more costly.

This needs to be kept with local authorities at UK level and not (as is apparently being proposed) allowed to be EU standardised. The UK is unique in that its land availability and population density are significantly different from the rest of the EU.

**Q15** The biggest challenge facing both the EU and the UK is to ensure that they do not impose conditions on industry that make its operations uncompetitive in global markets. We applaud the ambition at both EU and UK Government levels but unless binding commitments from the other major global trading nations are made then the UK and EU should now assess progress and provide solutions to enable others to catch up. In reality, on a consumption basis EU Carbon Intensity is increasing due to both. Carbon leakage and the fact that goods from other nations are produced from a more Carbon Intensive energy system (e.g. China). If we are really facilitating climate change we have to address this issue.

**Q18** The Confederation of UK Coal Producers (CoalPro) is pleased to respond to the Environment and Climate Change section. CoalPro's members produce more than 95% of the coal output of the UK and we have affiliates in the rail and equipment supply industries. We have learned to work with Local Authorities and are subject to many stringent examinations of our mining schemes with regard to their impact on the Environment. This response only deals with the questions which we believe have a direct effect on the UK Coal Industry.

## **Convention of Scottish Local Authorities**

*1. What evidence is there that EU competence in the area of environment and/or climate change has:*

*i. benefited the UK / your sector?*

*ii. disadvantaged the UK / your sector?*

The **Convention of Scottish Local Authorities (COSLA)** supports EU initiatives on environmental and sustainability matters as this is a matter that often has cross-border implications and requires combined multi-national responses.

We continue to stress the need for the EU to fully respect the principle of conferral – whereby the EU should only intervene on matters that the EU Treaties have explicitly enabled it to – and full respect of the principle of subsidiarity and proportionality – whereby the respect of local competences and roles on environmental matters, particularly those regarding spatial planning

COSLA therefore welcomes the opportunity to contribute to this review, indeed as strong supports of the principle of subsidiarity we very much welcome that the UK Government undertakes this thorough review on the distribution of powers between the EU, national and local governments.

Indeed COSLA has recently agreed a **Vision for Scottish Local government**<sup>109</sup> that aims to empower local democracy, foster integration not centralisation, focus on outcomes not inputs and puts local democracy at the heart of improvement and accountability. This vision precisely also notes the lack of constitutional protection for Local government that is further complication if the EU dimension is added.

### **Detailed considerations on EU environmental competence**

We recognise that article 192 TFEU defines the very large powers on EU Environmental protection do have a local impact: for instance, clearly **air quality** and **noise** are typical examples of EU wide standards that have a very local translation and indeed frame to a very significant extent the limits upon which local authorities can autonomously define local policies. However in both areas there is scope for a better balance of competences. The forthcoming revision of the EU Air Quality and Noise Directive offers a great opportunity to provide a more targeted approach of EU legislation that respects better conferral and subsidiarity: clearly there are parts of current EU Air Quality and Noise that have a transnational effect.

We believe that arguing EU competence using article 192 TFEU alone, as it is often the case, ignores the basic point that in order to establish a proper balance of competences between the national/local level and the EU all provisions on the EU Treaties must be regarded in its entirety and cross-read. It is simply not possible to merely argue that the EU has powers in one area merely looking at one of the articles when at the same time article 5 of the Treaty of European Union establishes legally enforceable principle of subsidiarity and proportionality which are overriding over any provision featured in the Treaty of the Functioning of the European Union. The more so as both the TEU and TFEU are to be also jointly read with treaty Protocol No. 2 on the application of the Principles of Subsidiarity and Proportionality

The EU Treaties have formulated, alongside subsidiarity the also legally enforceable principles of conferral and proportionality (also article 5 TEU). Basically the whole point of having thoroughly negotiated and extensive EU treaties is precisely to define exactly what the EU

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<sup>109</sup> [www.cosla.gov.uk/sites/default/files/private/l130426item09appendix.pdf](http://www.cosla.gov.uk/sites/default/files/private/l130426item09appendix.pdf)

could do and what should remain at national/local level. The principle of conferral whereby the EU “*shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States*”.

This overriding provision of the EU Treaties (that is why is put in article 5 TFEU) exists to precisely fight any moves of expansion of EU competences beyond what Member States (national parliaments and often the population at large through referendum) have explicitly agreed to confer upon the EU. While it is true that there are treaty provisions that enable the EU to enter into new areas of legislation by primary (Regulations, Directives) or secondary (implementing acts) it would be a misrepresentation of the EU treaties themselves if these provisions were used for issues that were not due to emergencies or developments (such as technological change) that were not foreseen/known at the time of the drafting of the treaties.

This discussion about whether the EU has overriding powers on environment reminds very powerfully the discussion in Constitutional Law between the *originalist* (the constitution must be read literally) and *activist* (the text can be interpreted flexibly according to the new times) schools of thought. Some people would say that mirroring the activist school in Constitutional law same principle could be applied to the EU treaties. However this would be ignore the fundamental difference between a national constitution and the EU Treaties which do remain international law treaties, indeed the developments over the last decade consistently proof that the EU Treaties are not akin to a Constitution; therefore it is the principles of International Treaty Law rather than those of Constitutional Law that should be applied.

Therefore COSLA would be keen that the UK arguers that in any future treaty revision should specifically spell out that “the EU exercises its competence in relation to environment issues only when there is a transnational element’.

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

2. *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?*

Given the vast EU body of environmental and climate law we have selected a number of dossiers particularly relevant for local government that we are currently working on to illustrate

in practice the broad principles on conferral, subsidiarity and proportionality of EU legislation that were generally outlined above.

#### **Waste:**

The forthcoming EU Waste legislation review is indeed a case in point of the need for a proper balance between the EU objectives and the realities on the ground.

COSLA continues to support the need for EU Waste Legislation to take fully into account local needs and contain provisions to ensure that Local Councils are financially supported to deliver the ambitious EU waste diversion, collection and recycling objectives.

We understand that the Commission is in favour of using this review for raising the current mandatory target for the recycling of solid municipal waste to 70% by 2020. It so happens that this would disrupt the ambitious objectives that exists in some Member States and indeed in our own case through Zero Waste Scotland programme. We are aiming for a similar target but at a slightly later date, 2025, forcing change investment plans just to meet the symbolic date of 2020 would simply be unrealistic and a waste of public resources. More generally this constitutes the case in point that the EU legislation should focus more on supporting sustained progress than simply focusing on uniform EU goals that, while easier to define through legislation often result in not being carried out in practice.

Another example on Waste, if the Commission were to propose, as we suspect , to increase the target for recycling plastic packaging – for plastics of all kinds – to 70% and set the recycling targets for glass, metal, paper, cardboard and wood at 80%, it would be more reasonable, and indeed proportionate, that that within these overall EU average targets , intermediate targets and transitional periods should be negotiated with individual Member States and Devolved administrations , particularly the least performing;

More generally given the large diversity of situations across the EU and the serious problems of implementation of the existing rules in many Member States we would encourage that the Commission would focus its efforts in those clearly non and underperforming countries;

For those countries with policies in place that show a clear direction of travel towards achieving the overall EU target, we would support that the Commission negotiates with them, intermediate targets, roadmaps and transitional periods. This would allow the least advanced performers to catch up whilst also supporting the efforts made by the most advanced performers;

#### **Air Quality**

The existence of pollutants in the atmosphere is without a doubt a part of Environmental policy that has a transnational effect and thus may need to be regulated at EU level. However it would be open to question why the measurement at a very local level of air quality standards (which often results in EU penalties in local authorities that register readings above the agreed ceilings) should be defined by EU legislation. Very often the quality of the local readings is very patchy across Member States thus penalising the more thorough LAs such as those of the UK

and others. At the same time there are a number of factors at play upon local air quality readings that are well beyond the control or indeed the competence of local authorities. This is why it would be much more advisable from the point of view of subsidiarity and proportionality that EU air quality legislation addressed EU-wide impacts and national contribution to them, leaving for each Member States/Devolved Administrations to define how local authorities (and hopefully in partnership with them) could contribute to improve air quality.

### **Noise**

As regards to **noise**, the same much more targeted approach would make more sense: clearly there are issues such as noise engine standards that make sense from a point of view of EU Internal Market powers (as well as Environmental Protection) that would be better regulated at EU level and indeed there are no major subsidiarity issues involved. However as regards to noise maps these are very local impacts that, other than in transnational urban areas, it results very hard to imagine why the EU should legally define local noise boundaries at EU level. Clearly from the point of view of subsidiarity and proportionality this should be left to the competent authorities (national or local as appropriate depending on which MS) to define.

There are other parts of transport policy in which there is a clear transnational effect that in most cases should not raise issues as regards to subsidiarity

### **Climate change:**

COSLA believes that that **Local Authorities are at the forefront of the challenge of mitigating and, crucially, of adapting to climate change** and therefore promotes the position that the EU climate change initiatives should support and be informed by the efforts at local level, both in terms of impacts, scenario planning, financial support and ensuing delivery of public services; We strongly defend the view that adapting to Climate Change can only be achieved through Multi Level Governance approach, where the roles and responsibilities, political and financial, are clearly laid out between local, national and EU government and also between different policies, particularly the EU policies to avoid gaps, inconsistency and duplication of policy responses; We welcome the mainstreaming of climate change adaptation across EU policies. COSLA holds the view that place-based integrated policies may be used as a vehicle to help address horizontal and cross-policy challenges posed by climate change as part of a mixed approach. In that regard would be also keen that domestic local initiatives (such as the Scottish Climate Change Declaration) were more explicitly acknowledged in the recent Action Plan.

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

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

*4. 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?*

As outlined in Question 2 there are transnational elements in Environmental policy that need to be addressed at an EU wide basis. The same principle applies to Internal Market. As mentioned above it makes sense for environmental standards being defined in a uniform scale (energy efficiency, emissions, for instance) across the EU as this will ensure more business opportunities and would prevent unfair protectionism arguing incompatible technical standards.



What we would object is that EU legislation were so detailed that it imposed a given technological solution. EU can define the framework and the outcomes but it should be the down local determination to choose which particular technological solution is best placed according to local circumstances to meet the EU wide standards.

Equally we are concerned by the growing body of EU green public procurement legislation that tend to be attached to unrelated pieces of legislation (EED, electrical appliances legislation, etc.) The recently approved EU Public Procurement legislation is meant to coordinate the legislative production of green public procurement standards across the different European Commission Directorates but we fear that this proliferation of EU Green Procurement obligations will continue as Internal Market and Competition is one of the few areas where the Commission has large powers to force change upon Member States. The unintended effect of this is that Local Authorities are often unable to track down let alone properly implement the scattered set of EU green procurement obligations that are coming from the EU level.

### **Current legislation**

*5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:*

*i. focused on outcomes (results)?*

*ii. based on an assessment of risk and scientific evidence?*

We have provided detailed responses using a number of specific pieces of EU legislation when answering Question 2

### **Doing things differently**

*6. 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?)*

### **Cost issues / Impact Assessments**

The Commission preparatory studies and indeed previous official statements place great emphasis on the societal benefit (environmental benefit of internalising environmental externalities. However what the Commission and indeed their commissioned studies always fail to provide is a detailed estimate of the compliance costs for Local Authorities (be to adapt to the new EU standards or the cost of building them from scratch, particularly to meet a given timescale, say 2020). The EU proposals have typically a very weak set of economic, territorial and subsidiarity impact assessments in spite of the EU Treaties requiring them to have so. Equally the new EU Territorial Impact Assessment methodology should be thoroughly used across EU policies and notably for environmental legislation.

We indeed believe that there are improvements to be made to the very way the Impact Assessments are carried out. While we have to recognise that opportunities for having an early dialogue on the prelegislative stage (indeed COSLA has had the opportunity to directly engage with the officers drafting the forthcoming air quality or waste legislation) often the way external studies are carried out through consultants is not satisfactory. Some of these studies tend to be excessively self-selecting resulting in COSLA or our equivalent bodies having to identify and chase the consultants to ensure clear evidence of local impacts is taken into the impact assessment. Equally for large pieces of legislation there are several overlapping external studies being launched at the same time and often asking for evidence independently. This clearly stretches the possibility of national associations of local government to engage, let alone individual Councils, and which result in the quality of the evaluation of local impact being affected.

Finally it must be said that this does not only regard the EU but also the MS own impact assessments towards formulating the MS negotiating stance or the implementation of policies. As regards to the UK, the **Part 2 Policy Statement**<sup>110</sup> of the UK Localism Act 2011 is a welcome first step but it is still a long way to go to have the sophisticated local impact assessment systems that exist in some Member States.

*7. How far do you think the UK might benefit from the EU taking:*

- i. More action on the environment/climate change?*
- ii. Less action on the environment/climate change?*

In question 2 we provide some detailed assessment on what the balance of competence should be in key pieces of EU environmental legislation, however there are other wider issues that we believe are also relevant to take into account:

### **EU direct role in implementation**

It has often been a source of concern that very ambitious EU legislation often result in being poorly or simply not implemented at all at domestic level. We do recognise that this is a clear problem that must be addressed. However as outlined above this needs to be done with directly support to the least performing countries and regions and not through ambitious new schemes that create duplication in the better performing countries and regions.

Instead of that there is always the recurring temptation of giving powers of direct supervision to the European institutions. One of the clearest examples of this long term ambition was clearly outlined in this 2009 [Commission study](#)<sup>111</sup> which recommended that the European Environment Agency had direct powers to enforce the implementation of EU waste legislation. The Commission has relented since and there is no sign on that in the on-going review of EU

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<sup>110</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6070/2180375.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6070/2180375.pdf)

<sup>111</sup> [www.ec.europa.eu/environment/waste/pdf/report\\_waste\\_dec09.pdf](http://www.ec.europa.eu/environment/waste/pdf/report_waste_dec09.pdf)

Waste legislation, however this is a recurring threat that will emerge whenever an opportunity emerges for that agenda to be put forward in the policy debate. Given that the balance of competence is a forward looking exercise in our view its recommendations should include a clear message that having EU agencies directly enforcing EU legislation at national or local level would clearly violate the Subsidiarity and Conferral principles as enshrined in the EU treaties. Indeed agreeing to this would constitute the biggest shift of power towards the EU since the at least the Maastricht Treaty, as by having these direct enforcement powers the EU would no longer be regarded as an international organisation (which albeit a very peculiar one still is) but as a supra-national, quasi-federal entity.

### **Criminal Sanctions on EU Environmental law**

Over the last few years we have seen an expansion of the EU acquis to criminal issues, notably on the environmental front: the legislation in place on maritime pollution, animal welfare and most notably the 2008 Directive on the protection of the environment through criminal law. While these legislation sets out general principles on which environmental offences must be considered criminal ones across EU countries, thus Member States retaining the power to define criminal legislation in that area, the fact that it was agreed through EU legislation puts such proposals beyond a mere approximation of legislation and therefore it has been a shift of EU competence to an area such as criminal law hitherto excluded from the scope of the EU competence as conferred to the Treaties. Clearly the issues that these pieces of legislation are very serious and indeed a robust approach needs to be ensured across all Member States and indeed beyond, however having established the principle that EU legislation can legislate on criminal matters this opens the way for more detailed legislation at EU level on criminal law that would clearly go beyond the EU Treaties as ratified by national parliaments and electorates.

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

As indicated in Question 6 the UK can indeed develop a more robust set of impact assessment and consultation with local government . The Part 2 policy arrangements foreseen in the UK Localism Act 2011 are a beginning but at the moment, and in contrast with other Member States in our vicinity the formulation of the UK negotiating position often has a casual or ad hoc approach when it comes to take on-board the view of Local Government, even if it is often Councils the ones responsible for implementing EU legislation including having to devote local financial resources. COSLA is more than keen to discuss with Government to established more predictable and robust arrangements that can make sure that the UK negotiating position is a robust one that takes the interest of local government fully on-board.

*9. a. 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?*

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

Clearly the role of the UK as a leading force in the EU shaping the block entire international environmental policy should not be disregarded. Equally the UK has played a very active and successful role on his own right in global EU bodies such as the UN, G8, G20. Beyond those two facts there is a large set of political considerations to take into account which is beyond our remit to comment here.

### **Future challenges and opportunities**

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

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

We have responded to these questions in the above answers to Questions 1, 2, 6 and 9 in particular.

***Anything else?***

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

**Local Dimension in EU environmental policies/programmes**

COSLA welcomes that support for adaptation in cities is a main objective in the EU Adaptation strategy. However, it is important that it supports local authorities regardless of a geographic or an institutional concept of 'city', whereby taking into account the differences in local governance structures across Europe. It is perfectly possible that local authorities not commonly understood as cities – perhaps due to a more diffuse built environment – undertake adaptation measures and shall be supported by the European and national level. This comment as regards to climate change can indeed be applicable to other areas of EU environmental policy: lacking a proper understanding of the actual governance structures in each country results in EU legislation either be often “local blind” or simply taken the unhelpful generalisations on the contribution that the local tier of government across the EU can provide to deliver the EU environmental objectives.

On that regard we see the Commission multiplicity of related schemes for sustainable development and climate change (often sponsored by different departments) as unhelpful and a less than ideal use of public resources: Smart Cities and Communities, Covenant of Mayors, Managenergy, Reference Framework for Sustainable Cities just to mention a few.

**Cooper, Dr. David**

**Q1** By enabling with a colleague at the Royal National College for the Blind, Hereford, to develop a project with EU funding to bring knowledge of climate change and rate of change to people with learning problems

**Q2** Perhaps by creating worries without knowledge of the actual rates of change or some of the forces involved.

**Q3** The first level should be international and then brought down to the national, regional, as sub-parts of national groups and then even local level.

The impact of climate change could be significantly different between a low lying coastal area affected by sea-level rise, requiring civil engineering solutions and an area such as the Spanish Meseta Plateau where climate becoming drier or rainfall changing slightly in its character would have major local impacts

**Q4** It is necessary to have a world wide understanding of and the making of decisions, especially those which impact heavily on people, especially by affecting their employments and welfare.

Whilst EU societies can cope with gradual change, some in Africa, parts of Asia and island communities in the Atlantic, Indian and Pacific Oceans, but by no means all would find more than local decisions somewhat irrelevant.

**Q5** If the amelioration or improvement of response to climate change requires it within the EU area then common standards are highly desirable

**Q6** This is difficult to assess as there are many components. The principal one lies between historic legislation and the developing needs for new legislation in the future, and the gap between drafting, passing and introducing in times. Equally there is some evidence that really significant climate changes take geological time, rather than climate time (35 -50 years), although the commencement and ending of ice-sheets in the last Glacial Periods and Interglacial's is closer to climate change. We do need to have a wider and better appreciation of how the last parts of the Pleistocene - Holocene functioned..

**Q7** So far more on hoped for rather than actual

**Q8** Decisions have been taken on some scientific ideas of the risks and a growing belief that significant change is happening, perhaps with only limited knowledge of 'how far the pendulum of change is swinging and how long the swing takes'

**Q9** Probably requires more broad consultation and taking the national and regional needs into consideration and not always hoping that legislation will produce the desired result. Events, like a tsunami or a rapid rise of sea level if a major part of the Greenland or Antarctic ice-caps melted or collapsed, cannot be dealt with by law, but do need some structured and expected response including the financing of that response.

**Q10** By firstly ensuring that the UK response is linked to what the EU expects its to be. However the UK should be able to lead the preparations for climate and environmental change. From an economic viewpoint we should ensure that we should have a proper share of the engineering and environmental responses and their associated spending. For example developing coastal defence systems and water conservation, by making better joined up use of tidal flows for electricity generation as part of that defence. Seriously support more environmentally friendly private transport power and systems, the solar powered car, perhaps,

**Q11** By not making issues where there is little good scientific evidence and compared with opinion to support them and creating legislation un-necessarily

**Q12** Probably not, but some of them do require detailed analysis of what is in the Directive and the time-scales over which they should be implemented. The traditional British response to the passage of a Bill to its coming into force as an Act is not well suited to the consideration and effecting of this particular area of Directive writing.

**Q13** I think that is essential on behalf of all the EU member countries

**Q14** Very and strong too

**Q15** From being a relatively gradual process although rapid in some views to becoming something which is short-term and catastrophic particularly in vulnerable areas like coasts and our uplands. IF the pendulum swung the opposite way, could we cope with much of our hill country becoming per glacial in fifty to a hundred years, and how would we recognise that happening.

**Q16** Not only industry, but agriculture and leisure industries must be involved and we have the capability to lead these within the EU through our Centre for Ecology and Hydrology and similar expertise, as well as our Meteorological Office.

**Q17** Cost should be shared and benefits are more likely to be prestige than financial as we would need to help those countries less able to afford their required response to the challenges.

**Q18** Whilst it is very important not to panic people and make knee jerk response, and there is some evidence that really important climate changes are slow, those of the Pleistocene and Holocene periods display changes and rates of change which could very significantly affect nearly all of us, where ever we live. No previous significant climate change has had a human population of its present and future projected size to live with it.

**Coulton, Alex**

**Q1** Has helped developed a thriving waste recycling and recovery industry.

**Q2** None that I am aware of

**Q3** A lot of the environmental legislation must kept within the sphere of internal bidding obligations. On one hand this ensures a fairer playing field for industries across Europe. On the other hand this binds all governments be they conservatives, labour, liberal democrats, etc to respecting these. Environmental and Climate change legislation must be based on long term visions and in long term strategies. National or local governments should only have a say in how we go around meeting these goals. Detailed legislation on specific solutions and criteria should be made at a more localized level.

**Q4** Same rules apply. EU and International Law must be used to frame the environmental agendas not provide the detailed solutions. The exception to this is if member states are not playing ball. Finally, a precautionary approach is the most desirable solution.

**Q5** Essential; not having common environmental regulations would pressure individual governments to reduce environmental protection in order to try and help businesses get a competitive advantage. We would destroy half a century of progress.

**Q6** The short term view could see that the UK economy suffered from more stringent regulation. In the long term, a 'circular economy' is the only sustainable economy. Additionally this fosters local employment as opposed to off shoring. The landfill escalator tax is a perfect example of a successful policy approach despite being strongly resisted by the construction industry. Today the construction industry has come to terms with this and recycling of waste is becoming more cost effective as the recycling industry is reaching a good level of maturity.

**Q7** Renewable targets for 2020, waste recycling targets, etc. Sustainable development of large infrastructure projects requires a clear vision supported by targets based on good ethical foundations. Targets are only harmful if they cannot be changed when it is clear that they are no longer the right option.

**Q8** Renewable targets for 2020, waste recycling targets, etc. Sustainable development of large infrastructure projects requires a clear vision supported by targets based on good ethical foundations. Targets are only harmful if they cannot be changed when it is clear that they are no longer the right option.

**Q9** Greater coordination of research initiatives. Greater support in cross-border infrastructure projects (electricity interconnection).

**Q10** The UK benefits from some of the largest renewable resources in the Europe. Stringent EU targets will help foster this competitive advantage as long as the UK government plays ball. The long term sustainability of our economy and society is intricately linked to the EU and the rest of the world. We cannot look back.

**Q11** This would be catastrophic not only would it jeopardize the long term sustainability of our economies it would lead us to a world of conflict and effectively result in much of our hard earned cash already invested in renewable technologies (for instance) being wasted.

**Q12** We should be anticipating and leading this process.  
The model of the single electricity market is based on our model.

**Q13** This is fantastic as long as the EU goals remain committed to long term sustainability and are supported by strong scientific evidence.

**Q14** The only reason that would justify the UK not being part of team EU is if the targets are not ambitious enough. There could be an advantage of having a party (such as the UK)

take an external position that is even more extreme than the EU's (i.e. requesting more stringent action), effectively mainstreaming the EU's position.

**Q15** The opportunity is a decarbonised electricity grid using indigenous resources instead of imported ones. The risk is not providing the storage and interconnection needed to optimize the use of it because we have decided to depend on gas.

**Q16** The politics needs to get back in the leaders chair!!! We need the regulation to foster the necessary change. This does not always mean having the most 'efficient' solution up front but finding solutions that have the right thinking. For instance plastic carrier bags are a perfect example of the wrong solutions because they have is ultimately a disposal material. Reduce, reuse, and recycle. If it does not fit into a closed cycle system it must go.

**Q17** The cost would be that the average per capita wealth of the UK population would decrease slightly however it would provide more employment. Repairing a pair of jeans in the UK instead of buying a pair made in China.

**Q18** The environment is something that we all share, respecting the environment is therefore respecting each other. The opposite is equally true so for a government deregulating cannot be an option. If regulation is needed then it must be international. In the short term in order to protect the competitiveness of UK business or at least gain their support. For the long term being a leader would foster innovation which is essential for our economy.

## **Department of the Environment Northern Ireland**

### **KEY FINDINGS**

Generally speaking, responses spoke positively of the EU's contribution to environmental protection in Northern Ireland. Most respondents felt that the current level of environmental regulation/protection in Northern Ireland would not have been achieved without the need for compliance with EU Directives.

According to respondents, other perceived benefits of EU competence included:

- Consistent standards across different Member States having a positive impact on transboundary pollution;
- Devolved Administrations within the UK working towards a common (UK) goal;
- Compliance with EU environmental legislation leading to more sustainable development.



However, the following problems with EU competence were raised by some respondents:

- Over-restrictive regulation harming industry;
- Compliance monitoring being too detailed, or disproportionate to environmental risk;
- Infraction fines being disproportionate to environmental risk or damage;
- Infraction process not always based on the best environmental outcomes;
- Compliance requirements being unsuited to local environmental needs or priorities;
- Outdated EU legislation not being in step with the latest scientific and technical advances;
- EU compliance requirements can distort local investment.

## **EVIDENCE**

### **DEPARTMENT FOR AGRICULTURE AND RURAL DEVELOPMENT**

#### **Climate Change**

To date EC targets on reduction of Greenhouse Gases have not been disaggregated to the extent that the agriculture sector has been directly impacted upon here. However, as DOE is aware, in their lead role on Climate Change, the NI agriculture and forestry sectors are working proactively in partnership with industry and environmental interests to:

improve resource efficiency; and

b. reduce intensity of emissions associated with products, and therefore improve sustainability.

Regional circumstances, i.e. the economic advantages of a dominant and exporting agri-food sector, need to continue to be taken into account alongside current legislative environmental requirements.

#### **Water**

The Nitrates and Water Framework Directives place significant requirements on agriculture. If implemented appropriately, the Directives should over time result in more efficient and sustainable farming methods as well as improved water quality. However, the European Commission can be overly prescriptive and a greater focus on outcomes would be beneficial. In relation to the balance of competences, there should be more recognition of national circumstances and Member States should have greater flexibility with the implementing measures.

It is important that these directives are implemented across all EU Member States to ensure a fair and equitable approach, the proper functioning of the internal market and to achieve maximum benefit.

## **Chemicals/Pesticides**

The EU Directive on the Sustainable Use of Pesticides provides the legislative framework governing the use of pesticides. Under the Directive, active substances in pesticides are undergoing review and this assessment is now risk based rather than hazard based. The change of assessment is leading to a loss of key plant protection products and this could have a significant impact in terms of reduced crop yields.

This is an area where an overly restrictive approach at EU level could have unintended consequences. A balanced and proportionate approach is therefore necessary. Otherwise the loss of key plant protection products could reduce agricultural production, increase food prices and compromise EU agriculture's ability to increase food supply to meet future demands of an increasing population.

## **EU Environmental regulation and the agriculture sector**

Farmers are required to meet specific EU Environmental standards through Cross Compliance. In return for receiving the Single Farm Payment, farmers must comply with a range of Statutory Management Requirements (SMRs), relating to EU legislation.

Non compliance can result in financial penalties on a farmer's single farm payment. The size of the penalty depends on the nature and scale of the non compliance and is determined through the Cross Compliance framework. Penalties on farmers for non compliance with environmental SMRs can be large and sometimes run into thousands of pounds. This can be the case even when the breach or non compliance may not have caused a significant environmental impact, such as water pollution.

In contrast, a large industrial company which causes a water pollution incident in a river resulting in a major fish kill could be fined a lesser amount in court.

The non compliance penalty could represent a significant proportion of a farmer's income, while a fine of several thousand pounds would not be of any major consequence to a large

company. Therefore, in this example the penalties are not related to the same degree to the ability to pay nor the scale of the pollution.

While this disparity is largely due to EU agricultural policies and the cross compliance framework, it does highlight an inconsistent approach to EU Environmental regulation across different sectors.

## **DEPARTMENT OF THE ENVIRONMENT**

### **CLIMATE CHANGE**

Climate Change Unit believes that the role of the EU has been a positive one in relation to climate change. The EU ETS is the cornerstone of EU mitigation policy and it is essential that action is European – wide as this avoids market distortions by providing a common level of ambition to reduce emissions in the large industrial and power sectors. We believe that the European –wide approach is essential to reduce the risk of carbon leakage.

The EU also plays an important complementary role to domestic policy in providing for a minimum level of greenhouse gas reductions (20%) which is useful in providing moral leadership for international negotiations and levelling the impacts of actions to reduce emissions across the EU.

The EU Climate Change Adaptation Strategy, whilst having no binding legal status, contains many positive initiatives which will enhance NI's preparedness and capacity to respond to the impacts of climate change. The initiatives in the strategy include: promoting action by Member States by further promoting adaptation in key vulnerable sectors', climate-proofing' action at EU level, and better informed decision-making by addressing gaps in knowledge about adaptation.

### **WASTE**

The broad framework of EU legislation has been a beneficial driver of environmental standards.

In the particular context of NI being a devolved administration which shares a land border with another Member State, more clarity would be welcome on how compliance at UK level with EU targets is measured and how non-compliance by any individual DA should be judged.

Again, in the context of being a devolved administration which shares a land border with another Member State, we would welcome more clarity on the application of EU principles,

particularly self-sufficiency and proximity, and what tools should be used to determine which of these takes priority in particular contexts.

Sometimes the semantics of the EU approach to regulation can generate unintended difficulties, e.g. separate technologies for energy recovery are all grouped under the Incineration Directive, and this creates a public perception that they all constitute incineration, regardless of the technological distinctions. This can lead to problems as regards political acceptability.

Some EU policy initiatives which have long term implications can require Member States to make major economic decisions in the absence of clarity on whether those initiatives will eventually translate into legislative obligations, and if so, how extensive those obligations will be. It would be helpful, where EU proposals require major long term investment, if there were a mechanism to ensure that cost of compliance did not place an undue burden on the devolved administrations (this may require a more refined definition of 'best endeavours').

The extent and complexity of the regulatory framework for waste is a burden for the SME sector which dominates NI. It also creates gaps in which illegal activity can go undetected. As a small DA, NI may be better placed than larger administrations to develop and test options for closing those gaps.

## **WATER**

### **Advantages and disadvantages**

In the area of water quality there is evidence from recent Article 10 monitoring reports that implementation of the Nitrates Directive (91/676/EEC) is beginning to lead to water quality improvements in NI. Surface freshwaters and groundwaters in Northern Ireland continue to have nitrate levels well below the 50 mg NO<sub>3</sub>/l limit. Phosphorus (P) levels in the majority of river monitoring sites show either stable or decreasing trends.

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

A major advantage of environmental legislation being made at EU level is, as is pointed out in the recent DEFRA/DECC review, that many environmental problems are transboundary. While this is maybe not a significant issue for England, Scotland and Wales, it is an issue for NI and Ireland. If water quality and resource legislation was made on a national level, this could lead to problems where one jurisdiction implements stricter controls than their neighbour, but does not see the improvements hoped for because transboundary

waterways are being polluted from sources in the other jurisdiction. Similarly, when considering the need to preserve and maintain adequate water supplies at a time when many areas are experiencing shortages, if one Member State extracts too much water it could lead to shortages in neighbouring states.

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

If all Member States must implement the same legislation, surely that must help make a level playing field?

### **Current legislation**

For water, the EU legislation itself is focused on outcomes – particularly the more modern legislation such as the Water Framework Directive. However, the manner in which the Commission actually monitors Member States' compliance with directives is sometimes at too low a level and is seen by many as micro-managing. For example, the Commission undertakes a very detailed examination of Member States' action programmes under the Nitrates directives and often insists that minor amendments are made. It would be better if the assessments of the programmes on water quality were carried out less frequently and brought into line with the reporting framework which is based on a four-year cycle. Recent bi-laterals between the Commission and Member States on implementation of WFD indicate that this suggestion might be gaining some momentum.

The water legislation, particularly the Water Framework Directive and the Groundwater Directive, is based on an assessment of risk and scientific evidence. However:

- Because of the length and complexity of the process to make amendments to EU legislation, sometimes the legislation does not keep up to date with scientific and technical developments. For example, the Sludge (Use in Agriculture) Directive dates from 1986; sludge treatment, accepted levels of substances present in sludge, and sludge types that might be applied have all evolved since then. There are similar issues with the Nitrates Directive and developments in spreading anaerobic digestate.
- Although the legislation is based on risk and scientific evidence, enforcement proceedings against Member States for incorrect implementation do not always seem to be related to evidence of environmental risk. For example infraction proceedings taken against the UK on implementation of the Bathing Water Directive (case ref: 2012/2080) were based on the Commission's view that UK regs (for the DAs) did not exactly mirror the wording in the directive. The Commission has also threatened to take action for the late submission of reports under the Nitrates Directive.

### **Doing things differently**

With regard to water legislation, monitoring and reporting guidelines could be overhauled and streamlined. The major water directives (UWWTD, Nitrates and WFD) are all on different reporting cycles and have different guidelines for how monitoring and assessment of water quality is carried out. This is partly related to the age of the directives e.g. the eutrophication assessments done under UWWTD and Nitrates are out of date according to current scientific consensus. This leads to Member States submitting multiple reports and, in some cases, having multiple monitoring networks, to report very similar data to the Commission. This is a drain on resources; however, because of the time and complexity involved in obtaining agreement between Member States to update these processes, attempts to do so have stalled.

### **Future challenges and opportunities**

Many of the future challenges for water protection are outlined in the Commission's 'blueprint' document (ref: COM(2012) 673). These include flooding, water scarcity, improving water quality standards and encouraging the growth of green infrastructure. The Commission has indicated that it would like to take further action to ensure more efficient use of phosphorus (P) in agriculture. Environmentally, this could have benefits for NI, where P is a major contributor to water quality problems. However, there would also be challenges for the agriculture industry to comply with further controls.

## **MARINE**

### **Advantages and disadvantages**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

In the area of marine water quality, compliance with EC Directives has definitely resulted in improvements in bathing water quality as a result of the Bathing Water Directive, and also more generally under the Urban Waste Water Treatment Directive, which set minimum standards for discharges to the marine environment. These improvements are recorded in the Northern Ireland State of the Seas report.

The Water Framework Directive has provided a positive structure by which concerted and co-ordinated programmes designed to significantly improve overall water quality at the river basin, catchment and system outlet level can be delivered. Without this structured and



committed approach by UK devolved administrations, much of the positive work done through coordination across UK CMAs and Member States would not have been achieved.

By creating legal obligation, EU directives are driving research and consideration of emerging issues to which Member States might not otherwise have dedicated resources. For example, resources may not have been directed to consideration of two of the MSFD descriptors - noise and marine litter - had it not been for the legal obligations created by the Directive.

ii. disadvantaged the UK / your sector?

No comment

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

2. 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?)

The major advantage in the management of the marine environment under the EU comes from the transboundary nature of the marine environment and therefore its management.

The UK benefits from the requirement for co-ordinated action at a national level. Responsibility for the environment is devolved to NI, Scotland and Wales; this could lead to the emergence of regional differences in environmental legislation within the UK e.g. plastic bag levies. However, administrations must take concerted action to achieve a national goal (e.g. check/balance) to ensure cohesion at a UK level. For instance, MSFD was transposed at a UK level to ensure that the requirement for activity on a national level was provided for. The transposing regulations give the SoS responsibility for co-ordinating implementation at a UK level which will help ensure cohesion at a national level.

ii. currently made at another level were instead made at EU level?

There is also cross-European co-operation on marine issues through the OSPAR agreement and other conventions that the UK is signed up to, for example MARPOL, London Convention, ASCOBANS etc. But international agreements move slowly and are staff resource intensive. Experience has shown that it is difficult for small administrations to

become fully engaged and there is a reliance on DEFRA and JNCC staff to service groups under these conventions.

Experience has also shown that little marine protection might have taken place without EC Directives. Existing national legislation did not focus on bathing water quality prior to the BW Directives. Equally, protection of the marine environment has taken a lower priority historically than protecting rivers, given the greater dilution that our coastal waters give. However, the UK could now use the good models set in environmental directives to bring in national legislation.

Unlike the terrestrial environment, the marine environment does not have static, defined/closed boundaries. Ocean currents and gyres mean that marine waters circulate around the planet. The EU is a contracting partner to the four regional seas conventions which also comprise third party countries. This could act as driver for standardisation of levels of environmental protection and also a driver for increased levels of protection among countries which are less economically developed.

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

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

Having a level environmental playing field across the EU should reduce the transaction costs for multinational companies - similar national regulations mean that companies need fewer specialists in national law etc.

4. 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?

No comment

### **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

EU legislation is outcome focussed, but infraction challenges can be tedious legal arguments, which are not always based on getting to better environmental outcomes quickly.

ii. based on an assessment of risk and scientific evidence?

Again – agree with EPD

### **Doing things differently**

6. 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?)

No comment

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

No comment

ii. Less action on the environment/climate change?

No comment

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

No comment

9. a. 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?

No comment

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

No comment

### **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

No comment

b. 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?

No comment

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

No comment

### **Anything else?**

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

Under NI legislation the Department is required to notify the Republic of Ireland of its intention to prepare a Marine Plan, and the Marine Policy Statement requires the UK to co-ordinate with Ireland (and others) with whom it shares a land and sea boundary. Therefore, in a transboundary context, EU legislation may assist in contributing to a level playing field

between MSs. Each MS is at varying stages of developing a marine plan, and therefore there may be benefit in similar approaches being adopted.

## **PLANNING**

### **General Comments**

It is recognised that there is a growing body of EU legislation and guidance in relation to the Environment and Climate Change which has relevance to the local planning system.

In relation to planning legislation and policy formulation Planning Policy Division seeks to ensure that relevant environment and climate change obligations, including legal commitments emanating from Europe, are adhered to, and/or adequately reflected, and that all necessary policy assessments are appropriately undertaken.

One area of particular note in relation to the above-mentioned is the Department's experience of implementing EC Directive 2001/42 on SEA. Officials will be aware that work undertaken by the Department in this regard has (on a number of occasions) been the subject of lengthy and expensive litigation, including a referral to the European Court of Justice (Judicial Reviews by Seaport (NI) Limited in relation to Development Plans, and Central Craigavon Limited in relation to dPPS 5 refer).

It is recognised that SEA seeks to provide for a high level of protection of the environment and to promote sustainable development. However, the growth of measures at EU level such as SEA aimed at protecting the environment has unfortunately contributed to a rise in the volume and complexity of legal challenges which has caused significant delay in bringing in new policy initiatives.

The following paragraphs serve to briefly highlight further some key observations in the application and effects of the EU's competence in the areas of environment and climate change from a regional planning policy perspective.

### **Planning Policy**

Planning policy statements (PPSs) set out the Department's policy in relation to particular aspects of land use planning. Their content is taken into account in preparing development plans and they are material considerations to decisions in planning applications and appeals. PPS1 states that the purpose of the planning system is to regulate the development and use of land in the public interest; the public interest requires that all development is carried out in a way that would not cause demonstrable harm to interests of acknowledged importance.

Extant PPS's which are of some relevance to the EU's competence in the areas of environment and climate change include:

**PPS2 Planning and Nature Conservation:** The objectives of this PPS are to seek to conserve, enhance and restore the abundance, quality, diversity and distinctiveness of the region's natural heritage; to promote sustainable development; and to assist in meeting international (including European), national and local responsibilities and obligations in the protection and enhancement of the natural heritage. A Revised PPS2 'Natural Heritage' is currently being prepared to reflect recent changes to European and domestic legislation, which require robust controls on activities which could have negative impacts on the environment. This work is at an advanced stage and subject to Executive approval the Department expects to publish revised PPS2 in final form before the 2013 summer recess.

**PPS11 Planning and Waste Management:** The main aims of this PPS are to facilitate the establishment of waste management facilities in appropriate locations; to ensure that detrimental effects on people, the environment, and local amenity associated with waste management facilities are avoided or minimised; and to secure appropriate restoration of proposed waste management sites for agreed after uses.

**PPS15 Planning and Flood Risk:** This PPS sets out the Department's policies to minimise flood risk to people, property and the environment. It adopts a precautionary approach to development and the use of land that takes account of climate change and is supportive of the wellbeing and safety of people. A Draft PPS15 is currently being prepared in accordance with the commitment in the original policy published in 2006, which recognised the need for a review within five years to take account of our evolving understanding of climate change and new evidence and experience of implementing flood risk policy.

PPS18 Renewable Energy: This PPS sets out the Department's planning policy for development that generates energy from renewable resources and that requires the submission of a planning application. It is supportive of renewable energy, which will assist in the reduction of greenhouse gas emissions targets and objectives.

Where appropriate, relevant EU Directives are signposted within these documents alongside relevant UK and NI legislation, policy and guidance.

## **Planning Reform**

The Department is undergoing a process of fundamental legislative and policy reform which has relevance for how the local planning system might address the areas of environment and climate change going forward.

The proposed Planning Bill 2012 will make reforms contained in the Planning Act (Northern Ireland) 2011 available to the Department ahead of local government reform. In particular the Bill will bring forward a duty contained in the 2011 Act, which requires the Department to carry out its general planning functions with the objective of furthering sustainable development.

The Department will also be reforming the way it prepares regional planning policy. It is intended to reconfigure and collate existing planning policy provisions within one single Strategic Planning Policy Statement ahead of the transfer of planning powers to local councils in 2015 and the introduction of a new two-tier planning system.

Through these initiatives the planning system will, where appropriate, continue to reflect and respond to EU, UK and NI objectives/priorities for the environment, and climate change.

## **AIR QUALITY**

### **Current status**

The overarching framework for EU Air Quality policy is the Thematic Strategy on Air Pollution, adopted by the Commission in 2005. It aims to realise the EU's long-term objective for air quality: to achieve 'levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment'. It sets an overall framework for assessing and managing air quality at EU level up to 2020.

There are three key pillars which implement the goals of the Thematic Strategy:

The Ambient Air Quality (AAQD) Directive 2008/50/EC and the 4<sup>th</sup> Daughter Directive on Air Quality (2004/107/EC). While the AAQD sets objectives for pollutants in ambient air which must be met by certain dates, the 4<sup>th</sup> Daughter Directive contains Target Values for which MS should take all reasonable (proportionate) measures to comply with.

The National Emissions Ceilings Directive (NECD) 2001/81/EC

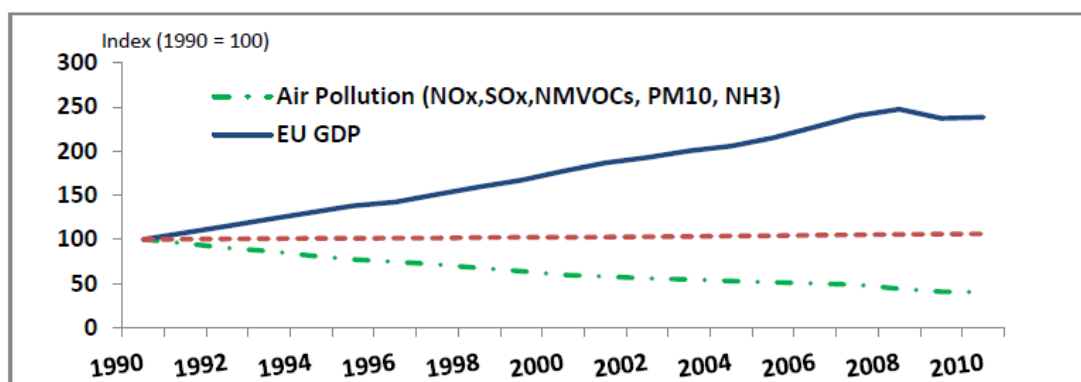
The various legislation which deals with emissions at source, for example, with industrial emissions and vehicle transport emissions.

In some ways, European air quality policy could be viewed as something of a success story, thus far: it is one of a few areas where it has demonstrated a **clear decoupling between economic growth and emissions**. Acid rain is the classic example: a problem that ravaged Europe in the 1980s has been practically solved, by an 80-90% decrease in emissions even while major economic growth has taken place.

**1. Progress has been made in reducing a range of emissions to air.**

*Evidence*

**Broken link between emissions and GDP**



Source: Presentation of EC



Despite the success in lowering emissions overall, there remain problems with levels of air pollutants in urban centres, with widespread non-compliance with the limits set in the AAQD for nitrogen dioxide (NO<sub>2</sub>) and particulate matter (PM) in cities across Europe. These high levels of NO<sub>2</sub> and PM are primarily due to emissions from road transport; a factor in the EU-wide non-compliance has been the failure of Euro emissions standards to deliver the expected reductions in pollutants.

Dealing with transport in urban centres therefore represents a key factor in achieving compliance with the AAQD. The Greater Belfast area is one of many urban centres in the UK, for which compliance with NO<sub>2</sub> objectives is a significant challenge. Encouraging modal shift away from private car use and onto public transport, as well as promoting cleaner forms of transport (e.g. electric cars) are key objectives, while it is hoped that the latest Euro emissions standards (Euro-6) will help deliver emissions reductions.

In Northern Ireland, compliance has not been achieved with the Target Value for polycyclic aromatic hydrocarbons (PAHs) set by the 4<sup>th</sup> Daughter Directive. Research has shown that the levels of PAHs in question are primarily due to residential combustion of bituminous (smoky) coal.

The UK has achieved compliance with the total amount of pollutants it has been set by the NECD, although it should be noted that Northern Ireland has a disproportionately high contribution to total UK emissions of ammonia from agriculture. Ammonia emissions represent a significant threat to the status of sensitive habitats, e.g. Special Areas of Conservation (SACs) and Areas of Special Scientific Interest (ASSIs). Ammonia emissions are also believed to contribute to the formation of PM in ambient air.

### **Future development (EU)**

The Thematic Strategy is currently under review and is expected to be finalised by autumn 2013. Ongoing assessment of the current policy framework has identified the following key problem categories:

Widespread non-compliance with the current air quality policy framework:

As discussed above, there exists widespread non-compliance with AAQD objectives in urban centres across Europe;

A preliminary assessment of air pollution impacts suggests that, despite substantial improvements in air quality, about 420,000 premature deaths in the EU can be attributed to air pollution.

Incoherence between EU legislation and international air quality commitments:

Current EU legislation may no longer be sufficient to ensure fulfilment of the EU's new international commitments. For example the NECD should reflect emissions reductions targets contained in the revised Gothenburg Protocol, rather than only setting absolute ceiling limits.

Insufficient future protection of human health and the environment:

The limit values set in the AAQD are in many cases substantially weaker than the air quality guideline values recommended by the WHO. Some countries (e.g. the United States) already prescribe stricter limit values than the EU, especially for ambient PM concentrations;

Baseline projections suggest that even when broad compliance with existing legislation is achieved, air pollution impacts would remain substantial. Therefore, the EU's overall long-term target to achieve 'levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment' would not be met.

Evaluation of the present EU air quality policy framework has identified a number of the key drivers which are at the root of these problems:

The subsidiarity approach has produced governance inefficiencies:

There is considerable discretion left to MS on the implementation of minimum criteria for assessing and managing air quality in zones and agglomerations. This has led to varied implementation of the provisions across the EU;

Many MS have delegated air quality responsibilities quite extensively to a local or regional level; problems with implementation at this scale have included a lack of the necessary power, expertise, knowledge or financial resources to deal with the relevant problems.

Transboundary pollution undermines the efforts of local and national authorities:

Despite the obvious success of present EU and international policy framework, high levels of 'background' pollution sometimes exist, which are beyond the control of local or even national competent authorities. Background pollution from beyond national borders therefore requires a review of EU and international competences;

Recent research on transboundary pollution has indicated that transboundary pollutants travel longer distances and faster than was previously assumed. The rise of the global economy, most notably of the major developing countries in the Northern hemisphere could therefore be a factor in rising EU background levels of air pollutants.

Some source legislation is not delivering as needed:

The most obvious example of this has been the failure of Euro emissions standards to deliver the expected emissions reductions for nitrogen oxides for diesel vehicles. This failure has been compounded by the inability of MS to control traffic volumes in urban centres.

Not all sectors have contributed equally to emission reductions in the past:

Policies in place to control emissions from different sectors have had varying degrees of success. Thus, emissions from power generation and energy intensive industries have reduced more substantially than emissions from road transport. The cost-effectiveness of further reductions from sectors which have already seen large reductions is reduced, while the reasons for lower reductions from other sectors remain to be tackled.

Synergies between air pollution and other policies are not managed optimally:

In particular, policies relating to the lowering of carbon emissions have not always been developed in tandem with consideration of the effects on emissions of air pollutants. The promotion of relatively carbon efficient diesel engines has contributed to exceedances of AAQD standards for PM and NO<sub>2</sub> in EU cities, while the promotion of biomass has the potential to have significant deleterious impacts on air quality.

While the revision of the Thematic Strategy is not due to be finalised until autumn 2013, a set of specific enabling and interim objectives have been formulated in relation to the problems so far identified:

Ensure MS compliance with air quality policies as soon as possible:

The first priority of the review will be to deal with the current widespread breaches of AAQD objectives across the EU. In particular, the problems with NO<sub>2</sub> and PM (from road transport, as previously discussed);

Reduction of transboundary emissions is an important factor in driving down background levels of air pollutants, which undermine local, regional and national efforts to achieve compliance with air quality objectives.

Ensure coherence between the recently amended Gothenburg Protocol and the NECD:

EU legislation should be aligned with the newly revised Gothenburg Protocol on Transboundary Air Pollution, notably the newly agreed emissions ceilings for 2020, including for PM<sub>10</sub>. Reductions targets (as opposed to ceilings alone) may also be a factor.

Further reduce the exposure of citizens and ecosystems to air pollution beyond 2020:

New interim objectives for 2025 and 2030 will be required, which will contribute towards achievement of the general EU objective by 2050.

NI supports the development of policies to reduce air pollution and improve local air quality, recognising that clean air is vital for public health. Achieving compliance with the AAQD in particular is a key driver in delivering emissions reductions. Synergies with other policy areas of government are viewed as key in achieving these reductions.

### **Future development (NI)**

Moving forward, the key challenges for Northern Ireland's air quality are:

To achieve compliance with EU air quality objectives

To achieve compliance with NO<sub>2</sub> limit values, effective policies will need to be developed to deal with road transport in the Greater Belfast area. This will involve engagement between central and local government;

To achieve compliance with the EU Target Value for PAHs. DOE will shortly (in conjunction with ROI) take forward research to examine the issue of residential fuel combustion, with the aim of developing policies to tackle the high levels of PAHs measured in NI.

To reduce ammonia emissions from agricultural activities

This will involve developing policies and/or incentives to use Best Available Techniques which can help to offset or alleviate ammonia emissions, so that the status of sensitive/protected habitats is improved, and biodiversity is protected.

To ensure that there are synergies between air quality and other policies

For example, in relation to biomass. There is a need to comprehensively assess the full implications of such policies in relation to potential air quality impacts.

## INDUSTRIAL POLLUTION

**What evidence is there that EU competence in the area of environment and/or climate change has:**

i. benefited the UK / your sector?

European Directives are a driver for improved environmental outcomes in NI. The threat of infraction fines is an effective driver of compliance. The Industrial Emissions Directive, The Petrol Vapour Recovery Directives, The Paints Products Directive, The Sulphur Content of Liquid Fuels Directive, the Directive on Emissions from Non-road Mobile Machinery and the National Emissions Ceiling Directive have all contributed to improved environmental standards in Northern Ireland, in particular air quality.

Improved air quality is of particular benefit to public health.

It is questionable if this would have happened in Northern Ireland without the Directives and their associated infraction risks.

The Directives ensure consistent standards across the EU and thereby eliminate any economic advantage for an individual Member State to have lower environmental standards (and hence lower operating costs).

ii. disadvantaged the UK / your sector?

None

Where should decisions be made?

Decisions affecting transboundary pollutants are best made at EU level. Decisions affecting local pollution are also best made at EU level to avoid enticing individual Member States to less stringent national emissions standards in order to increase economic growth at the expense of public health.

Specific example of how decisions made at EU level would be better made at a different level.

None

Specific example of how decisions made at a different level would be better made at EU level

None

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

DOE considers that EU Environmental Standards are crucial for the proper functioning of the internal market, particularly in the case of Northern Ireland which has a border with another Member State (Ireland). EU level agreements avoid distortions with different standards on either side of the border. There would also be complications regarding the Water Framework Directive because of the cross-border river basin districts.

Where common standards are not developed at EU level, each Member State has to make a choice between economic interests (industry lobbying for less controls on emissions) and the public interest (health impacts on the population in the immediate vicinity, and in the case of cross boundary pollutants such as ozone, NO<sub>x</sub> and SO<sub>2</sub>, the population more generally). There is an immediate financial incentive for industry to lobby against tighter standards/ fitting expensive abatement equipment. However, there is not the same financial incentive for the public to lobby for tighter controls, since each individual person is affected only slightly. The implementation of the 'polluter pays' principle is very important and best achieved at an EU level.

### **Doing things differently**

How could the EU's competence be used better?

How far would the UK benefit taking more/less action on the environment/climate change?

The UK should continue to play an integral role in developing future policy at EU level as it is best negotiated before Directives come into force.

Alternative approaches the UK could take in the way it implements EU Directives.

No suggestion

Advantages/disadvantages in the EU having a greater/lesser role in negotiating international agreements

The UK is one of the biggest polluters in terms of EU air pollution and it is therefore imperative that it is involved in the negotiation of international agreements.

How important is it to be part of team EU

Very important

Future challenges and opportunities

Future challenges or opportunities on environmental protection or climate change include:

- looking at multiple pathway pollutants and not just single pollutants in isolation i.e. the interaction of multiple pollutants at low levels over long periods;
- further decoupling of economic growth and energy /resource use and the intrinsic waste/ pollutants that result;
- taking the 'polluter pays' principle to the next level by accurately accounting for external costs;

- ensuring that the exploitation of hydraulic fracturing is adequately regulated to prevent/minimise any environmental impacts.

What is the right balance between actions taken at industry/UK/EU level?

Actions are best agreed at EU level to ensure a level playing field

Costs and benefits of addressing these challenges at EU level.

## **ENVIRONMENTAL NOISE**

Noise is regulated at EU level mainly through the Environmental Noise Directive and the establishment of noise limits for vehicles and equipment/machinery. However, some aspects of noise, such as neighbourhood noise, may be best addressed at the national level.

NI supports the principles set out in the END but considers that more could be achieved if END was more prescriptive and the scope of existing obligations clarified. Implementation of the END could also be improved through the provision of more guidance on the content of action plans and designation of quiet areas and clarification of key words and phrases.

The introduction of noise limits or targets would achieve more consistency of application and implementation across the EU. It is accepted that some Member States or Competent Authorities may have difficulties meeting targets, but this could be addressed by the introduction of staggered targets or limits which reduce over time. Northern Ireland supports the need for obligations to be proportionate and achievable in terms of costs and benefits. Any limits or targets set should be based on evidence of beneficial health effects and on a robust impact assessment.

Noise mapping must be undertaken every five years. Given that the noise environment changes relatively slowly and that population data in the UK is only updated every ten years, it may be appropriate to consider aligning these timings and undertake noise



mapping only every ten years following the release of census data. It is also important to seek synergies between noise and air quality.

## **DEPARTMENT FOR REGIONAL DEVELOPMENT**

The Department for Regional Development would raise a number of issues in relation to the review of competences between the UK and European Union in relation to water and sewerage services. The Minister for Regional Development (NI) has responsibility for water and sewerage policy and legislation in Northern Ireland. As suggested in the call for evidence, there is a significant body of European legislation covering the protection of drinking water and the protection of the environment from water pollution.

The European Union's legislative action in the area of water policy has been a significant driver for making improvements in the management and protection of water resources, and higher drinking water quality in Northern Ireland. While it would be difficult to demonstrate that these improvements could only have been secured as a result of EU action it seems that issues were not addressed until meeting EU requirements became prominent. We note that recent Westminster Government public consultation on red tape did not result in calls for less regulation in this area.

Nonetheless, some of the requirements are very detailed and can result in administrative burdens for the water industry. It can be argued that they could, distort local priorities for investment by the NI Executive. We would also highlight the potential for contradictory EU policies to lead to unclear or unsustainable investment priorities at a local level.

Responses to the Review questions are set out below.

### **Advantages and disadvantages**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

A wide range of EU environmental legislation impacts on the water and sewerage sector, as set out in the legal annex to the review. This has resulted in significant investment in improvements to the quality of drinking water and water in the environment in Northern Ireland.

More than £600 million is being invested in water and sewerage services in Northern Ireland over the current budget period (2011-15) and the Executive has invested over £1 billion since devolution. As a result of sustained investment, we now enjoy very high drinking water and waste water quality in Northern Ireland. It is unlikely that all of these improvements would have been taken forward without formal EU drivers such as the Drinking Water Directive, Urban Waste Water Treatment Directive, Shellfish Waters Directive, Bathing Waters Directive, and Water Framework Directive, inter alia.

ii. disadvantaged the UK / your sector?

EU legislation has in some circumstances placed additional administrative burdens on the water industry and NI Administration. One example is the requirements of the Strategic Environmental Assessment Directive which may result in additional costs and administrative hurdles in taking forward programmes of development in Northern Ireland. The requirements of the directive seem unnecessary given the pre-existing requirement for an Environmental Impact Assessment on all individual planning proposals in Northern Ireland.

The expansive application and enforcement of EU legislation has also resulted in inappropriate prioritisation of investment on occasion. For example, there is a requirement for secondary waste water treatment to be installed at Ballycastle waste water treatment works to comply with the requirements of the UWWTD, despite local understanding that that this investment is not an environmental priority.

EU action can lead to contradictory and unclear local objectives. For example, climate change emissions commitments, urban waste water treatment requirements (UWWTD) and EU water quality targets (WFD) have the potential to result in unclear investment objectives for the water industry. In the past water quality has been prioritised over energy consumption and emissions impacts. This may no longer be the case. However, investment in changing priorities and supporting a legacy of high energy treatment works can draw funding away from local objectives such as facilitation of development and economic growth.

Environmental water quality standards may also place uneven financial burdens on different Member States/regions as a consequence of climatic variations, population densities and historical design of water and sewerage infrastructure. Recent EU infraction action against the UK for failure to comply with the UWWTD requirements at London/Whitburn refers. Account should be taken by the Commission of different national approaches to the management of waste water in this case to avoid placing significant financial burden on the water sector and water customers.

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

It seems appropriate that high level aims should be established at a national or supranational level, with national and regional implementation which allows room for local priorities in the development of targets. The principle of subsidiarity is recognised in EU legislation and supported by UK devolution settlements.

Detailed directives, reporting requirements and enforcement taken by the EU in the water sector have resulted in investment and regulatory decisions effectively being taken by the EU at a supranational level.

An example of the distortion of investment prioritisation is provided above (Ballycastle UWWTD requirements).

An example of excessive EU regulatory detail driving local legislation is in transposition of the Drinking Water Directive (DWD). An infraction initiated against the UK in 2010 for failure to transpose the Directive correctly required the introduction of particular local enforcement measures for domestic distribution systems (in respect of schools, hospitals and restaurants where water is supplied to the public). Due to differences between GB and NI local government legislation this proved to be not straightforward. In addition, some of the other issues raised in respect of the DWD's transposition were so trivial that they would not have risen to local scrutiny let alone EU level. Similar detailed requirements were imposed by having to make certain activities associated with supplying public drinking water into criminal offences. Again this level of detail is best dealt with at local level.

2. 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?)

The national interest may be better served by enforcing the principle that ownership of target setting for the water sector, and decisions as to where and when investment is appropriate should ultimately rest at a regional level. The principle of subsidiarity should be more prominent in decisions as to whether EU infringement can be initiated. Local priorities should be given additional weight of consideration. For example, water quality, fluvial flooding, water scarcity and drought issues clearly present different risks in Northern Europe and Mediterranean states. Infringement should not result from variations in local prioritisation and identical standards may not always be appropriate.

ii. currently made at another level were instead made at EU level?

No comment.

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

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

EU environmental requirements have assisted in generating a more level playing field throughout the internal market. However, EU over-regulation has the potential to delay local economic growth on occasion. Development restrictions have been put in place in the past in Northern Ireland as a result of EU environmental requirements for waste water treatment.

4. 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?

See above.

### **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

Environmental legislation such as the Urban Waste Water Treatment Directive is very specific and detailed and has resulted in significant investment over the past 20 years. The Water Framework Directive represents a step forward in setting high level objectives for water quality as opposed to specific investment requirements. It also includes economic considerations.

ii. based on an assessment of risk and scientific evidence?

Environmental legislation does tend to be based on scientific evidence.

### **Doing things differently**

6. 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?)

Soft law could be used as the normal means of EU action (less use of Directives and formal legislative requirements backed by EU powers to enforce). This could allow Member States greater freedom to set national, regional and local objectives. However, if EU targets were replaced by a plethora of local targets or more rigid local targets this would be a disadvantage.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

ii. Less action on the environment/climate change?

The UK would benefit from the EU taking a more holistic view of environmental/climate change policies which, at the moment, can provide contradictory drivers (i.e. "use less power to reduce carbon emissions" at the same time as "raise treatment standards" – which inevitably requires more power.

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

No comment.

9. a. 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?

No comment.

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

No comment.

## **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

Achieving a sustainable balance between environmental, economic and social development in addressing the risks arising from the UK Climate Change Risk Assessment. Greater integration and understanding of wider emissions commitments and economic needs in setting and achieving water quality improvements will be required in future. National and regional priorities and variations in policy approach will be necessary in responding to local climate change risks.

b. 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?

National and regional priorities and variations in policy approach will be necessary in responding to local climate change risks.

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

No comment

## **Anything else?**

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

No comment



## **DEPARTMENT FOR SOCIAL DEVELOPMENT**

The Department for Social Development tackles fuel poverty and improves domestic energy efficiency for low income households. The energy efficiency improvement measures provided have a positive impact on carbon emission reduction, albeit as a by product of the schemes.

The Department funds two energy efficiency schemes, the Warm Homes Scheme and the Boiler Replacement Scheme. While our programmes are aimed at alleviating fuel poverty, they do impact positively on the environment. Replacing an old inefficient boiler can significantly increase the thermal efficiency of homes with some delivering a 30% increase in fuel efficiency. The Warm Homes Schemes offers a range of energy efficiency improvement measures to privately owned and privately rented homes.

The Boiler Replacement Scheme offers an allowance towards the cost of replacing old, inefficient boilers to householders whose total gross annual income is less than £40,000. The Northern Ireland Executive set aside £12 million for the Boiler Replacement Scheme over 3 years with the aim of assisting 16,000 households to replace their old inefficient boilers. In an average three bedroom semi-detached house, the saving is in excess of £2,700 over 10 years; this figure increases the older the boiler being replaced. Replacing an old inefficient boiler can significantly increase the thermal efficiency of homes with some delivering a 30% increase in fuel efficiency.

The grant provided to Housing Associations to enable them to build new social homes to code level 3 means more energy efficient new build housing and also Departmental retrofitting schemes to improve domestic energy efficiency in social housing have a positive impact on green house gas reduction.

### **DLA Piper UK LLP**

#### **INTRODUCTION**

DLA Piper UK LLP were invited to respond to the Call for Evidence in respect of Environment and Climate Change. The following response is based on the experience of



our team of specialist environmental lawyers. This derives in part from our practice advising clients in a number of sectors on matters included in the remit of this report, and partly from work carried out by individuals outside the practice in promoting knowledge of environmental issues and interest in pursuing sustainable development by business and other organisations.

As a law firm, we are not in a position to provide detailed evidence on the economic benefits and disbenefits of EU involvement in Environmental and Climate Change policy on particular sectors. However we believe the following comments may be helpful to DEFRA and DECC in considering what evidence they receive as a result of this review.

## **ADVANTAGES AND DISADVANTAGES**

1. As set out in in the paper, there is now hardly any significant area of environmental and climate change law in which the EU has not legislated. The most significant areas of UK environmental law in which national law still plays a predominant role are those of enforcement, (though even in this area the UK's freedom to act is contained by the Environmental Crime Directive), and the remediation of land contaminated by activities carried on prior to the coming into force of the Environmental Liability Directive.

The first of these cases is attributable to the fundamental differences in criminal law and administration institutions in the Member States, and the fact that the EU does not have its own system of enforcement agencies. The second is attributable to political disagreements between the Member States during the protracted negotiation of the Environmental Liability Directive, and the more recent failure of EU Member States to reach agreement on a Soil Directive.

Much of the EU legislation has been built on good legislative practice in the different Member States, and has benefitted from the opportunity of comparative study. The general effect has been to bring about more uniform environmental regulation throughout the EU. This is arguably to the benefit of the environment as a whole and to the competitive advantage of the UK as a relatively rich Member State with generally high standards of environmental regulation. The UK has thereby been able to ensure that certain Member States have not been able to secure an unfair competitive advantage as a result of less strict environmental regulations. In a number of cases, as with Integrated Pollution Management and Control, the EU ETS, or integrated water basin management, the UK has succeeded in establishing at EU level regimes substantially in line with those developed in the UK.

EU competence in the areas of Environment and Climate Change has also provided members of the public with an economical and effective means of holding Member States to account if they are dissatisfied with a Member State's failure to implement EU Law satisfactorily, by making a complaint to the Commission.

It may also be mentioned that the legal and consultancy service sectors in the UK have derived a benefit from increased uniformity in EU Environmental Legislation through greater opportunities in work on multi-jurisdictional transactions. However this has also been contributed to by the concentration in the UK of English speaking expertise, and also the presence of what are generally larger consultancy and legal service firms than are common in other Member States.

Those benefits have however come at a price.

Firstly there have been instances where the UK Government has not been able to resist unwelcome policies, such as the Landfill Directive, or Water Resource legislation, which does not wholly reflect the different geography of UK from that, for example, of the Member States which share the Rhine basin.

Secondly, there have been cases where EU legislation has imposed standards that are too strict and expensive to implement, such as certain requirements of the Drinking Water Directive. These have imposed a heavy cost burden, particularly in the UK, where is no tradition of distinguishing between potable and non-potable mains supplies and in consequence all mains water has to be treated to the standards of the Directive. It is cogently been argued that a portion of the costs of compliance with requirements of the Directive in the EU, which are unnecessary for public health, could much more equitably diverted to overseas aid projects to provide basic healthy water supplies to populations in great need of such supplies.

Thirdly, the process of negotiation of EU legislation is not ideal, and has led to difficulties of interpretation which has had to be resolved by litigation. We have in mind here the extensive case-law on the meaning of the term "Waste" in the various redactions of the Waste Framework Directive. Another example is provided by the test for "by-products" in the some Directive, where extensive litigation may have resulted from a faulty translation of some of the different language versions of the Directive. Litigation does of course provide remunerative and interesting work for the legal services sector, but the cost, both in terms of money, and in terms of the delay, (particularly where reference has to be made to Luxembourg), falls on the clients, i.e. UK businesses.

Fourthly, there may be a cost in terms of democratic accountability. In the recent past this may have been less of an issue for the UK than in other Member States, where national governments have used the EU legislative machinery to force policy changes on regional governments with which the appropriate competence lay under national constitutional law. However with increasing devolution in the UK this may become more of an issue in future.

The fifth cost is one which may also not be currently apparent, but may present more of an issue in future. As previously set out, much of UK environmental law is now EU-determined. Inevitably with the passing of time the existing corpus of law will become decreasingly fit for purpose. Given the cumbersome nature of the EU legislative process, it may be difficult to replace it. Further, the existence of the current laws may stifle legislative

innovation, so that examples of different and innovative approaches may have to be taken from non-EU countries, where they may less readily be found.

## **WHERE SHOULD DECISIONS BE MADE?**

2. Currently the fields of environmental and climate change law are matters of shared competence between the EU and Member States. We think it would hardly be feasible, even if it were politically acceptable, to change this position radically by transferring competence in these areas exclusively either to the EU or the Member States.

It would also seem difficult to divide up these subjects into topics which could be allocated to one level or another as a matter of exclusive competence. It is true that certain topics, such as climate change law, lend themselves more naturally to trans-national competence than others, but most topics relate to environmental phenomenon which have some international, some national and some purely local effects, so that a topic-by-topic allocation of responsibilities is likely to be unsatisfactory.

As we see it, the way forward would lie rather with a self-denying ordinance on the part of the EU, and particularly the Commission, which has the right of legislative initiative in respect of future environmental and climate change legislation.

The suggestion we would make is that what is effectively a federal system of environmental and climate change regulation would work best if the EU focused on goals but left the administration to the Member States. This may indeed have been the original purpose of EU Directives, which was thwarted by the development of the doctrine of "direct effect". However it could still be achieved if the EU renounced legislating on matters going beyond the goals to be achieved.

Where it was considered necessary for the EU to concern itself with the regulatory process, it should do so only as regards matters which significantly affected the competitiveness of major industries.

To give a practical example, in the field of climate change the EU currently regulates the large-scale emitters subject to the EU ETS. However it is left to Member States to decide whether to extend emissions trading, or similar measures, further down the scale, as the UK has chosen to do with the CRC Energy Efficiency Scheme.

The suggestion would be that the EU should avoid the temptation to regulate further down the scale on climate change, but leave it to the Member States to choose how to meet their emissions reduction targets. In this way the EU might move towards a division of responsibilities more akin to that found in the US, where the Federal Government and State Governments share responsibility for environmental regulation.

Similarly, the EU should be encouraged to avoid future, and ideally reverse current, forays into such areas as enforcement, for example the Environmental Crime Directive. These are

areas where the sharp differences between the legal systems of the different Member States give scope for misunderstanding and litigation.

Access to environmental information is also a good example of an area in which EU law is inappropriately involving itself with the administrative systems of the Member States. Since Member States are parties to the Aarhus Convention, which has its own mechanisms for dispute resolution, it is difficult to see why there is a need for EU legislation in this area.

We believe that a clearer demarcation between the respective roles of the EU and the Member States would lend to a reduction in costly litigation and more cost-effective regulation.

## **INTERNAL MARKET AND ECONOMIC GROWTH**

3. In principle it would be possible to conceive of an internal market which could function in the absence of environmental regulation, and thus leave it to the Member States to determine the extent of environmental regulation they would impose. This would not necessarily lead to an abandonment, or even a severe limitation, of environmental regulation, so as to sacrifice the environment to economic growth, since environmental regulation is not necessarily inimical to economic efficiency. In practice, however, calls for a level playing field are likely to prevail, because of the need for confidence that the environment will not be inappropriately sacrificed to short-term economic gain. The balance between regulation and economic growth is essentially a matter of political judgment. We therefore doubt whether it is possible to propose clear criteria for striking that balance. Nevertheless we believe that it would be advantageous to give more consideration in relation to new proposals whether further environmental regulation is necessary at EU, as opposed to Member State, level.

4. As just suggested, environmental regulation is not necessarily inimical to economic growth, and the need to provide new technology may provide new business opportunities to stimulate economic growth. The dichotomy between environmental regulation and economic growth may therefore be a false one. The major exception to this is that some legislation, either in the form of emission limits, or in the form of upgrading requirements under permits, has the effect of requiring the replacement of existing technology unreasonably before the end of its usual economic life. However, the main cases which this has come to our attention have been due to overzealous regulatory enforcement (such as inappropriate application of new technology requirements to existing plant) rather than the legislation itself.

## **CURRENT LEGISLATION**

5. There are a number of good examples of EU legislation which is focused on outcomes and results (eg the Air Quality legislation, the Water Framework Directive). The main problem with such legislation is that the Member States have often focused on regulation as the main means of ensuring compliance with the targets set. Unfortunately,

many of the targets do not lend themselves to enforcement by regulation, because the regulated industries only contribute a small portion of the regulated emissions. What is required is wider societal change affecting patterns of land-use, transport, etc. This is not easy to organise, but much could be done by encouraging businesses and public authorities to educate their customers and stakeholders.

Similarly, there are a number of good examples of EU legislation, such as the REACH Regulation and the RoHS legislation where the need for regulatory decisions to be based on an assessment of right to scientific evidence. The good intentions do not always succeed, for example, implementation across the EU of the legislation on Genetically Modified Organisms does not provide a good example of this approach, but this problem appears to arise from politics rather than legislative intent.

### **DOING THINGS DIFFERENTLY**

6. We think that the shared competence of the EU and the Member States could both be used more effectively with greater recognition of the limits to regulation and appreciation of the need for societal change.

For example, there have recently been complaints from businesses and others on the overzealous implementation of the EU legislation on Nature Protection/Biodiversity. This may be partly due to regulators acting without regard for legitimate business interests when there is no real risk of harm to the protected species or habitat. It may also be partly due to the fact that those regulators may consider they have little option, given strict interpretation of the regulatory requirements by the courts and pressure from well-financed NGOs. However, an alternative approach might be to consider whether modifications to agricultural practice or land use planning might not provide an improved environment, so that the protected species might be less at risk. Government might play an important role here in disseminating scientific advice and encouraging businesses and public authorities to educate their customers and stakeholders.

One possible way in which this could be done would be to place general duties on businesses, in line with the general duties under health and safety legislation, to minimise adverse impacts on the environment, so far as is reasonably practicable. We would however be cautious in suggesting the promotion of such an initiative at EU level. We note also the recent changes which require company directors to report on such impacts as part of their Strategic Report.

7. We would refer to our response to question 2 above.

8. The UK would appear to have very limited freedom of action, having regard to its obligations to transpose EU Directives faithfully, which has led to the general implementation of a "copy-out" approach in the drafting of the transposing regulations.

9.

(a) In our view it would not be appropriate to change the formal allocation of competences outlined on pages 22ff. of the paper. The question is whether, over and above that, the UK might choose to negotiate more or less as part of a bloc with the other EU Member States, and where relevant the EU itself, on specific issues. Undoubtedly, there are advantages in the EU negotiating as a bloc where there is no significant disagreement on policy within it. It clearly lends strength to the negotiating position if a number of parties take the same line.

(b) Climate change presents a good example of the potential benefits of negotiating as a bloc, and as one of the leading players on climate change, the UK is appropriately one of the leading representatives on the EU team. However, it should be pointed out that the negotiating tactics of the bloc have not always proved successful. At the Copenhagen COPMOP, for example, the EU representatives were effectively sidelined after failing to take into account the clear expressions of intent on the part of the US and China, in advance of the COPMOP, which effectively set out the limits of what would be achieved at it. The need to agree a common position may well have contributed to a lack of realism.

## **FUTURE CHALLENGES AND OPPORTUNITIES**

10.

(a) As suggested earlier, one of the challenges we face is environmental protection to climate change is that we are probably fairly close to the limit of what can be achieved by regulation, so that wider society has to be mobilised. Clearly that has also to be achieved within the context of a free and market-based economy.

(b) Following on from that, it would seem that further progress most likely to be achieved by co-operation between industry and local government to educate their customers and stakeholders to exercise their choices in ways which are likely to benefit, rather than harm, the environment.

(c) This suggests that the focus should be downwards to the institutions of civil society rather than upwards to a central EU authority.

## **ANYTHING ELSE**

11. We have nothing further to add.

## **Dŵr Cymru Welsh Water**

The attached evidence is from Dŵr Cymru Welsh Water, the statutory water and sewerage undertaker that supplies over three million people in Wales and some adjoining parts of England. We are owned by Glas Cymru, a single purpose, not-for-profit company with no shareholders. We provide essential public services to our customers by supplying their

drinking water and then carrying away and dealing with their wastewater. In this way, we make a major contribution to public health and to the protection of the Welsh environment. Our services are also essential to sustainable economic development in Wales.

Our evidence reflects our experience in helping to deliver the many European laws that apply to water. Implementation of these laws has undoubtedly brought many benefits: the consistently high quality of the UK's drinking water supplies and the widespread improvements seen to the aquatic environment are testament to this. But they also continue to represent a major burden for our sector and thus our customers. Our evidence therefore tries to find ways of ensuring that our customers' money remains well spent, and continues to support the worthwhile, overall objectives underpinning much of the EU's environmental law.

There are a number of simple but important changes which would support much improved European laws in future.

Firstly, all new European standards must be put onto a more scientifically justified and evidence-based footing, where the environmental and other consequences of new standards are properly understood and consulted upon, including the impacts on carbon emissions.

Secondly, the social and economic consequences of all new standards must be properly articulated and included in Regulatory Impact Assessments which, in turn, should be evaluated and consulted upon in the UK to inform negotiations with other Member States and the Commission about proposed standards.

Lastly, we would like the Water Framework Directive's concepts of technical infeasibility and disproportionate costs applied to all other EU environmental Directives, and for all such Directives to be refreshed with this in mind, before any new standards are progressed which drive investment and costs for our customers.

## **EVIDENCE FROM DŴR CYMRU WELSH WATER TO THE JOINT DEFRA & DECC REVIEW INTO THE BALANCE OF EU/UK COMPETENCES ON THE ENVIRONMENT AND CLIMATE CHANGE**

### ***1. What evidence is there that EU competence in the area of environment and/or climate change has:***

#### ***i. benefited the UK / your sector?***

As acknowledged in your consultation paper, there is a large body of European law related to water. It has undoubtedly delivered significant improvements e.g. in bathing water quality, and promises further improvement through the achievement of the Water Framework Directive (2000/60/EC). These improvements have delivered significant 'knock-on' economic benefits: for example, the excellent water quality at many of Wales' beaches has undoubtedly enhanced its reputation as a tourism destination.

The ability to plan ahead with reasonable certainty, e.g. in deciding where future investment will be needed, is important for business, including the water industry. Decisions at an EU level tend to have more longevity than national policies so EU competence can offer welcome stability for business.

It is hard to speculate what environmental improvements would have been made in the absence of European standards, but it seems unlikely that they would have been on the same sustained scale if left to national administrations.

***ii. disadvantaged the UK / your sector?***

Most European water related law has resulted in new burdens on the UK's water and sewerage businesses and thus their customers. For example, Dŵr Cymru estimates that our company has spent over £1 billion on bathing water improvements to meet the 1976 Directive (76/160/EEC). The Urban Waste Water Treatment Directive (91/271/EEC) has also driven enormous investment (e.g. the provision of a new waste water treatment works at Cardiff cost Dŵr Cymru £180 million and that was only one - albeit the largest - of many schemes we have been required to undertake to help the UK comply with the Directive) and a recent ECJ ruling suggests that the EU is trying to extend the Directive's purview to include more specific requirements in relation to intermittent discharges.

Our sector provides essential services which must remain affordable for our customers, including those on low incomes. We see too little evidence that either the EU, or the UK, undertakes robust assessments of the financial implications of proposals and, in turn, an assessment of the impact on water charges. Consideration of these wider costs needs to be factored into decisions about whether tighter environmental standards are justified. This is particularly important now as the range of new standards under review could drive very significant additional costs for our customers but have limited, if any, benefits. New standards, such as those included in proposed revisions to the Priority Substances Directive (2008/105/EC), will drive up our carbon footprint significantly if not found to be disproportionately costly. To avoid such poor regulation, as a matter of policy, control at source solutions should be implemented before we consider any tighter standards on emissions from our discharges.

In the UK we have not yet developed effective ways to ensure that some other sectors, notably agriculture, are able to deliver their contribution to meeting European standards, e.g. in meeting the Water Framework Directive. As a result, an unfair proportion of the burden has historically been placed on the water and sewage sector and, in turn, our customers. It is essential therefore, that we review the various financial and other incentive processes we have available to ensure that all sectors involved with land use management are willing and able to make their contribution to meeting the required standards.

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

***2. 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?***

Most of the drinking water standards within the relevant European Directives (Directive 98/83/EC and its forerunner Directive 80/778/EEC) reflect Guidelines published by the



World Health Organisation which are based on sound science and enjoy international credibility. Standards prescribed in Wales and England have sometimes gone beyond EU requirements in some respects, partly to ensure they remain aligned with emerging WHO advice, e.g. in relation to risk assessments. It is not obvious why the European Union has competence for drinking water standards except perhaps in relation to bottled waters and for water used in food production.

Particularly given the increasingly global branding of the Blue Flag award and its link with local bathing water quality standards, there may be an argument for setting bathing water quality standards at a wider level than Europe.

The questions imply that there should always be one main level of competence. However, in some cases, there are arguments for action to be taken in tandem at several levels. For example, tackling the threats posed by climate change will require concerted global action and there have been a number of high profile treaties, such as the Kyoto Protocol, to encourage international collaboration. But that should not preclude EU action: given the economic significance of the EU bloc, its negotiating position can be enhanced if its Member States are already taking coordinated action that can act as a model for other states and blocs to follow.

Another example is the protection of threatened migratory species. If migratory species such as birds or other threatened species, are to be properly protected, coordinated action beyond the EU is likely to be needed. The RAMSAR and CITES Conventions are good examples of global agreements in this area. But that should not preclude action also being taken at a Europe wide level, such as establishing a coherent, pan-European network of sites to assure the long-term survival some of Europe's most threatened species and habitats under the umbrella of the Habitats Directive (92/43/EEC). The action taken at different levels can be 'joined up': so, for example, within the UK the Governments have said that RAMSAR sites should enjoy the same level of protection as sites designated under the Habitats Directive.

European legislation can provide a vehicle for the simultaneous delivery across Europe of wider international agreements. For example, the OSPAR Commission sought to stop the disposal of sewage sludge at sea: this 'soft law' was given legal weight through Article 14(3) of the Urban Waste Water Treatment Directive that phased out this practice across the EU by 31 December 1998.

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

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

Given the existence of many major cross border rivers, the argument for legislation governing the water environment is more obvious in relation to mainland Europe. That said, Northern Ireland shares cross border catchments with Eire, so the issue is relevant to the UK.

If environmental resources are to be protected – with the implicit burdens for business that such protection implies – it is right that there is some level of international coordination to ensure that the burden is proportionately shared between States. It encourages a fairer

market within the EU if industry faces comparable requirements: conversely it would distort the market and hamper sustainable development if Member States were able to gain an economic advantage by applying relaxed environmental standards.

The need for consistency of standards (and thus burdens) can militate against more flexible, outcome-based Directives, but such drawbacks can be overcome: for example, the intercalibration process for the implementation of the Water Framework Directive was designed to go some way towards addressing this issue.

Air quality is another trans-boundary issue where the case for coordinated action is fairly clear cut. There is also a strong case for pan-European waste legislation to avoid dumping of non-recyclables, particularly in poorer Member States.

#### ***4. 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?***

This question implies that the two objectives are competing. As the ecosystem services approach seeks to recognise, a healthy economy – now and in the future - often depends on the availability of natural resources: as Gaylord Wilson succinctly put it, “*the economy is a wholly owned subsidiary of the environment, not the other way around*”<sup>112</sup>.

A company such as ours is totally reliant on the water environment. It is in our long term commercial interest that the quality and quantity of water in the environment is maintained and, where necessary, improved.

Similarly, climate change poses a real threat to the UK’s economy. The events of summer 2007 when key infrastructure was under imminent threat from flooding illustrated all too well what is at stake. It is in our national interest to reduce emissions and if the EU can help bring that about, that would be in the national interest.

There does, though, need to be acknowledgement that what may be seen as affordable during a period of significant economic growth may become less affordable when Member States and their citizens are facing severe budgetary constraints, such as is being experienced at the current time. These wider issues should, for example, be allowed to inform considerations of disproportionate costs and timescales for delivery under the Water Framework Directive.

#### ***Current legislation***

#### ***5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:***

##### ***i. focused on outcomes (results)?***

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<sup>112</sup> Gaylord Nelson, 2002

Historically most of the water related European Directives prescribed particular standards that Member States were obliged to meet, e.g. the Shellfish Water and Freshwater Fish Directives (codified into 2006/113/EC and 2006/44/EC). The more recent Water Framework Directive (WFD) is often cited as a good example of outcome based legislation as it does not specify the standards that all Member States must attain to achieve 'good status' under the Directive. In this way, it is seen as offering Member States more flexibility in terms of tailoring the obligations to tackle relevant environmental issues within their territories. In principle this is clearly a desirable approach.

However, in practice, the UK's regulators prescribe standards that waterbodies must achieve to be classified as good under WFD. As these are not determined at a European level, they can be subject to repeated change. So, for example, the UK's environmental regulators have recommended that the standards they previously recommended under WFD for phosphorus should be significantly tightened: if Ministers accept their advice the cost of achieving this proposed change will be very large for water companies and thus their customers. This lack of stability hampers planning by business, so, for example, as a result of the uncertainty around future phosphorus requirements, sewerage undertakers do not know what standard they should be designing sewage works to achieve in their next 5 year (2015-2020) programmes, even though these complex plans have to be finalised for submission to our economic regulator later this year.

#### ***ii. based on an assessment of risk and scientific evidence?***

The 1976 Bathing Water Directive (76/160/EEC) was reviewed in the light of updated scientific evidence and this culminated in the adoption early in 2006 of a revised Bathing Water Directive (2006/7/EC). The types of bacteria to be measured under the revised Directive are undoubtedly more relevant. However, the revised Directive set standards that are significantly more stringent than its 1976 equivalent and we have seen little evidence that the costs of achieving these tighter standards are justified by the public health benefits.

There are some Directives that remain in place where the science is in need of review. For example, the Nitrates Directive sets an arbitrary standard of 50mg/l for waters affected by agricultural nitrate. This (unpopular) Directive should be repealed on the basis of unsound science and instead the Water Framework Directive should be the vehicle for setting and delivering relevant standards for waterbodies, including nutrients such as nitrate and phosphorus from whatever source.

The Habitats and Birds Directives have worthwhile ambitions. However, the approach taken to their implementation by the relevant regulators in the UK has posed problems for business. The regulators have, hitherto, tended to adopt an overreliance on the precautionary principle rather than seeking to apply a scientific, evidenced based approach to the protection of the features these Directives are intended to safeguard. In the long run, as well as risking unnecessary expenditure by business, this approach may not serve the relevant species well. We would welcome a much greater commitment from Regulators to monitoring the health of features and species underpinned by a greater effort put into trying to understand their needs. This would ensure that investment by business is better targeted in the future.

As a specific example, Dŵr Cymru is currently leading a major collaborative project to try to improve our understanding of the impact of our abstractions on the protected features in the Rivers Wye and Usk. These rivers are important sources of water for many of our domestic and business customers but are also Special Areas of Conservation under the Habitats Directive. We have tried hard to engage our regulators in this project but have experienced some reluctance on their part, e.g. in licensing our fish monitoring activities.

The Water Framework Directive puts considerable weight on ecology. In general terms Dŵr Cymru welcomes this shift in direction away from Directives that set arbitrary chemical standards on a pass/fail basis, toward an approach that looks at the health of a water body on a more holistic basis. The main drawback of the WFD approach is that much remains uncertain about what healthy ecosystems might look like in rivers and coastal waters; how to take account of the variables (e.g. the impact of tree shading on rivers); how to measure, for example, fish populations without damaging the very species you are seeking to protect; and how to deliver greater consensus between relevant regulators (here in Wales, the Welsh Government's decision to amalgamate Environment Agency Wales and the Countryside Council for Wales may help overcome this problem). The EC and the competent authorities within Member States need to factor these inherent uncertainties into assessments of compliance with the Directive.

### ***Doing things differently***

#### ***6. 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?)***

In developing standards, we would like to see greater involvement of these bodies on whom the burden will be placed. The UK Government relies almost exclusively on their statutory regulators who, whilst being expert on the protection of the environment, can be too far removed from delivery of improvement schemes and associated cost implications.

The recently established Natural Resources Wales is now the competent authority for most European environmental legislation in Wales: Dŵr Cymru welcomes the duty that has been placed upon it to have regard to costs and benefits in exercising its powers.

We would like to see greater flexibility within the EU/EC as regards the application of EU law. So, for example, if Member States can demonstrate that individual schemes under the Urban Waste Water Treatment Directive are unlikely to deliver significant measurable environmental improvement but will be very costly in financial and carbon terms, the EC should have the discretion – and be encouraged to use it – to allow Member States to apply less stringent standards. This could be achieved by applying the disproportionate cost provisions of the Water Framework Directive to the delivery of other, older Directives.

We would like the EC to undertake robust retrospective reviews of European obligations, so that their effectiveness (in terms of environmental improvement as well as cost-effectiveness) can be assessed. This would enable lessons to be learnt for future environmental legislation.

Dŵr Cymru therefore welcomed the EU's decision to undertake a review of its water law through its '*Blueprint to Safeguard Europe's Water Resources*' and has sought to engage in the process. However, thus far, we have gained the impression that the review is mainly aimed at justifying further action by the EC on water related matters, rather than making a robust assessment of the costs and benefits of its measures to date.

## **7. How far do you think the UK might benefit from the EU taking:**

### ***i. More action on the environment/climate change?***

Historically there has been an assumption that sewerage operators should be able to remove all polluting substances from effluent and thus help deliver European water standards. However, this should be reinforced through a greater willingness to prevent pollution at source. The European Regulation (259/2012) to introduce limits of phosphates in household detergents is a very welcome example of this and will make a significant contribution toward improving the aquatic environment, thus helping to deliver WFD. Setting pan-European standards for products to be sold is fully in accordance with the internal market ethos that underpins it. We would like to see similar action taken to reduce agri-chemicals and pharmaceuticals at source: this is a more realistic approach than introducing ever tighter standards under WFD daughter Directives which may not even be achievable without greater source control.

### ***ii. Less action on the environment/climate change?***

There is already a large body of EU related legislation, some of which are at very early stages of implementation (e.g. Marine Strategy Framework Directive). Apart from more source control (see our answer to (i) above) the water industry would like a period of stability to give us the opportunity to plan for and help deliver the existing body of legislation. For example, additional requirements on water resources, as was hinted at in the EU's *Blueprint to Safeguard Europe's Water Resources*, would be very unwelcome, as would a Soils Directive imposing new restrictions on the disposal to sewage sludge to land.

We would also welcome more flexibility, where relevant, in the application of existing Directives – see our answer to question 6 above: this would imply less enforcement action by the EC.

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

We acknowledge that Member States currently have limited room for manoeuvre regarding the implementation of European Directives within their territories.

As Welsh devolution becomes more established, we hope that the Welsh Ministers will look for ways to tailor transposition and implementation of European law to suit Welsh needs (e.g. in setting future standards for shellfish waters following the imminent repeal of Directive 2006/113/EC).

As mentioned above, we would also like to see more fundamental research and site specific monitoring by UK Regulators to support the derivation of environmental standards in place of a default precautionary approach.

***9. a. 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?***

As noted in our answer to question 2 above, the EU economic bloc does have considerable weight in international negotiations, generally more than individual States. The line the EU takes in such negotiations should be subject to prior agreement between States.

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

The UK should also continue to look for opportunities for its officials to form part of, or ideally lead, EU delegations, and thus increase the UK's influence at all relevant international fora, not just UNFCCC.

## ***Future challenges and opportunities***

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

Challenges - Population growth putting pressure on water resources; resilience in the face of climate change; reversing biodiversity loss.

We believe that there is an impending problem to be faced with regard to climate change and the Habitats Directive (as implemented in the UK).

Firstly there is increasing competition between public water supply and the environment for available water resource. As the climate changes we are anticipating the pattern of river flows to change with it, probably with lower flows in the summer, and higher flows in the winter. Having set precautionary flow standards for the benefit of designated species in many rivers, we can foresee growing pressure on abstraction, particularly in the summer to retain environmental flows. This also impacts on the volume of water available in the environment for dilution of treated effluent discharges.

In parallel, we also need to be aware of changes, arising from climate change, in the natural range of designated species such as migratory salmon where there is already evidence of a northward trend towards cooler waters.

It is important therefore that we keep a watchful eye on what we consider to be the 'natural environment' that we are protecting – making sure that as a nation we regularly review our designations so we do not expend our resources defending against the inevitable, and natural, movement of species in response to changes in the climate.

### ***b. 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?***

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

Apart perhaps for Northern and Southern Ireland, water resources is not an issue that, from a UK perspective, would usefully be addressed at an EU level, although that may not be true for (interdependent) mainland European countries.

Population growth is not an area on which a water utility can comment; other than to plan and invest to deal with it.

The practical implementation of European conservation laws should be reviewed to assess their success in achieving their objectives and to put them onto a more sound scientific footing.

## ***Anything else?***

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

There is a lack of join up between policies. For example, the Urban Waste Water Treatment Directive has significant implications for carbon: working with the EC, Member States should be able to weigh the wider environmental costs of carbon production against the environmental benefits of this and other Directives' requirements.

We would like to see the WFD concepts of technical infeasibility and disproportionate costs applied to other EU Directives, such as the Habitats Directive.

EU procurement rules should be relaxed to enable greater weight to be given the environmental and sustainability considerations when tendering for large projects.

Devolved administrations should be given more opportunity (and resource) to influence the negotiating position taken by the UK Member State on the EU stage.

There should be no ratcheting up of standards by the EC, e.g. using the Urban Waste Water Treatment Directive to set frequency of spills from sewer overflows even though the Directive set no frequency standards, or through the back door, e.g. through volumes of impenetrable WFD CIS guidance.

The UK is often accused of going beyond minimum European obligations, i.e. "gold-plating". Although detailed investigations to date have tended to disprove this (e.g. Defra's recent review of the Habitats Directive) it would be sensible if the UK continued to monitor other Members States to see if there are lessons to be learnt from their approaches to the implementation of European environmental laws.

## **Cometrics Research and Consulting**

**Q1** Enabled common standards to be established in many areas that the UK alone could not act on, such as vehicle emissions. In some areas, such as air or water quality the UK could act alone. However, even assuming that the UK standards are set optimally, it would still leave citizens at risk when traveling. The common standards have gone a long way to addressing this. Promotion of international collaboration in research has been highly beneficial and far more cost-effective than such research being undertaken at a national level.

**Q2** The environmental and climate effects of some EU policies, notably on agriculture (perhaps less so now on fisheries) are problematic.

**Q3** For climate there is a clear case for binding regulation being made at a global level. However, as things stand I see the EU as the best forum for the UK to work within.



**Q4** There is a strong case for environmental regulation for industry to be implemented more centrally, to avoid inconsistent application. Laxer standards in some places imply potential for competitive advantage, with member states playing the rules.

**Q5** Environmental standards provide consistency between member states. Given that air and water are not bound to national borders such standards should ensure that all play their part, avoiding free riders. Environment was first brought into EU competence because of concerns about the proper functioning of the internal market, a situation that remains unchanged.

**Q6** Impact appraisal for the European Commission follows a very similar path to impact appraisal for UK government. This requires the broader consequences of policies to be considered when new legislation is developed, hence opportunity is present to strike the necessary balances. The one area where I don't think it works well concerns agriculture.

**Q7** Taking air quality legislation as an example, EU legislation is properly focused on outcomes, for example in terms of health improvement and reduced ecological damage. This is done by bringing together researchers, analysts, etc. from a variety of fields from technologists to impact assessors to economists.

**Q8** All of the environmental legislation that I have first hand knowledge of (air quality, waste, chemicals, etc.) is developed on assessment of risk and scientific evidence, with opportunity for stakeholders to provide input.

**Q9** For chemicals regulation under REACH it would be useful to have a clearer protocol for prioritising substances for restriction or authorisation than at present. The current system seems to me to be somewhat haphazard, with some substances more 'low hanging fruit' than true priorities.

The EU is quite good at defining end goals, though these may be far distant. The development of clearer paths to meeting these goals might be beneficial in allowing stakeholders to better understand what is likely to happen and hence planning their investments accordingly.

I am not convinced that alternatives to legislation provide an answer in the majority of cases. I can think of a few voluntary agreements that have been well thought out, but these are few and far between. Even then, they have been introduced largely because of the threat of legislation from on high.

**Q10** If one considers climate change to be a problem and that it is in the national interest for us to combat it (as one would infer from UK legislation), it must be appropriate for the EU to take more action of the right sort.

That said I am sceptical of some of the interventions on renewable energy sources, though this applies as much to UK schemes (eg the regressive subsidies handed out for solar power) as to EU proposals.

**Q11** I am very hard pressed to see where this would be in the national interest. Clean air and clean water have a significant benefit for health as well as the environment. Given that neither respects national boundaries (particularly air pollution) it is hard to see why it should be beneficial for the EU to take less action. In some areas progress would be impossible at a UK level - common standards for motor vehicles being one example.

**Q12** For air quality legislation the UK has a massive process in place where responsibility is devolved down to local authority level. Given that exceedance of AQ standards reflects local conditions to some degree, this is appropriate. However, there is no systematic process established for local authorities to learn from one another. Action plans are reviewed by consultants for national government, but there is no proper system for identifying the most cost-effective approaches at local level. Comments go from the consultants to the local authority concerned and to Defra, but information is not pooled across local authorities. There are fora established where this could happen (e.g. IAPSC) but IAPSC has no budget to do this systematically. This raises a wider concern of inefficiency in the implementation of legislation (whether from the EU or not).

**Q13** If we accept that the EU's standards for air, water, waste, etc. are appropriate - and I see no disagreement from government on this - I can't see that there is a downside to the EU having a greater role in negotiating on things environmental with third countries. The EU will carry more weight than the UK. Interesting that China, Korea, etc. are developing their own versions of EU legislation on health and the environment.

**Q14** So long as the UK agrees with the overall objectives of team EU, there is no point in the UK not being part of it.

**Q15** For climate the challenges are twofold:

- Developing meaningful and effective international agreements
- Protecting those most at risk

For environment generally the science funded by the UK and EU has identified a number of important environmental risk factors with consequences for both health and the environment. Now we know what the problems are we have the opportunity to take action. For vehicle emissions there is a challenge to ensure that standards are set in a meaningful way - test cycles defined at present have little relation to the real world. Challenge in ensuring common standards across the differing economies of the EU.

**Q16** Any problem should be targeted at the geographic scale on which it operates. In many cases this is internationally, with the EU providing a useful collective voice for engaging with the debate or setting the agenda. Not sure what is meant by 'industry level', unless industry is provided with some sort of bubble within which it must operate.

**Q17** Benefit through shared research costs and access to a larger number of skilled researchers. Benefit through commonality in standards. Benefit to UK health and

environment through dealing with transboundary problems. Cost where UK disagrees with the EU position but cannot influence the debate effectively.

**Q18** The focus on 'environment' and 'climate change' in this questionnaire is done with no reference whatsoever to the health benefits of these policies. Such benefits are the main reason for a lot of so called 'environmental regulation'. These health benefits have direct consequences for business - healthy people earn more and spend more. Sick people require more healthcare. Analysis shows that these feedbacks can be very important.

## **EDF Energy**

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

Our key messages for this Call for Evidence are as follows:

Issues such as climate change are both global and long term in nature, and can only be addressed at a supranational level. It is therefore appropriate for action to be taken at the EU level as long as the frameworks adopted are capable of adapting to changing circumstances when necessary.

However, EU legislation should focus on environmental outcomes rather than specifying rigid routes for the delivery of those outcomes. We would highlight that there are a number of environmental Directives that have taken an extremely prescriptive approach without fully considering national or local conditions. Inflexible approaches serve to produce broadly the same environmental outcome as flexible approaches but in a less efficient and more expensive way.

It is therefore critical that Member States should have the flexibility to implement national mechanisms that best suit their specific circumstances. We believe that there will continue to be a role for targeted national initiatives to complement EU initiatives. For example, Electricity Market Reform in the UK is supplementing EU climate change initiatives to reflect the particular circumstances of the UK electricity supply industry and the timing of opportunities to decarbonise through new investment.

In addition, a key principle that should be retained is the concept of a "level playing field" across Europe for environment regulation. Preventing regulatory distortions between

Member States from occurring is important for the proper functioning of the internal market. In practice, this means that businesses and individuals should expect equivalent levels of environmental protection and associated regulatory requirements across all of Europe. Common standards and consistent regulation provide real benefits to businesses.

It is important that the wider policy context for sectors is taken into account in developing legislation. An integrated approach needs to be taken for parallel environmental policy areas, rather than developing them separately.

Finally, the costs and benefits of new European legislation need to be assessed by more transparent and technically robust methodologies. The economic assessment in legislation impact assessments is not always comprehensive or robust.

**Q1. What evidence is there that EU competence in the area of environment and/or climate change has:**

- i. benefited the UK / your sector?**
- ii. disadvantaged the UK / your sector?**

## **Benefits**

EDF Energy believes that the EU Emissions Trading System (EU ETS) is a good example of a policy area where it is appropriate for action at the EU level. Climate change impacts are global in extent and long term. The benefits of reduced carbon emissions are not dependent on location. The EU ETS provides a single European mechanism for controlling carbon emissions from single large point sources in a flexible way with a consistent pricing of carbon across Europe. The trading mechanism enables flexible responses by individual member states and installations and is not prescriptive. It should ensure that carbon abatement occurs at the lowest cost.

The inclusion of a CO<sub>2</sub> reduction target in the EU 2020 package firmly established climate change on the political and business agendas. Although, we are now in a different economic climate compared to 2008/9 and affordability concerns have risen, the development of a further 2030 climate change framework represents an opportunity for Europe to demonstrate that low carbon is compatible with growth through cost-reflective and efficient policy mechanisms.

Energy intensive industries and certain other activities are potentially vulnerable to competitiveness impacts that could lead to their relocation, often referred to as carbon leakage. A pan-Europe mechanism enables a European approach to deal with carbon leakage, rather than a fragmented and inconsistent set of Member State initiatives.

In a similar way to the EU ETS, the National Emissions Ceilings Directive (NECD) has taken a flexible rather than prescriptive approach to reducing the total emissions of key pollutants from each member state. This allows each Member State to tailor its detailed policy measures to reflect national circumstances, but within a framework that requires real action by all to deliver the required emissions outcome for Europe as a whole.

## Disadvantages

In contrast, there are many examples of Directives that have taken an extremely prescriptive approach. The Directives have prescribed inflexible limits or measures that are mandatory across the whole of Europe down to installation level. No account is taken of national or local circumstances. This can be characterised as “command and control” regulation that is not focused on outcomes but on mechanisms. It is inefficient because it inevitably requires additional, complex derogations to provide the flexibility that is essential in practice at a national level. It would be far more efficient to include that flexibility in the main implementation of the Directive.

Examples of such prescriptive Directives are the Large Combustion Plant Directive (LCPD) and the Industrial Emissions Directive (IED). In both cases, a rigid set of mandatory emission limits had to be modified by a complex set of derogations to reinstate flexibility.

It is important to understand that inflexible approaches do not produce a better environmental outcome than flexible approaches. Rather, they deliver broadly the same outcome but in a less efficient and more expensive way.

A further example is the Waste Electrical and Electronic Equipment Directive (WEEE Directive) - EC Directives 2002/96/EC and 2003/108/EC. The WEEE Directive, and the UK Regulations that transpose them, represent a significant improvement in environmental and health protection, lessens the impacts on the scarce landfill resource, as well as representing a positive contribution to reductions in greenhouse gases and to sustainable development.

It is reasonable to assume that the UK would have proceeded anyway with environmental regulation in this area. However, the prescriptive nature of the WEEE Directive required the UK Government to transpose specific requirements that reduced potential flexibility or reduction of 'red-tape' at source. A regulatory impact assessment (RIA) for the WEEE Regulations 2006 produced by the then Department for Trade and Industry put the implementation costs (for which could be read administration costs) at £28-33m per year.

Clearly if the UK had unilaterally implemented WEEE Regulations based upon an international or European standard there would still be costs of implementation, but there

would have been the potential to reduce the estimated £28-33m costs to business. For example, simplifying or removing the requirements for registration of producers would still have allowed the UK to have achieved the overall aim of the Directive but at potentially lower cost.

A separate category of challenging legislation is Directives that amend key legal principles. This can result in a complex set of legal interpretations. The Habitats Directive is a good example. It rightly sets out species and features that should be protected across Europe, but it goes on to specify a novel burden of proof of no harm, implying an absolute requirement to protect and preserve irrespective of cost. This does not fit well with the rest of European environmental law and it continues to generate a growing legal case load, without necessarily delivering any greater level of environmental protection in the final outcomes.

The definition of waste is another good example where the EU has set out a headline definition that must be applied universally, with limited scope for the national interpretation. There is a lack of further detailed interpretation and guidance that is necessary when applying waste law to practical, complex cases.

As a result it is often difficult at a Member State level to determine whether a material is a by-product or a waste. This challenge of definitions is a continuing obstacle to the effective reuse of waste and the maximum use of by-products, which are key objectives of European waste policy. The legislation is obstructing policy delivery, because the difficulty of securing an agreed classification as a by-product means that it is often simpler to dispose of a material as a waste, rather than to divert it for reuse as a by-product.

In the area of energy policy, the fixed EU 2020 renewables target has been very expensive for the UK (for example, the UK Renewables Obligation has already cost c.£43bn<sup>113</sup>). One reason is that the UK started from a position where it had to increase its renewables share tenfold, while the average Member State had to only double its renewables share.

Even in cases where we believe the EU should have competence, there are examples of the inability of the EU to effectively adapt its policy approaches to changing circumstances.

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<sup>113</sup> UK Department of Energy and Climate Change (DECC) presentation, Benchmarking the Renewable Energy Strategy: current matters in review, and issues of deployment, 8 May 2013

Looking at climate change policy, a shortcoming of the EU ETS is its inability to provide an effective supply side response and therefore the current surplus of carbon allowances, which is largely due to the economic recession, has meant that the EU ETS price is not providing the right signal for investment in low carbon generation plant. The need for structural reform of the EU ETS is overwhelming, as potentially it remains the most efficient mechanism for European action on climate change. In addition to the surplus, renewables and efficiency targets have undermined the carbon price, underlining the importance of avoiding such additional targets for 2030. Only a carbon reduction target is required.

These examples illustrate the point that, while a broad European framework may be appropriate, it is important that these frameworks provide sufficient flexibility to deal with specific national circumstances and for the EU to ensure that the EU framework is capable of adapting to changing circumstances. Furthermore, Member States should have the flexibility to pursue detailed interpretations and national mechanisms that best suit their circumstances for environment and climate change.

**Q2. 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?)**

As noted in our answer to Question 1, climate change impacts are global and long-term. Action coordinated by the EU is likely to provide an effective way forward for most aspects. However, there will be a role for targeted national initiatives to complement the EU initiatives. For example, Electricity Market Reform in the UK is supplementing EU climate change initiatives to reflect the particular circumstances of the UK electricity supply industry and the timing of opportunities to decarbonise through new investment.

One area of climate change policy that we believe does not require EU action is climate change adaptation. This is best managed at a Member State level, supplemented by regional arrangements, for example for shared river basins. Climate change impacts will vary significantly across the EU and there is no single approach or set of measures that can fit all Member State circumstances.

Environmental impacts span local, regional, national and international scales and all timescales. There is definitely a role for pan-European initiatives and a common EU approach for long-range environment impacts. However, it is not realistic to expect the EU



to specify the most appropriate action at every scale cater for every local circumstance. Consequently, it would be useful for the European Commission to adopt clear principles to determine the balance of competence between the EU and National Authorities.

In formulating these principles, as a general rule it is appropriate for decisions on overall environmental goals to be made by the EU. However, decisions of exactly how these goals are delivered may need to be taken at the Member State level, particularly where the issues are local in nature or are heavily affected by Member State circumstances.

In summary, EU legislation should focus on environmental outcomes and avoid specifying rigid routes for the delivery of those outcomes.

Specific environmental examples of the need for decisions to be made at a national level can be found in the following areas:

- LCPD, IED and industrial regulation in general
- Waste regulation
- Water quality regulation
- Habitats Directive

We would be pleased to provide more details to illustrate these examples if this would assist.

**ii. currently made at another level were instead made at EU level?**

We do not have any examples that fall into this category.

**Q3. To what extent do you consider EU environmental standards necessary for the proper functioning of the internal market?**

A key principle that must be retained is the concept of a “level playing field” across Europe for environment regulation. Preventing regulatory distortions between Member States from occurring is important for the proper functioning of the internal market. In practice, this means that businesses and individuals should expect equivalent levels of environmental protection and associated regulatory requirements across all of Europe. Common standards and consistent regulation provide real benefits to businesses.

However, universal, mandatory standards are not the only way to deliver this consistency. “Command and control” measures often fail to recognise all the relevant specific circumstances and can hence result in inefficient and excessively costly regulation.

**Q4. 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?**

A key challenge for EU competence on environmental matters is that the low-cost measures to deliver environmental improvements have largely all been taken. The marginal cost of further actions is increasing. Consequently, the balance between costs and benefits of further environmental legislation is more marginal than in the past. This places increasing weight on the impact assessments of new EU legislation.

Unfortunately, the economic assessment of costs and benefits in legislation impact assessments is not always comprehensive or robust. Member States may recognise this, but are frequently reluctant to challenge the details. The trend for outsourcing of impact assessments to consultants by the European Commission is a particular concern:

- Consultants are not always able to gain the necessary insight into sector circumstances.
- Commission staff do not develop the level of understanding needed to make decisions on often complex matters.

There are opportunities to draw upon wider resources in Member States if earlier engagement is made by the European Commission. Costs and benefits do need to be assessed by more transparent and technically robust methodologies. Air quality legislation and the Water Framework Directive are good examples of the challenges for impact assessment.

In conclusion it is proving increasingly challenging to take appropriate account of economic factors, particularly at national level, in developing new EU environmental legislation.

**Q5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

- i. **focused on outcomes (results)?**
- ii. **based on an assessment of risk and scientific evidence?**

### **Focus on outcomes**

The previous examples set out in our answer to Question 1 of the EU ETS and NECD are good examples of legislation focused on outcomes. However, it is fair to say that these are in a minority.

In contrast, there are many more examples of Directives that have taken a prescriptive approach, focusing on mechanisms rather than on outcomes. For example, the LCPD and IED specify inflexible limits that are mandatory across the whole of Europe down to installation level.

Current examples of inflexibility are the recent amendments being proposed to the Environmental Impact Assessment Directive and to the Nuclear Safety Directive. As a result, both of these are moving away from setting reasonable minimum standards and towards a more prescriptive legislative approach.

It would be a very positive development if the EU were to adopt an approach to environmental legislation which prioritised:

- the definition of clear outcomes, and
- flexible implementation mechanisms for Member States.

### **Risk and scientific evidence**

Risk assessment techniques and methodologies need to be adopted far more extensively in impact assessments of EU legislative proposals. At present there is very little consideration of the uncertainties involved, both in the measures available and the projected outcomes.

In particular the development of European legislation needs to distinguish more clearly between hazard and risk. The overall environmental outcome can be the same, but delivered at lower cost, if risk is taken into account, because this enables existing mitigating

factors to be taken into account. Further measures specified in the legislation can then be proportionate to the further action that is actually required.

Linked to this is a concern over excessive application of the precautionary principle in developing EU legislation. Rather than adopt precautionary measures that may be excessive and costly, it would be more efficient to apply a combination of risk assessment and collection of further evidence.

Waste regulation is a good example where a greater use of risk assessment could enable more flexible regulation at a national level. There are several examples of particular materials that are unnecessarily classified as waste, or classified as a more hazardous category of waste, because little or no account has been taken of the actual environmental risk presented. We would be pleased to provide further detailed case studies if this would be of interest.

A greater emphasis is needed on understanding the level of scientific uncertainty in the evidence used to assess risk, costs and benefits. A simplistic application of single, central cases can be misleading. A more sophisticated approach to policy formulation is required, given the ever smaller additional environmental benefits that remain to be secured by further action, following the success of earlier European initiatives. This is particularly important in complex topics such as air quality and health.

**Q6. 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?)**

The lack of real and effective wider stakeholder engagement at the early stages of legislation remains a major challenge. Environmental Directives often cover topics that are highly technical, but it can be difficult for stakeholders to engage the key European Commission staff and consultants at an early stage to present relevant technical points. At present, the European Commission prefers to develop proposals in isolation and then present a fairly well-developed proposition. The European Commission is then open to inputs from stakeholders, but by this stage it can be difficult to redirect legislation if, for example, a key issue has been overlooked.

There is scope to use more frameworks for the flexible implementation of Directives. This would be enabled by more clearly defined environmental outcomes in the legislation. Negotiated frameworks at a national level, to implement specific Directives in specific

sectors, can work well. However, they require flexibility to be available in the original Directive. The England & Wales coal-fired power stations' regulatory framework for air emissions from 2008 to 2015 is a good example of the framework approach. This implemented the LCPD and the Integrated Pollution Prevention and Control (IPPC) Directive.

Voluntary agreements are an alternative to formal legislation. However, experience of these in industry has been mixed and the general conclusion is that a regulatory backstop is still required in most cases.

As highlighted in our answer to Question 4, costs must be assessed more robustly. Benefits must be realistic and assessed using credible methodologies.

It is increasingly important that the wider policy context for sectors is taken into account in developing legislation. An integrated approach needs to be taken for parallel environmental policy areas, rather than developing them separately. For example, air quality, climate change, energy efficiency, energy policy and industrial emissions control, all interact very closely. However, to date these have been developed largely independently and often by different European Commission Directorates. There is a need for the different Directorates to work more closely together.

There is also a need for Member States to be more proactive and to provide further expertise to support the European Commission. However, this will require the European Commission to become more open to Member State input from the start of legislation development.

At present the typical sequence for a new directive is for the European Commission to develop proposals largely in isolation on its own initiative and then present a fairly well-developed proposition to Member States and other stakeholders. It is often difficult to redirect the European Commission at this point if certain fundamental issues have not been taken into account. There are many options for a more productive collaborative approach to be taken earlier.

**Q7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change?**

We support continued and greater action on climate change by the EU through the EU ETS. The development of a further 2030 climate change and energy framework represents an opportunity for Europe to demonstrate that low carbon is compatible with growth through cost-reflective and efficient policy mechanisms.

**ii. Less action on the environment/climate change?**

The UK would benefit from an EU approach to developing legislation that was based more explicitly on some guiding principles on competence. These principles would address the concerns set out in this response. For example:

- The EU should focus on overall outcomes.
- Member States should have maximum flexibility in selecting the detailed measures to achieve the outcomes.
- For impacts at a global level a single European mechanism is more likely to be appropriate. However, the EU must be able to demonstrate its ability to effectively manage the policy implementation and its ability to adapt it as necessary.
- For impacts at a local level, or dependent on local circumstances, a prescriptive European approach is unlikely to be efficient or workable.

We would welcome the opportunity to develop such a principled approach. If applied in practice, this should automatically identify when the EU should take more or less action on environment and climate change.

**Q8. Are there any alternative approaches the UK could take to the way it implements EU Directives on the environment and climate change?**

Building on the options that we set out in our answer to Question 6, the UK should seek to flexible mechanisms as far as possible in implementing Directives. The use of sector frameworks for some environmental legislation has been an effective approach in the power sector and could have wider applications.

The UK does not always make full use of the flexibilities that are available in EU Directives. In the example of waste given in our answer to Question 1, there is some scope to apply Member State discretion in the definition of by-products, for example. However, the UK regulators have so far been very precautionary and reluctant to apply any additional interpretation. In implementation, the UK often focuses on the “letter of the law” rather than starting from the intention and purpose of a Directive.

The recent DEFRA review of the UK implementation of the Habitats Directive is an excellent example of how the UK can be pro-active in re-examining how the implementation and interpretation of a Directive has evolved over the years and how this compares to the original intent of the Directive.

We would strongly recommend similar reviews are carried out for other Directives. The Waste Framework Directive would be an immediate candidate.

**Q9. a. 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?**

In acting as a single entity, the EU is able to maximise the advantage of economy of scale, and greater political influence. The EU combined is one of the largest economies in the world and should be able to leverage this in discussions and negotiations. Therefore, as a general principle, a greater role for the EU in international agreements should be beneficial.

However, this is dependent on the internal organisation of the EU being capable of identifying and accounting for the range of internal views on often complex issues. In our previous answers, we identified the opportunity for the European Commission and Member States to work more closely earlier in the development of legislation. The same applies to preparation for international negotiations and agreements.

**b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

Our assessment is that the international climate change negotiations have benefited from the EU approach, rather than a series of individual Member State initiatives. By presenting a unified view and a common commitment to action, the EU has been able to present a strong position.

We consider it very important that the UK is part of Team EU at the UNFCCC.

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

Further environmental improvements will have increasingly higher marginal costs. Determining and delivering the appropriate level of action will be increasingly challenging. The EU needs to engage more effectively on the costs and benefits of proposed environmental legislation, to ensure that it is not only efficient and effective, but also affordable.

The CO2 reduction target in the EU 2020 policy package firmly established climate change on the political and business agendas. The development of a further 2030 climate change framework represents an opportunity for Europe to demonstrate that low carbon is compatible with growth through efficient and competitive policy mechanisms.

**b. 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?**

As we set out in our answer to Question 7, the UK would benefit from an EU approach to developing legislation that was based more explicitly on some guiding principles on competence. These principles would address the concerns set out in this response. For example:

- The EU should focus on overall outcomes.
- Member States should have maximum flexibility in selecting the detailed measures to achieve the outcomes.
- For impacts at a global level a single European mechanism may well be appropriate.
- For impacts at a local level, or dependent on local circumstances, a prescriptive European approach is unlikely to be efficient or workable.

We would welcome the opportunity to develop such a principled approach. If applied in practice, this should automatically identify when the EU should take more or less action on environment and climate change.

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

As noted above, applying an approach to competence based on sound principles should lead to the most cost-effective solutions in delivering required environmental and climate change outcomes.



Affordability for customers is a key concern for the electricity sector. The sector is committed to delivering climate change and environmental improvements. More emphasis is needed on the cost-effectiveness and efficiency of the delivery mechanisms to achieve the desired outcomes.

**Q11. Are there any general points you wish to make which are not captured in any of the questions above?**

The majority of UK environmental regulation is driven by the implementation of European Union Directives and Regulations. These requirements are a key factor in the development of new electricity generation projects. It is important that investors in new generation have clarity on their environmental obligations and are assured of regulatory stability.

Consequently, if the Government were to consider taking back competence in environmental regulation, there would need to be a well-managed transition with considerable advance notice, to ensure that investor confidence was not affected.

In addition, although we are aware that the Government will be carrying out a review of the EU's competences with respect to Energy in Autumn 2013, we would like to take this opportunity to agree with the assertion in the Call for Evidence that climate change policy is inextricably linked with energy policy.

We believe that Member States should be free to meet any agreed greenhouse gas emissions reduction target at least cost to their consumers, and in a way that best suits their national circumstances, both politically and economically. This is consistent with Article 194 of the Lisbon Treaty, which makes it clear that Member States retain the right to determine the structure of their energy mix and the structure of their energy supply. The European Commission was correct in its recent "Green Paper - A 2030 framework for climate and energy policies" to acknowledge the diversity of geographical characteristics, natural resources and economic capability of Member States. Since differing circumstances have led to differing energy mixes and industrial structures, it is our view that a wholly unified energy policy across Europe would not be feasible.

It should be left to Member States to develop their own energy policy options to match the relative availability and acceptability of different technologies. Member States should be accountable to their own citizens for the costs of the energy policies they choose to pursue, and the arrangements should be transparent so that consumers are clear about what they are paying for.

EDF Energy therefore supports an overarching technology-neutral decarbonisation target at the EU level for 2030. This will allow Member States the flexibility to create the market framework that they consider will best deliver low carbon investment, and it is reasonable to expect that these arrangements will differ from country to country.

## **EDF Energy**

**August 2013**

### **EEF, the manufacturers' organisation**

EEF, the manufacturers' organisation is the representative voice of UK manufacturing, with offices in London, Brussels, every English region and Wales. We are a not for profit organisation with a growing membership of almost 6,000 companies of all sizes, employing some 900,000 people from every sector of the engineering, manufacturing and technology based industries. UK Steel, a division of EEF, is the trade association for the UK steel industry. It represents all the country's steelmakers and a large number of downstream steel processors.

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### **Summary of response**

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- It is essential that EU environment and climate policy helps to promote the single market and ensures a level playing field for all Member States. However the EU and the UK must be mindful that unilateral action can cause competitiveness risk;
- The level of competence for environment and climate change policy between the UK and the EU needs to be balanced between EU Regulations which are not over burdensome and lean but clear transposition of Directives by HMG. EEF believe both the EU and HMG must improve;
- The EU has a major role to play in influencing the rest of the world and encouraging other countries to adopt environmental and climate change standards;
- EEF recommends that the development, deployment and enforcement of EU environment and climate change policy should move away from being based on the precautionary principle to a risk based approach;
- The UK must lead the better regulation agenda in Europe because of its strong expertise in this area. It is essential that EU policy development improves, with more evidence based policy development, better impact assessments and a constant review of the burden and effectiveness of regulation as well as its competitive impacts;

- UK government must engage with industry and other stakeholders earlier in the development of policy at the EU level, ahead of the formal review process in the Parliament and Council. The Commission must also improve how it engages with stakeholders and increase the transparency of its processes. The UK, meanwhile, must also focus on transposition of EU directives which is outcome focused, and should consider the merits of “copy out”.

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## Response

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The UK’s relationship with Europe and EU is vital to manufacturers in Britain as the single market is our largest export market.

A significant proportion of environmental and climate change legislation regulating manufacturing now emanates from Brussels. The UK has been a champion for environment and climate change policy for many decades and has been a driving force behind the development of European legislation. This in itself is not necessarily unattractive, It is important that we ensure a level playing field across Europe in the development and application of legislation.

Alongside the need for a truly common approach in the EU, we must ensure that legislation does not impinge on the competitiveness of businesses competing with extra-EU markets. There is a clear need for better regulation in the EU. The UK, with its undisputed expertise in this area, must lead the better regulation agenda from within Europe.

### **Advantages and disadvantages**

Driving change: The UK, and in turn the EU, has undoubtedly driven improvements in environmental practices across Europe. Well-designed environment and climate change policy can stimulate manufacturers’ investments in innovation, jobs and supply chains and can also create new markets, for example stimulation of markets for energy efficient equipment.

A level playing field: The key advantage of EU competence in this policy area should be in enabling the correct functioning of the single market and ensuring that manufacturers in Europe are addressing environmental and climate change challenges equivalently in a clear, coherent and compatible manner.

Well-designed policy: Our concern is that well-designed policies are few and far between and the poorly-designed ones are far more prevalent. More often than not, the UK and the EU have relied on a series of explicit and implicit price signals, leaving manufacturers facing unilateral cost increases. Too many policies squeeze production and innovation rather than tackle life-cycle impacts. To date the EU’s commitment has been too inconsistent or too uncertain to spur long-term investment.

*Burden of regulation:* Despite the opportunities presented by well-designed policy, it is clear that environmental and climate change legislation puts a significant burden on manufacturers both in terms of cost and time. Analysis conducted by EEF<sup>114</sup> in 2012 showed that over the last two years UK manufacturers have seen the cost and time needed to comply with green regulations increase. Although there was no distinction made between EU and UK legislation in this analysis, the EU must review the burden of regulation regularly.

*Coherency and compatibility:* Where it is more appropriate that Member States transpose EU legislation, Directives must ensure a coherent and compatible legislative environment in all Member States. Application of policy in different Member States can vary significantly which can create competitive distortions within the single market. An example is found with the Waste Electrical and Electronic Equipment (WEEE) Directive which is applied differently in many Member States meaning that companies operating across Europe are required to comply with a host of different schemes. EU legislation must ensure that Member States' approaches are compatible and that they seek to minimise regulatory burden for manufacturers. The disparity in the ability of different Member States to enforce complex legislation must also be considered. Some Member States are better positioned than others to engage with the development of policy and fund and deploy effective enforcement.

*The risk of unilateral action:* It is vital that policy makers in both the EU and the UK be mindful that unilateral action, at either EU or Member State level, can cause competitiveness risks if the regulation landscape is too burdensome or if it places costs on manufacturers that aren't borne by our competitors and that can't be easily passed on to consumers. The key concern with EU legislation is the risk that unilateral action places a cost and administrative burden on manufacturers not borne by our key extra-EU competitors. If the EU is to take a more prescriptive approach legislators must ensure that legislation is risk based, does not disrupt intra-European trade and has no competitiveness risk with extra-EU markets

A prime example is energy and carbon reduction policy. Climate change is a global challenge and requires a global response. Climate change legislation must be focused on driving change at a global level, not simply within the EU-28.

A robust, global means of pricing carbon would be of significant benefit; however in isolation, EU climate change policy risks restricting growth in carbon efficient countries, inversely incentivising production in countries with low carbon standards. This risks the displacement of relatively efficient manufacturing within Europe in favour of imported materials, often with significantly higher levels of embedded carbon. Thus investment and jobs here in the UK are put at risk with no net benefit for global climate change.

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<sup>114</sup> EEF (2012) *Managing Green and Growth - A survey of manufacturers*

Encouraging others: The EU has a major role to play in influencing the rest of the world. The EU must continue to encourage other countries to adopt environmental and climate change standards. However in most cases this has yet to result in equivalent systems of the same rigor. While more countries are undoubtedly seeking to adopt their own schemes and standards, it is clear they will not develop systems which unduly risk the competitiveness of their domestic industrial sectors. The EU must show real leadership, and demonstrate that we can meet our ambitious emissions targets while our industrial sectors prosper and grow.

## **Future challenges and opportunities**

As already discussed well-designed environmental and climate change policy can stimulate manufacturers' to invest, can create innovative new markets and help firms become more efficient. However we need a new approach in the EU that understands the trade-offs involved, is grounded in how businesses actually operate and reflects global economic realities. Manufacturers need the clarity and predictability of a clear vision from the UK and the EU on how industry can deliver its contribution to a greener economy.

In February 2013 EEF published *Tech for Growth*, which set out the significant opportunities in the transition to a low carbon economy, and there are additional opportunities in unlocking wider resource efficiency. Surveys of business executives<sup>115</sup> within manufacturing continue to show that access to raw materials is still perceived to be a threat to business growth in the UK. A combination of factors, from geopolitical tensions and demographical changes to changing resource demands and climate change mean that concerns about future material security are mounting. This challenge must be addressed at both the EU and UK level, as our competitors around the world are much further advanced. The EU must develop policies that enable manufacturers to contribute to this challenge.

EU policy needs to be at the heart of driving innovation in these new markets, and enable manufacturers to develop innovative processes and products which will improve energy and resource efficiency, reduce carbon emissions and improve environmental standards.

Many of the challenges in reducing carbon emissions and unlocking resource efficiency will require sensitive action at the EU level. Sectors are reaching the limits of current technology and process and will be required to fundamentally change how products are designed, manufactured and used. This will only be achieved with support at a European level. This challenge is heightened for trade-exposed, energy-intensive sectors, such as steel, which is why EEF has called for the European Commission to urgently explore sector-specific regimes. This will be particularly important in the continued absence of a global deal on climate change. UK government can support industry by working with it to develop a credible alternative model and championing its adoption. The UK and the EU must support these sector agreements in the medium to long-term as the most efficient way

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<sup>115</sup> EEF (2013) *Executive Survey 2013* and EEF (2012) *Executive Survey 2012*

to tackle emissions from hard-to-treat sectors and make full use of diplomatic connections to build support and participation other countries, particularly those who are not signatories to the second commitment phase of the Kyoto Protocol.

To help fund this transition the UK must help manufacturers access future innovation funding opportunities arising from EU's innovation and research framework Horizon 2020 and encouraging the Commission to allocate all funding on the basis of clear, common criteria. In addition we recommend that the Commission to adopt a technology-neutral approach when allocating further project finance through NER300. Currently it is solely focused on Carbon Capture and Storage and renewable energy projects. For consistency, it should adopt the same criteria for innovation investment as Horizon 2020. Future schemes of this ilk should be rationalised with Horizon 2020.

Getting this right will help manufacturers to unlock opportunity in low carbon markets, estimated by EEF to be around £800bn between now and 2050<sup>116</sup>, and will help to realise significant opportunities in resource efficiency and material security.

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

For environmental legislation which has an impact on a national or local area, Member State competency, supported by EU Directives with coherent, compatible and appropriate Member State legislation, may be the best solution, for example regulation of waterways and local air quality. For environmental and climate change impacts on European or global scale, EU competency may be more appropriate.

However the level of competence for environment and climate change policy between the UK and the EU needs to be balanced between EU Regulations which are not over burdensome and lean transposition of Directives by UK government. In both cases there are examples of where improvement is needed. REACH is seen as an overly burdensome regulation which is targets hazard rather than risk and the original transposition of the WEEE Directive left manufacturers paying significantly more in the UK than in other Member States. The EU has a role in highlighting and driving best practice.

The UK government must also be mindful that unilateral action can cause competitiveness risks for manufacturing. A clear example of policy currently made at national level which goes beyond EU level is the introduction in the UK of a Carbon Price Floor.

The Carbon Price Floor sets a minimum price for carbon in electricity generation and through the Carbon Price Support sets an additional cost, on top of the cost of EU ETS, for UK generators. This price will be passed on to consumers, with the result that consumers in the UK will pay a significantly higher price on carbon in electricity than EU competitors. EEF's analysis shows that by 2015 this additional cost, not borne by competitors in the EU, will increase electricity prices by 10% alone.

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<sup>116</sup> EEF (2013) *Tech for Growth - Delivering green growth through technology*

If Member States are concerned with the functioning of EU legislation, in this case the price of carbon in the EU ETS, then this must be addressed at an EU level through changes to EU policy, rather than applying a Member State level sticking plaster policy which adds unilateral cost and drives disparity within the single market.

However the EU must also be mindful of, and respect, the principle of subsidiarity in energy policy. EEF believes an important lesson to learn from the EU 2020 climate and energy framework is the need to avoid impinging on the discretion of Member States to formulate and implement national energy policies wherever possible. Going forward, the EU should focus on overall objectives rather than specific outcomes. An EU 2030 framework should focus on decarbonising energy supply, enhancing energy security and making European energy prices and markets more competitive. Within those overall objectives, Member States should be given maximum discretion in the formulation and design of policies. A technology-neutral approach to decarbonising energy, rather than a renewables-specific target, is essential.

### **Doing things differently**

*Lead the Better Regulation agenda:* The UK must lead the better regulation agenda in Europe. It is essential that EU policy development improves. There is a clear need for more evidence based policy development. A key example is the experience of the zinc galvanising sector that faced significant legislation through poor analysis of the impacts of their products on the natural environment. In 2010, after 9 years of development, the EU published the *European Union Risk Assessment Report – Zinc metal*. In the early stages of the development of the report it was concluded that high zinc concentrations in surface waters and sediments alongside motorways was the result of leeching from galvanised crash barriers and lamp posts. It was then recommended that the EU should look at a ban of galvanised products or the painting of galvanised products used in these applications. However research carried out by the galvanising sector, at significant cost, showed that the significant contribution to zinc in surface waters and sediments alongside motorways was zinc from tyre ware.

*Build in constant review of EU legislation:* There is a need for constant review of European policy which focuses not just on ensuring that the legislation is having the right outcome, but ensures it is not creating distortions in the burden for manufacturers in either the internal or external markets. Recasts and reviews of current legislation should evaluate the impact that the policy is having in different Member States and aim to reduce the burden of regulation.

*Better Impact Assessments:* Central to the success of any regulatory reform programme, is clear and robust understanding of the cost of regulation. The Commission introduced impact assessments in 2006 and, whilst they are not mandatory for all proposals, they have become increasingly embedded in working practices. However, there remains considerable scope for improvement. Regular examples of poor evidence to support the assessment of costs and of benefits that have not been clearly defined, let alone quantified, are still seen.

A joint report by the UK, Danish and Dutch governments identified the poor quality of impact assessments in 2010. EEF believes that full and public impact assessments should be mandatory for all legislative proposals and quantify all economic costs and benefits as far as possible.

The European Parliament has recently created a new office to carry out impact assessments. All Parliamentary amendments likely to result in costs to business of more than €50m should be subject to impact assessment.

Move away from the precautionary principle. EU Environment and Climate Change policy should move away from the precautionary principle to a risk based approach. The precautionary principle often leads to significant, and disproportionate, legislative burden on industrial processes and manufacturers where the risk of environmental impacts is low.

This is clearly illustrated in the case of REACH with a key example in the regulation of nickel in stainless steel. The addition of nickel in steel creates an important grade of stainless steel prized for being non-brittle, non-magnetic and for its strength. It can be considered a resource-efficient material – it is highly durable and infinitely recyclable. It is clear that nickel in isolation presents a risk to human health and there needs to be appropriate legislation to control those risks. However nickel bonded as an element of a complex alloy such as stainless steel will remain bonded and is as a result extremely low risk. Yet should nickel become subject to authorisation, stainless steel manufacturers will be subject to the same legislative and cost burden as applications and processes using nickel which present significant higher levels of risk.

Although there has been some progress in this area, for example with the recommendations of the REACH review, the principle of risk based policy must be expanded to the development, deployment and enforcement of EU environmental and climate change legislation.

Implement Policy Review Cycles: There is also a need for constant review of EU legislation which truly examines the burden and effectiveness of regulation in the EU and Member States. A core component of the review should be a Better Regulation ambition to ensure that the relative burden in each Member State is assessed and recommendations that focus on reducing the cost and time burden of the legislation on those whom the legislation targets. Reviews should also assess whether the objectives of legislation have been met and should not be approached with a preconceived expectation to tighten regulation if they have.

Undertake Meaningful Consultation: UK government must also engage with industry and other stakeholders earlier in the development of policy at the EU level. Ahead of the formal review process in the Parliament and Council, while policy is being developed by the Commission, Member States should be provided with the opportunity to consult widely, with industry and other stakeholders on the legislative proposal. The time for review should be



appropriate to the complexity of the policy; often Member States are provided with as little as a week to comment on proposals from the Commission. This is frankly unacceptable.

*Better transposition:* The UK government should improve the application of EU Directives through effective transposition, which considers the desired outcome of the policy and ensures that the UK legislation achieves this outcome at least cost and burden. The recent decision by the government to apply derogations where they appear in EU Directives is a positive development, although this has not always been the case. EEF would call on the UK government to review historic legislation to ensure that derogations available in EU Directives are appropriately applied. A good example of this is the application of the exemption of metallurgical and mineralogical processes from the Climate Change Levy as enabled by the Energy Taxation Directive.

Another example can be found in the application of the guidance for the EU Emission Trading System, which required the emissions from all combustion sources to be reported. Strict application of this guidance by the UK regulator, the Environment Agency, resulted in many UK operators being required to add very small sources such as acetylene and propane canisters to their permits and absurdly in some cases Bunsen burners. Whilst this is strictly required by the MRR, these sources are so small that the requirements for monitoring and reporting are seen as inappropriate and intelligence from other Member States shows that these emissions are not included.

The UK must also focus on transposition of EU directives which is outcome focused, and should consider moving away from copy out principle to ensure that the legislation is enforced in the UK in a comparative way to other Member States.

## **Energy UK**

### **About Energy UK**

Energy UK is the Trade Association for the energy industry. Energy UK has over 80 companies as members that together cover the broad range of energy providers and suppliers and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes and invested over £10 billion in the British economy in 2011.

### **Key points**

- ▶ The electricity generation sector is subject to a very high level of environmental regulation. It is also a consistently high performer in terms of compliance with Environmental Permits, with 85% of the sector in compliance Band A in 2011 and no installations in Bands D, E or F<sup>117</sup>.
- ▶ The vast majority of UK environmental regulation originates from the transposition and implementation of European Union Directives and Regulations. It is so significant for the electricity generation sector that, if the Government were to consider taking back competence in this area, its intentions would have to be clearly signalled well in advance and any transition would have to be gradual and carefully managed to ensure that investor confidence was not adversely affected.
- ▶ Energy UK is supportive of legislation for Environment and Climate Change at EU-level, provided that the instruments are clear, consistent and introduce sufficient flexibility to allow them to be implemented appropriately across a range of Member States that are at different stages of development of environmental awareness.
- ▶ In general, we would support a greater focus on environmental outcomes instead of a prescriptive approach to regulation that struggles to reflect the full range of local circumstances across the EU.
- ▶ We would like to see the Commission take a more principled and considered approach to the introduction of environmental legislation in future. It is important to recognise that EU legislation has delivered very significant environmental improvements but that levels of emissions in some areas are now so low that it will become very costly to reduce them further.

## **1. What evidence is there that EU competence in the area of environment and/or climate change has:**

### **i. benefited the UK/your sector**

As most emissions do not respect national boundaries, it is appropriate that emissions standards and frameworks are developed on a pan-European level, based on the “polluter pays” principle. This avoids the negotiation of a significant number of bilateral agreements.

The European Union’s (EU) 2020 Climate and Energy framework has been successful to the extent that the EU is on track to meet its key greenhouse gas target, continues to lead the international debate on climate change and has developed an effective Emissions Trading System (ETS).

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<sup>117</sup> Environment Agency Sustainable Business Report 2011.

Energy UK is strongly committed to the EU ETS as the best means to achieve the European Council goal of an economy-wide 80-95% reduction in EU greenhouse gas (GHG) emissions by 2050 within an integrated EU Internal Energy Market. We consider the ETS to be the best pan-European instrument to drive investments in carbon reduction because it is technology neutral, because carbon markets are the cost-effective way to drive investment choice in GHG reduction and because the ETS is fully compatible with the Internal Energy Market. However, we do recognise that the ETS requires strengthening if it is to encourage investment in low carbon technologies.

The National Emission Ceilings Directive (NECD) (2001/81/EC), which sets upper limits for Member States' emissions of sulphur dioxide, nitrogen oxides, volatile organic compounds and ammonia, is a good example of a legislative instrument that establishes a desired environmental outcome and then allows Member States to determine their own route to compliance. The UK met all the limits set by the specified compliance year of 2010.

## **ii. disadvantaged the UK/your sector**

Disadvantages have tended to arise when EU legislation adopts an inflexible and prescriptive approach to regulation without delivering environmental benefits, instead of focusing on environmental outcomes. The Large Combustion Plant Directive (LCPD) (2001/80/EC) is a case in point. Original proposals for the LCPD were so prescriptive that they would have led to extensive plant closure in the power generation sector. That outcome was averted by introducing a number of derogations to allow power stations to continue to operate on a restricted basis, but implementation of the derogations turned out to be a very complex and time-consuming operation for both the Government and Operators, not least because there was uncertainty around the definition of "combustion plant" as a result of the term "common stack" being open to a range of interpretations.

The prescriptive approach of the LCPD has been perpetuated in the Industrial Emissions Directive (IED) (2010/75/EU), which brought together the LCPD and a handful of other environmental Directives. The IED includes a similar range of derogations to the LCPD and implementation has once again been (and continues to be) complex and time-consuming for Government, Operators and Environmental Regulators. The consequent uncertainty around how regulations will work in practice is a significant cause for concern for Operators who have to take investment decisions for their plant before the Directive comes into full

effect. The confusion and delay associated with LCPD implementation led to some Flue Gas De-sulphurisation projects completing behind schedule.

Uncertainty around implementation of the IED is compounded by the simultaneous revision of the Best Available Techniques Reference Document for Large Combustion Plants (LCP BREF) which will set the performance standards that Regulators will use when issuing Environmental Permits to both new and existing power stations.

A further example of an unhelpful, prescriptive and overly-bureaucratic approach to environmental protection is the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation. Producers of Pulverised Fuel Ash (PFA) in the electricity generation sector have spent up to £0.5 million just to register ash products.

Similarly, the ongoing revision of the Environmental Impact Assessment (EIA) Directive could bring some burdensome provisions without clear environmental benefits. The draft revised Directive would in effect shift some of the EIA responsibilities from 'project developers' to 'competent authorities', a move which could cause significant delays for energy infrastructure projects. A number of amendments brought forward by the European Parliament's Environment Committee (such as the inclusion of the impact of land property value within the scope of the Directive) would also be impractical. As it stands, the proposed Directive could therefore be detrimental to energy infrastructure projects.

The Waste Framework Directive (2008/98/EC) has disadvantaged the electricity sector through its approach to the definition of waste. Pulverised Fuel Ash (PFA) is the fine ash produced when pulverised coal is burnt in a power plant. It has been safely and successfully used in the construction industry for over 50 years, but is defined and regulated as a waste in the UK under the Waste Framework Directive (2008/98/EC). As a result, sales of PFA have reduced in recent years and primary aggregates are increasingly being used in its place. The environmental outcome is negative: more virgin aggregate has to be quarried, and more PFA is being landfilled. Poor drafting of waste legislation has led to a large number of cases being taken to the European Court. The resultant body of case law, parts of which are conflicting, has become more significant in the classification of waste than the original legislation. This is a highly inefficient means of establishing environmental regulation and causes Regulators to adopt an overly-legalistic and negative approach to implementation instead of a purposive approach that could lead to better environmental outcomes. In addition to problems with ash, there has been regulatory confusion around the status of some biomass fuels which has prevented them from being

co-fired in coal-burning power stations because those plants do not comply with the Waste Incineration Directive (2000/76/EC, now incorporated into the IED).

Lastly, the proposed revision of the fluorinated greenhouse gases (F-Gas) Regulation, which is currently under consideration by the EU Institutions, could pose a specific challenge in the energy sector. Whilst it is sensible to have such a Regulation adopted at an EU level, some of the provisions appear extremely challenging to the energy sector, where the SF<sub>6</sub> gas is used in electrical switchgear equipment. For instance, the proposed provisions on SF<sub>6</sub> use and leak repairs would be practically impossible to implement without causing major disruptions on the energy transmission and networks.

## **2. 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?)**

As a general observation, the legislative process at EU level is complex and often opaque. Consequently, it is very difficult, time-consuming and costly for stakeholders such as Energy UK to engage with it effectively via the Commission, the Parliament and the Council. A current case in point is the revision of the Best Available Techniques (BAT) Reference Document for Large Combustion Plants (LCP BREF), which is a fundamental reference for the environmental permitting of power stations. Despite early collaboration between Energy UK's members and the Environment Agency to establish a UK position (supported by 27 technical papers and more than 40 completed performance questionnaires for reference plants submitted to the Commission's drafting team at the Joint Research Centre) the first draft of the LCP BREF published in June this year evidently ignores most of the UK's information and offers no explanation for doing so.

In recent years, we have found UK Government Departments and their Agencies to be accessible and open to discussion of EU proposals but, as a rule, it would be much simpler to engage in a decision-making process that was at Member State level.

It is important to ensure that the appropriate degree of detail is introduced to legislation at each level of decision-making. In some areas it may be better to have only very broad legislation at EU level with more detailed implementation at UK level. The EU's strategy on

adaptation to climate change (COM(2013)216) is a good example of a proportionate approach in which guiding principles at EU level are introduced at Member State level, but individual governments have the flexibility to deliver adaptation plans in their own way.

The UK Government (in concert with other Members States) has successfully opposed the introduction of a Soil Framework Directive in the past on the grounds that soil protection can be achieved most effectively at Member State level. This is a rare example of an unsuccessful attempt to introduce environmental legislation at EU level.

In an attempt to cut through the confusion around the definition of waste introduced by the Waste Framework Directive, the Commission (through its Joint Research Centre) began to develop end-of-waste criteria for certain materials. That work has been curtailed but has been mirrored in the UK by the development of Quality Protocols (QPs) by the Environment Agency and WRAP. Energy UK helped to develop a QP for the beneficial use of PFA in bound and grout applications in construction, which has received European approval via the procedures set out in the Technical Standards Directive. QPs do not have to be adopted by other Member States but have made a positive contribution to improving resource efficiency in the UK.

## **ii. currently made at another level were instead made at EU level?**

It has been suggested that Member State initiatives on climate and energy can lead to policy fragmentation. However, the reality is that some Member States have to move faster to renew their infrastructure than others. For example, the UK faces a particular challenge in the period to 2020, as a significant proportion of current generating capacity is expected to close. Consequently, the UK has introduced an Electricity Market Reform package (EMR) in order to bring forward the investment needed in low-carbon generation. This includes a carbon price floor, Emission Performance Standard, Contracts for Difference and a capacity mechanism. In the longer term, a reformed EU ETS and an integrated European energy market will provide solutions, but in the meantime some national policy measures such as EMR, which looks to create a market framework that will deliver all three of the UK's energy policy objectives of decarbonisation, security of supply and affordability, are likely to be needed. These objectives are consistent with the EU's long-term energy and climate ambitions. It is essential that national measures complement rather than work against the EU ETS and European internal energy market.

Standards for the sustainability of biomass fuels have been developed in the UK by DECC, ahead of decisions at EU level. It would help intra-EU trade in biomass if sustainability standards were adopted at EU level.

### **3. To what extent to you consider EU environmental standards necessary for the proper functioning of the internal market?**

Common EU standards for monitoring reporting and verification (Decision 2007/589/EC) have been vital to the successful implementation of the EU ETS. Such a market-based mechanism could not function effectively without the confidence imbued by rigorous technical administration across the EU.

Common EU environmental standards will be needed to prevent distortions in the Internal Energy Market as variations in environmental standards could lead to changes in the merit order for the dispatch of power stations.

### **4. 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?**

Energy UK welcomed the introduction of a requirement that all proposals for EU legislation must be supported by a Regulatory Impact Assessment, as this mechanism provides an opportunity to take account of the wider economic interests of Member States. However, the reliability and relevance to individual Member States of RIAs carried out at EU level can be questionable as it is very difficult to represent accurately the circumstances of 28 individual countries.

In some cases, the UK's wider economic interest is not best served as a result of the way in which EU legislation is implemented in the UK.

The over-implementation of EU legislation occurs both in the transposition of legislation and during enforcement by Regulators. Much of the problem arises from unclear and varying definitions in Directives. Although broad definitions may be useful as a means of providing flexibility for Member States, the lack of clarity in many Directives increases the likelihood of

“goldplating” when drafting domestic legislation or when Regulators are required to interpret the requirements of Directives in practice.

This situation is exacerbated by an overly legalistic approach to implementing EU legislation rather than a more informed purposive approach that would avoid goldplating and place more emphasis on the overall objectives of the original Directive. Our members’ experience of the Environment Agency is that it relies too heavily on lawyers when interpreting Directives and formulating guidance, and too little on the intent of the policy makers. This has resulted in decisions that do not produce the best environmental outcome and a risk-averse approach which imposes unnecessary costs and burdens on business. In some cases this is made worse by the lack of a clear policy steer by Defra.

Poor drafting can also result in goldplating. As a result of the quantity of overlapping and complex EU legislation, it is possible that the wording in one set of Regulations implementing a Directive can easily change the purpose or workings of that Directive or impact upon the implementation of another Directive.

In some instances the UK Government seems too willing to call on the European Commission to clarify details of Directives when other Member States are content to make these decisions themselves. This is an erosion of subsidiarity and can lead to a form of goldplating, whereby extra requirements are added to Directives during transposition at the insistence of the Commission.

## **5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

### **i. focused on outcomes (results)**

There are few examples of EU legislation relating to environment and climate change being focused on outcomes. The NECD’s emission ceilings are clearly focused on outcomes and so is the EU ETS via its cap on GHG emissions.

### **ii. based on an assessment of risk and scientific evidence?**



The introduction of RIAs to support legislative proposals has encouraged the increased collection and use of scientific evidence and this is a positive move. However, there is a tendency for the collection of evidence to be biased towards point sources such as large industrial installations because the information is easier to gather than it would be from smaller diffuse sources such as vehicles.

In some cases we are concerned that EU legislation does not reflect an appropriate assessment of risk or take into account scientific evidence. For example, although the Regulation 1100/2007 establishing measures for the recovery of the stock of European eel contains some flexibility in implementation, it fails to take into account the scientific evidence that 99% of the impact on the eel population takes place outside the EU and does not contain any impact assessment of the measures mandated.

The models used for analysing the data at EU level should be open to scrutiny by stakeholders. A degree of transparency has been achieved in the modelling associated with the revision of the EU Thematic Strategy on Air Pollution and there has been an opportunity to check and comment on the national inputs to the PRIMES and GAINS models used by the Commission in that work. Selected results of modelling are also discussed at occasional stakeholder events, but the material is provided so close to the time of the event that it is impossible to review it in sufficient detail to take full advantage of the opportunity for dialogue.

**6. 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?)**

The EU's current competence for the environment would benefit from a more holistic approach to legislation. The Climate and Energy Package for 2020 was an encouraging move in the right direction, which we hope will be carried through in the proposals for 2030. It would be helpful to have environmental regulation operating on a more integrated timescale, but we still encounter aberrations e.g. the Commission's proposal to revise the NECD is likely to select 2025 as the compliance date with new emission limits, whereas it would seem logical to extend the deadline to 2030 and align it with the timescale for GHG emission reductions.

In spite of the Commission's process of Inter-Service Consultation between Directorates, occasional examples of silo-thinking still arise. A recent proposal from DG Energy for a Directive on Non-Road Mobile Machinery contained provisions for diesel engines that overlap with the regulation of diesel engines under the IED.

## **7. How far do you think the UK might benefit from the EU taking:**

### **i. more action on environment/climate change/**

Energy UK supports an ambitious economy-wide GHG reduction target to bring forward the scale of low-carbon investment needed. In our view, a target of 40% reduction against 1990 levels would be in line with the reductions needed to achieve an 80-95% reduction by 2050. Once this target has been set it will indicate the level of reductions needed from the traded sector. Energy UK would support the structural reform of EU ETS and would like to see an early revision of the annual 1.74% linear reduction factor.

Affordability of policies and a level playing field for regulation and enforcement across the EU are essential to maintain the UK's industrial competitiveness. We strongly believe that any target must be economy-wide to ensure cost effective reduction in emissions. We recognise that the EU ETS requires strengthening but consider that it still offers an efficient, coherent, technology neutral, market-led approach to reducing GHG emissions.

Binding targets will be needed to cover those emissions outside the traded sector. These targets should be set at a level that ensures the most cost-effective emissions reductions overall. Non-ETS sectors should be exposed to the price of carbon through other policy measures.

Decarbonisation of the power sector will play an integral role in achieving the EU's longer-term GHG goals, but it alone cannot deliver the 2050 ambition. The level of decarbonisation required will necessitate contributions from other sectors as well. Energy UK firmly supports the extension of the scope of the ETS to other sectors where feasible. This is consistent with the goal of cost-effective, economy-wide carbon reductions and complements transition to an Internal Energy Market. We have called on the Commission to undertake a detailed assessment of the feasibility of extending the scope of the ETS for Phase 4. This

should include a review of existing measures in each additional sector to ensure that double regulation is avoided.

## **ii. less action on the environment/climate change?**

We would like to see the Commission take a more principled and considered approach to the introduction of environmental legislation in future. Once the machinery of government is in place it tends to gain momentum and there is a concern that the number of Directives will be increased indiscriminately as a consequence. As the legislative process for Directives is one of Co-decision, the European Council could also exercise its right to make a more critical assessment of proposals made by the Commission. There is, of course, an opportunity every five years (2014 being the next) to re-evaluate the situation when a new Commission is appointed. It is important to recognise that EU legislation has delivered very significant environmental improvements but that levels of emissions in some areas are now so low that it will become very costly to reduce them further.

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

An area of concern for the power generation sector is the over-implementation of EU environmental legislation. The implementation of the Habitats Directive (92/43/EEC) in the UK has extended its scope to cover air quality issues as well as direct management of the designated area. The UK has interpreted the Directive as requiring complex long-range, multiple-source acidification and eutrophication impacts to be assessed. However, it is clear from the wording and structure of the Directive that it only relates to direct and obvious physical damage to sites where the source of the damage is clearly identifiable. A suite of legislation, including the LCPD and National Emissions Ceilings Directive, has been implemented since the Habitats Directive specifically to deal with long-range deposition, indicating that this was not the intended purpose of the Habitats Directive and that the Directive has been goldplated in the UK. The UK's onerous approach has not been adopted in any other Member State.

Under this approach to the Directive, the key impact of a power station is acidification from sulphur deposition. This impact is assessed using site-relevant dynamic critical loads, which are an estimate of the acid deposition that can be tolerated. However, the use of dynamic critical loads is a new and untested concept where there is no direct relationship between the protection of the species or habitat of conservation and the assigned critical load. Many sites have very low critical loads as a precaution and these are often exceeded by the total deposition from all sources, making it difficult for operators to prove that a power station has no adverse effect. No other Member State is assessing adverse effect using dynamic critical loads. The stringent approach adopted by the UK potentially places the UK at a competitive disadvantage compared to other Member States, in terms of both the assessment costs and the actions which may be required.

We welcome the Government's review of the implementation of the Habitats Directive and the actions that are being taken as a result to improve the use of the Directive in relation to major infrastructure projects.

Pulverised Fuel Ash (PFA) is the fine ash produced when pulverised coal is burnt in a power plant. It has been safely and successfully used in the construction industry for over 50 years, but is defined and regulated as a waste in the UK under the Waste Framework Directive (2008/98/EC). As a result, sales of PFA have reduced in recent years and primary aggregates are increasingly being used in its place. The environmental outcome is negative: more virgin aggregate has to be quarried, and more PFA is being landfilled.

One of the constant challenges faced by the electricity generation sector has been to achieve a geographically consistent approach to the implementation of environmental regulation throughout the UK. A level playing field for generators is important because electricity is traded in a GB market. As from April this year, the sector has to engage with separate Environmental Regulators for England, Scotland, Wales and Northern Ireland. With regard to the implementation of some aspects of IED, England (and possibly Wales) is adopting a different approach from Scotland and Northern Ireland.

**9. (a) 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?**

We consider that the UK is well-served by being a member of the EU when negotiating and entering agreements internationally or with third countries. The UK is capable of setting the international agenda within the EU and influencing the overall EU position. However, the dynamic and governance between Member States, the EU and the United Nations is difficult to understand from the point of view of both negotiation and ratification. Stakeholder engagement in the process is difficult to manage e.g. Defra began to brief stakeholders on the UN's Global Agreement on Mercury at quite a late stage and there was little opportunity for industry representatives to engage in the process.

**(b) How important is it for the UK to be part of 'Team EU' at the UNFCCC?**

Energy UK considers that the UK should continue to play a strong role in “Team EU” at the UNFCCC. The EU has played a leading role in GHG emission reductions and can be expected to influence the ongoing negotiations around a global agreement to succeed the Kyoto Protocol. The UK has more influence with UNFCCC and other countries by working through the EU than it would have on its own.

**10. (a) What future challenges or opportunities might we face on environmental protection and climate change?**

The most significant future challenge is to achieve the European Council goal of an economy-wide 80 to 95% reduction in GHG emissions by 2050. To meet that level of ambition, the electricity generation sector will have to be essentially decarbonised. If the transition to a low-carbon generating portfolio is to be made successfully, environmental legislation will have to be sensitive to, and co-ordinated with, the needs of the Internal Energy Market to ensure that secure and affordable electricity can be provided, together with the appropriate level of environmental protection.

A robust EU ETS should provide a clear market signal for continued long-term investment in low carbon technologies. Energy UK strongly agrees with the Commission's statement that the EU ETS will need to play an increased role in the transition to a low-carbon economy by 2050.

**(b) 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?**

In order to meet the challenges we face, it is important that the correct balance is maintained. It is likely that this will be a mix of actions at EU and UK level. This requires flexibility in how legislation is both set and implemented. It is important that actions are co-ordinated and that action at the UK level does not undermine EU mechanisms.

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

At an EU level the EU ETS should promote the most cost-effective GHG abatement options in the traded sector. Additional policies are needed for the non-traded sectors, which may be more appropriately designed at the national level, such as energy efficiency (recognising that this will be predominantly for heat use, as electricity use should remain covered by EU ETS).

Apart from de-carbonisation, the major environmental impacts of electricity generation have already been addressed in EU legislation. The levels of emissions in some areas are now so low that it will become very costly to reduce them further and the Commission should take a more critical and principled approach towards its rolling programme for revising Directives based on an assessment of costs and benefits.

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

The vast majority of UK environmental regulation originates from the transposition and implementation of European Union Directives and Regulations. It is so significant for the electricity generation sector that, if the Government were to consider taking back competence in this area, its intentions would have to be clearly signalled well in advance and any transition would have to be gradual and carefully managed to ensure that investor confidence was not adversely affected.

## English Heritage

### Advantages and disadvantages

#### 1. What evidence is there that EU competence in the area of environment and/or climate change has:

##### i. benefited the UK / your sector?

The EU SEA and EIA Directives have been fundamental to, and directly underpinned the development of terrestrial and offshore mitigation and investigation in relation to cultural heritage. The conservation of England's historic environment has therefore directly benefited from their provisions, and we therefore support the role that the Directives have had in facilitating an integrated, proportionate approach to considering proposals.

We would also single out the EU White Paper *Adapting to Climate Change: Towards a European framework for action (2009)* which supports the UK *Climate Change Risk Assessment* and the *National Adaptation Programme (2013)*. The National Adaptation Programme will help us to plan for conserving the historic environment in the light of changing climate.

##### ii. disadvantaged the UK / your sector?

Notwithstanding their value, there is no explicit reference to the historic environment in the EU documents which pertain to Climate Change. We consider that this is a major omission, and the valuable work on ensuring that heritage is appropriately conserved that will be undertaken via England's National Adaptation Programme is therefore largely a result of domestic recognition of the importance of this issue, rather than European .

Similarly, there is no wider European environmental regulation directly relating to cultural heritage, and (with the exception of the EIA and SEA Directives), the EU view of "environment" otherwise largely seems to exclude cultural heritage. This has introduced a fundamental discrepancy in the coverage of EU legislation relating to the natural environment in comparison to that for the historic environment, which is as a result almost exclusively domestic in origin. In practice this means that measures relating to the historic environment are perceived to be of lesser importance, and it promotes narrow, single-objective, sometimes conflicting approaches to the conservation and management of the individual elements which combine to comprise our environment.

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

### **2. 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?)**

Given that the environmental and climate change impacts of decisions made at the level of individual member states may go beyond their boundaries, it is probably right that the EU seeks to achieve universal measures which are binding. To remove this higher level of decision making would undoubtedly introduce fragmentation in terms of delivery. But it is also true that individual member states are better placed to identify and take appropriate action to respond to environmental issues within their area. In short EU measures have to include within them sufficient flexibility and discretion for individual member states to apply them in the most effective manner.

#### **ii. currently made at another level were instead made at EU level?**

As per our comments above, we would welcome explicit recognition of the cultural heritage aspects of our environment within EU climate change measures, and more broadly within its environmental legislation.

## **Internal market and economic growth**

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

We have no comments to offer.

### **4. 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?**

We have no comments to offer.

## **Current legislation**

### **5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

#### **i. focused on outcomes (results)?**

We consider that it would be helpful to be more focused upon delivering specific, measurable outcomes in relation to the cultural heritage aspect of our environment,



although we appreciate that the potential "one size fits all" nature of EU legislation does not always make this easy.

**ii. based on an assessment of risk and scientific evidence?**

We believe that the legislation is evidence-based, although sometimes too narrowly focused.

**Doing things differently**

**6. 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?)**

As per question 5, above, we consider that there should be better monitoring of environmental outcomes.

**7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change?**

We believe that the current measures are sufficient, without being unduly onerous.

**ii. Less action on the environment/climate change?**

As above.

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

We have no comments to offer.

**9. a. 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?**

We have no comments to offer.

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

We have no comments.

**Future challenges and opportunities**

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

**b. 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?**

We have no comments.

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

We have no comments.

**Anything else?**

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

We have no further comments to offer.

**Environmental Services Association**

The Environmental Services Association (ESA) is the trade association which represents the UK's waste management and secondary resources industry. ESA's members provide a wide range of essential resource management services to the public and private sectors.

The UK's waste and secondary resource industry is leading the transformation of how the UK's waste is managed. An industry with an annual turnover of £11 billion, our Members have helped England's recycling rate quintuple in the last decade and provide over a quarter of the UK's renewable electricity.

The ESA welcomes the opportunity to set out its views and experience on the question of how EU legislation on waste and resource management has impacted on its Members, and on the UK economy and environment as a whole.

In the view of the ESA and its members, the overall impact of EU waste legislation on the UK environment and economy, and on the UK waste and resource management sector in particular, has been positive.

**Benefits of EU competence for waste and resource management**

The UK's approach to waste and resource management changed markedly when the EU Landfill Directive came into effect in the late 1990s. Whereas 10-15 years ago almost all the UK's waste was disposed of in landfill sites, today the UK recycles over 40% of its household waste and about 50% of its commercial and industrial waste. This change is a direct result of the landfill tax escalator introduced by the UK Government to ensure that the landfill diversion targets set by the EU Landfill Directive would be met.

The steep and progressive increases in the price of landfill resulting from the landfill tax escalator made alternative methods of waste management economically viable. Local authorities introduced recycling collections and private sector waste management companies including ESA members invested in sorting plants and other waste treatment infrastructure. For non-recyclable wastes local authorities and the waste industry are working together to build a new generation of waste to energy plants, with the help of PFI credits from the UK Government.

As a result of the introduction of the Landfill Directive and the very significant investments made by ESA members and others in recycling, composting and residual waste treatment facilities, there has been a huge reduction in UK methane emissions from landfill (emissions are down 65% since 1990), and a much better rate of recovery of materials and energy for the UK economy. These investments also have a 'multiplier' effect so that the further investments required to meet the EU 2020 targets for landfill diversion and recycling would have the following wider economic benefits:

- Additional waste processing could add up to £2 billion (gross) to GDP
- There could be up to an additional 25,000 permanent jobs across the economy
- These jobs could lead to an extra £210 million spending in the economy

While the main beneficial effects of EU competence for waste legislation have so far arisen from the significant reduction in landfill, other pieces of EU waste legislation have also helped to drive improvements in resource efficiency and environmental protection in the UK:

- The EU Packaging Directive has led to a significant increase in packaging recycling in the UK, and other EU Directives have done the same for end of life vehicles (ELVs – now over 85% recycled or recovered), waste electronics (WEEE), and batteries. It is doubtful whether any UK Government would have taken steps to improve the recovery of these waste streams in the absence of EU legislation.
- The EU Waste Framework Directive, substantially revised in 2008 and in force from 2010 onwards, has set recycling targets for household and similar waste and recovery targets for construction and demolition waste which remain in place at a time when the UK Government has removed the targets which used to apply to local authorities and is repealing regulations which encouraged better waste management in the construction sector in England.
- The EU Waste Shipments Regulation has laid down rules for tackling illegal and environmentally damaging movements of waste across international boundaries.
- Other EU Directives notably the Industrial Emissions Directive (now incorporating the former Waste Incineration Directive), the hazardous waste provisions of the revised Waste Framework Directive, and the Best Available Technology reference documents which

underpin them, provide a high level of environmental protection at site level (it is worth noting that this cross-EU site regulation is not primarily needed for Single Market reasons, as waste management is not like traditional product markets where manufacturers from across the EU are competing. However ESA believes that it is right for all EU citizens to have minimum acceptable standards of environmental protection).

Of course, there would have been nothing to stop UK governments over the last 20 years putting in place equally beneficial legislation through the UK parliament. But while it is difficult to construct a counter-factual there are good grounds for believing that without the impetus of EU waste legislation, successive UK governments would have lacked the political will to have taken the steps necessary to achieve the significant improvements in resource efficiency and environmental protection which these EU initiatives have prompted. It is only very recently that Devolved Administrations in Scotland and Wales have begun to introduce waste and resource management measures which go beyond minimum EU requirements, while in England the UK Government has consciously decided not to do so and has confined itself to a series of useful but limited voluntary measures.

Looking forward, there are key areas of resource management where the EU is much better placed to act than individual Member States. The prime example is eco-design: in the Single Market, only the EU can set rules requiring designers and manufacturers to make products more resource efficient in the future – more durable, repairable, re-usable and recyclable. In the view of ESA, this is where the EU should focus much of its future efforts on waste and resource management.

### **Disadvantages of EU competence for waste and resource management**

The approach taken in EU environmental protection legislation is often contrary to the approach taken in the UK, which is to balance the degree of protection which must be applied against the degree of risk of an unacceptable impact. So for example in the UK the concentrations of contaminants which are acceptable in land being used for housing with gardens are far lower (standards are tighter) than those which are acceptable for land being used for commercial premises. By contrast EU legislation tends to prefer to set single standards for all which must then be suitable for the most sensitive situations and which, inevitably, are then tighter than necessary for less sensitive situations, sometimes resulting in unnecessary costs.

Turning to the waste sector in particular, EU legislation in this area is far from perfect. There are three main reasons why EU competence can pose problems for the waste and resource management sector and more widely. These are:

1. The EU legislative process, which can be opaque, erratic and cumbersome, and is sometimes inimical to business views and experiences
2. The huge disparity between Member States in the EU-28, which makes it difficult to arrive at sensible common policies on waste and resources at EU level

3. The EU's tendency towards "mission creep", as shown in some over-prescriptive EU waste legislation, and in a reflex towards ever higher targets regardless of context.

#### Problems with the EU legislative process

The problems with EU legislation are well known and are not limited to waste. For "primary" EU legislation, the co-decision process involving Commission proposals, Member States in the Council of Ministers and its many working groups, and the European Parliament with its various Committees, is very difficult for interested parties including business representatives to understand, let alone contribute to or seek to influence. Commission proposals rarely are based on the kind of impact assessments required in the UK (and those are not perfect either). Commission officials and Member State representatives, with some honourable exceptions, do not consult sufficiently with affected parties, or fully understand the problems that new EU legislation can pose to businesses. For "secondary" EU legislation made by the Commission the problems are similar – lack of transparency, lack of real engagement with parties likely to be affected by new measures, and lack of understanding of how business operates.

As a result, the effect of the EU legislative process on the waste and resource management sector can sometimes be to create uncertainty and so inhibit investment in new ways of treating and recovering value from waste. An example would be the EU 'End of Waste' legislative processes, where the reasonable original aims have yet to be delivered despite years of discussion and analysis.

There are also instances of EU institutions being insufficiently joined-up – for example different Directorate Generals within the Commission pursuing different agendas on issues such as end of waste and REACH.

#### Disparities between the Member States

When the Landfill Directive targets were set in the late 1990s there were 15 EU Member States and although there were marked differences between them those disparities were much less dramatic than those among the present EU-28. Even with the EU-15, it was necessary to allow some Member States an additional four years to reach the required EU landfill diversion targets, given the very different systems of waste management in the 15 EU countries.

By 2008 there were 25 EU Member States and when the revised Waste Framework Directive set a target for Member States to recycle 50% of household and similar waste by 2020, the Commission subsequently had to introduce detailed rules which allowed Member States to measure their achievement of this target in any one of four different ways, again to allow for the increasing diversity in waste and resource management practices on the ground within the enlarged EU.

Now in 2013 with an EU-28, the Commission is carrying out a review of EU waste legislation and targets. Commission publications such as its "Roadmap for a Resource

Efficient Europe” rightly call for further improvements in waste prevention and resource efficiency. But in an EU where some Member States landfill over 95% of their waste and others less than 5%, ESA members believe that new EU legislation setting even higher and uniform EU-wide targets for recycling in all 28 Member States would not make sense. Instead, the new Member States should be helped to meet existing EU legislation and targets before new targets are set.

### Mission creep

In EU environmental legislation there is a difficult balance to be struck between achieving common EU goals and standards (the so-called level playing field) in the Single Market and in terms of environmental protection, while allowing Member States sufficient flexibility as to the means to be employed to meet those common goals and standards. It is of course all the more difficult to get this right when there are 28 different countries, half a dozen EU institutions, and a myriad of affected parties involved.

There are areas where EU waste legislation risks being unnecessarily prescriptive. The revised Waste Framework Directive requires Member States to apply the “waste hierarchy” as a priority order in waste policy and legislation, but is too prescriptive about some of the means to be used, for example in the provisions dealing with methods of collecting recyclable waste materials, which do not reflect the principles of proportionality and subsidiarity. Similarly, under the Industrial Emissions Directive (IED), the way Best Available Technology (BAT) requirements are implemented through the BAT reference document (BREF) procedure at EU level can be very prescriptive and time-consuming. There should be greater focus on the environmental outcomes to be achieved, leaving national regulators to ensure the right technologies are used to deliver those. Flexibility is needed in design and construction to allow the investigation and use of new materials and new designs. Prescriptive requirements can stifle development, whereas a set of principles verified by risk assessment can foster innovation and progress.

In addition the EU sometimes tries to extend its competence over environmental matters to countries outside Europe. For example, DG Enterprise is actively considering the idea of requiring waste recyclers who are based outside the EU to comply with a mandatory EU certification scheme in order to be eligible to receive recyclable waste material from Europe. This would be a significant and unwarranted extension of EU competence.

A further concern is where EU legislation is misinterpreted by local policy makers. An example would be the Waste Framework Directive’s position on the ‘proximity principle’, where it advocates self-sufficiency at Member State level in recovery and disposal infrastructure. This is a reasonable position, but is sometimes misleadingly invoked at local level to support arguments that new waste management infrastructure should be focused on local self-sufficiency and hence prohibited from accepting waste from outside the local area.

Looking beyond waste-specific EU legislation, the European Commission has adopted proposals for a new EIA Directive, which seem likely to increase the burden on developers and slow down the UK planning process, whilst providing no environmental benefit. ESA's main concern is on proposals for extended timescales, allowing competent authorities up to 12 months to decide on an EIA planning application (a significant increase on the existing 16 week statutory determination period)

Lastly, it is of concern to ESA and its members that senior Commission officials in DG Environment have been quoted as saying that in future the Commission is minded to legislate via directly applicable EU Regulations, rather than by EU Directives which leave room for Member States to use local discretion as to the means to be used to achieve the common EU goals. The Commission's professed aim of thereby improving implementation in the Member States is laudable, but in the view of ESA this would be the wrong way to go about it, given the huge disparities between Member States of the EU-28 referred to earlier.

## **Conclusion**

Given the Single Market and the need for a level playing field for UK companies within it, there is value in having goals and standards for waste and resource management set at EU level, notably on eco-design, to promote high levels of resource efficiency and minimum standards of environmental protection. However, Member States must be free to decide how best to meet the agreed objectives in their countries. Subject to that caveat, ESA and its members believe that the overall impact of EU waste legislation on the UK environment, as well as on the economic performance of the UK waste and resource management sector, has been positive.

## **ESA**

**August 2013**

## **European Commission**

### **1. ENVIRONMENT**

#### 1.1 Overarching Environment Policy Themes

##### a. Resource Efficiency

- Roadmap to a Resource Efficient Europe – COM (2011) 571 & associated analysis

[www.ec.europa.eu/environment/resource\\_efficiency/pdf/com2011\\_571.pdf](http://www.ec.europa.eu/environment/resource_efficiency/pdf/com2011_571.pdf)

[www.ec.europa.eu/environment/resource\\_efficiency/pdf/sec2011\\_1068\\_final.pdf](http://www.ec.europa.eu/environment/resource_efficiency/pdf/sec2011_1068_final.pdf)

[www.ec.europa.eu/environment/resource\\_efficiency/pdf/working\\_paper\\_part2.pdf](http://www.ec.europa.eu/environment/resource_efficiency/pdf/working_paper_part2.pdf)

b. Action Programme

- Proposal for a General Union Environment Action Programme to 2020 – COM (2012) 710 & associated Impact Assessment SWD (2012) 398  
[www.ec.europa.eu/environment/newprg/pdf/7EAP\\_Proposal/en.pdf](http://www.ec.europa.eu/environment/newprg/pdf/7EAP_Proposal/en.pdf)  
[www.ec.europa.eu/environment/newprg/pdf/ia.pdf](http://www.ec.europa.eu/environment/newprg/pdf/ia.pdf)
- Final assessment of the 6<sup>th</sup> EAP COM (2011) 531 & related Council Conclusions (10706/12)  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0531:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0531:FIN:EN:PDF)  
<http://register.consilium.europa.eu/pdf/en/12/st10/st10706.en12.pdf>

c. Implementation

- Communication on improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness - COM (2012) 95  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0095:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0095:FIN:EN:PDF)

d. International

- Communication on Rio + 20 follow –up "A DECENT LIFE FOR ALL: Ending poverty and giving the world a sustainable future COM (2013) 92 & related Council Conclusions  
[www.ec.europa.eu/europeaid/documents/2013-02-22\\_communication\\_a\\_decent\\_life\\_for\\_all\\_post\\_2015\\_en.pdf](http://www.ec.europa.eu/europeaid/documents/2013-02-22_communication_a_decent_life_for_all_post_2015_en.pdf)  
<http://register.consilium.europa.eu/pdf/en/13/st11/st11559.en13.pdf>

e. State of the Environment

- 4<sup>th</sup> European Environment State and Outlook Report  
[www.eea.europa.eu/soer](http://www.eea.europa.eu/soer)

1.2 Specific Policy Themes

a. Circular Economy

- Communication on Building the Single Market for Green products COM(2013)196 - & Associated Impact Assessment - SWD (2013) 111  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0196:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0196:FIN:EN:PDF)  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0111:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0111:FIN:EN:PDF)
- Action Plan on Sustainable Consumption and Production and Sustainable Industrial Policy - COM (2008) 397 and related Council Conclusions (17495/10)  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0397:FIN:en:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0397:FIN:en:PDF)



<http://register.consilium.europa.eu/pdf/en/10/st17/st17495.en10.pdf>

- Communication on Public Procurement for a Better Environment - COM(2008) 400  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0400:EN:NOT](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0400:EN:NOT)
- Green paper on a European Strategy on Plastic Waste in the Environment  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0123:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0123:FIN:EN:PDF)
- Implementing EU waste legislation for green growth (study)  
[www.ec.europa.eu/environment/waste/studies/pdf/study%2012%20FINAL%20REPORT.pdf](http://www.ec.europa.eu/environment/waste/studies/pdf/study%2012%20FINAL%20REPORT.pdf)
- Communication on Innovation for a Sustainable Future - The Eco-innovation Action Plan (Eco-AP) - COM (2011) 899  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0899:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0899:FIN:EN:PDF)  
[www.ec.europa.eu/environment/ecoap/index\\_en.htm](http://www.ec.europa.eu/environment/ecoap/index_en.htm)
- Consultative Communication on the Sustainable Use of Phosphorus - COM (2013) 517  
[www.ec.europa.eu/environment/consultations/pdf/phosphorus/EN.pdf](http://www.ec.europa.eu/environment/consultations/pdf/phosphorus/EN.pdf)

b. Air Quality

- Commission Staff Working Paper on the implementation of EU Air Quality Policy and preparing for its comprehensive review – SEC (2011) 342  
[www.ec.europa.eu/environment/air/pdf/sec\\_2011\\_342.pdf](http://www.ec.europa.eu/environment/air/pdf/sec_2011_342.pdf)
- Communication from the Commission on the implementation of the Community Strategy for dioxins, furans, and polychlorinated biphenyls - Third progress report - COM(2010) 562  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0562:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0562:FIN:EN:PDF)
- Review of the Community Strategy Concerning Mercury – COM (2010) 723  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0723:EN:NOT](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0723:EN:NOT)

c. Water

- Blueprint to Safeguard Europe's Water Resources COM (2012)  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0673:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0673:FIN:EN:PDF)
- Impact Assessment of the Water Blueprint SWD (2012) 382  
[www.ec.europa.eu/environment/water/blueprint/pdf/SWD-2012-382\\_EN\\_impact\\_assessment\\_part1.pdf](http://www.ec.europa.eu/environment/water/blueprint/pdf/SWD-2012-382_EN_impact_assessment_part1.pdf)  
[www.ec.europa.eu/environment/water/blueprint/pdf/SWD-2012-382\\_EN\\_impact\\_assessment\\_part2.pdf](http://www.ec.europa.eu/environment/water/blueprint/pdf/SWD-2012-382_EN_impact_assessment_part2.pdf)
- Water Fitness Check SWD (2012) 393

[www.ec.europa.eu/environment/water/blueprint/pdf/fitness\\_check.pdf](http://www.ec.europa.eu/environment/water/blueprint/pdf/fitness_check.pdf)

- Review of the EU policy on water scarcity and droughts - COM(2012)672  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0672:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0672:FIN:EN:PDF)

d. Chemicals & Plant Protection Products

- Communication on the Combination Effects of Chemicals COM 2012 (252)  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0252:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0252:FIN:EN:PDF)
- Communication of the Commission on 'Towards a thematic strategy on the sustainable use of pesticides'  
[www.europa.eu/legislation\\_summaries/internal\\_market/single\\_market\\_for\\_goods/chemical\\_products/21288\\_en.htm](http://www.europa.eu/legislation_summaries/internal_market/single_market_for_goods/chemical_products/21288_en.htm)
- Community action to achieve the sustainable use of pesticides  
[www.ec.europa.eu/environment/ppps/background.htm](http://www.ec.europa.eu/environment/ppps/background.htm)

e. Biotechnology/Genetically Modified Organisms

- An overview of recent developments can be found at:  
[www.ec.europa.eu/food/food/biotechnology/index\\_en.htm](http://www.ec.europa.eu/food/food/biotechnology/index_en.htm)
- Analysis of field trials management in Member States and prevention of accidental entry into the marketplace (ENV - completed 2008):  
[www.ec.europa.eu/food/food/biotechnology/reports\\_studies/docs/management\\_field\\_trials\\_report\\_en.pdf](http://www.ec.europa.eu/food/food/biotechnology/reports_studies/docs/management_field_trials_report_en.pdf)
- Evaluation of the legislative framework in the field of cultivation of GMOs under Directive 2001/18/EC and Regulation (EC) No 1829/2003 and marketing of their other uses under Directive 2001/18/EC, (SANCO – completed 2011)  
[www.ec.europa.eu/food/food/biotechnology/evaluation/docs/gmo\\_cultivation\\_report\\_en.pdf](http://www.ec.europa.eu/food/food/biotechnology/evaluation/docs/gmo_cultivation_report_en.pdf)
- Evaluation of the legislative framework in the field of cultivation of GM food and feed (SANCO 2011)  
[www.ec.europa.eu/food/food/biotechnology/evaluation/gmo\\_eval\\_intro\\_en.htm](http://www.ec.europa.eu/food/food/biotechnology/evaluation/gmo_eval_intro_en.htm)
- Assessment study of the economic performance of GM crops worldwide (SANCO 2011)  
[www.ec.europa.eu/food/plant/gmo/reports\\_studies/docs/socio\\_economic\\_report\\_gmo\\_en.pdf](http://www.ec.europa.eu/food/plant/gmo/reports_studies/docs/socio_economic_report_gmo_en.pdf)
- Report on the socio-economic impacts of GMO cultivation (SANCO – completed 2011)  
[www.ec.europa.eu/food/food/biotechnology/index\\_en.htm](http://www.ec.europa.eu/food/food/biotechnology/index_en.htm)

f. Nano Materials & Endocrine Disruptors

- Commission Recommendation on the definition of nano-materials – 2011/696/EU

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:275:0038:0040:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:275:0038:0040:EN:PDF)

- Communication on Regulatory Aspects of Nano-materials – COM (2008) 366 & Staff working Document - SWD (2008) 2036

[www.ec.europa.eu/nanotechnology/pdf/comm\\_2008\\_0366\\_en.pdf](http://www.ec.europa.eu/nanotechnology/pdf/comm_2008_0366_en.pdf)

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2036:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2036:FIN:EN:PDF)

- Staff Working Document on implementation of the Community strategy on Endocrine disruptors SEC (2011) 1001

[www.ec.europa.eu/environment/chemicals/endocrine/pdf/sec\\_2011\\_1001.pdf](http://www.ec.europa.eu/environment/chemicals/endocrine/pdf/sec_2011_1001.pdf)

#### g. Biodiversity & Soil

- Communication on an EU biodiversity strategy to 2020 COM (2011) 244 & related Council Conclusions (11249/11)

[www.ec.europa.eu/environment/nature/biodiversity/comm2006/pdf/2020/1\\_EN\\_ACT\\_part1\\_v7%5B1%5D.pdf](http://www.ec.europa.eu/environment/nature/biodiversity/comm2006/pdf/2020/1_EN_ACT_part1_v7%5B1%5D.pdf)

<http://register.consilium.europa.eu/pdf/en/11/st11/st11249.en11.pdf>

- Communication on Green Infrastructure COM (2013) 249 & Commission Staff Working Document & Technical information on Green Infrastructure SWD (2013) 155

[www.ec.europa.eu/environment/nature/ecosystems/docs/green\\_infrastructures/1\\_EN\\_ACT\\_part1\\_v5.pdf](http://www.ec.europa.eu/environment/nature/ecosystems/docs/green_infrastructures/1_EN_ACT_part1_v5.pdf)

[www.ec.europa.eu/environment/nature/ecosystems/docs/green\\_infrastructures/1\\_EN\\_autre\\_document\\_travail\\_service\\_part1\\_v2.pdf](http://www.ec.europa.eu/environment/nature/ecosystems/docs/green_infrastructures/1_EN_autre_document_travail_service_part1_v2.pdf)

- Communication addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss COM (2008) 645 and associated impact assessment - SEC (2008) 2619

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0645:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0645:FIN:EN:PDF)

[www.ec.europa.eu/environment/forests/pdf/sec\\_2008\\_2619.pdf](http://www.ec.europa.eu/environment/forests/pdf/sec_2008_2619.pdf)

- The Economic Benefits of the Natura 2000 Network – Synthesis Report

[www.ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018\\_LR\\_Final1.pdf](http://www.ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018_LR_Final1.pdf)

- Commission Staff Working Paper - Investing in Natura 2000: Delivering benefits for nature and people – SEC (2011) 1573

[www.ec.europa.eu/environment/nature/natura2000/financing/docs/financing\\_natura2000.pdf](http://www.ec.europa.eu/environment/nature/natura2000/financing/docs/financing_natura2000.pdf)

- Policy Report on the implementation of the Soil Thematic Strategy COM(2012) 46

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0046:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0046:FIN:EN:PDF)

### 1.3 Legislation, Legislative Proposals, Impact Assessments & Reports

a. Waste

**Implementation**

- Report on the Implementation of EU Waste Legislation COM (2013) 06  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0006:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0006:FIN:EN:PDF)

**Waste shipments**

- Proposal for a Regulation amending Regulation (EC) No 1013/2006 on shipments of waste & associated impact assessment

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0516:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0516:FIN:EN:PDF)

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0268:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0268:FIN:EN:PDF)

**Ship Recycling**

- Proposal for a Regulation on Ship Recycling – COM (2012) 118 & associated Impact Assessment SWD (2012) 47

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0118:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0118:FIN:EN:PDF)

[www.ec.europa.eu/environment/waste/ships/pdf/Impact%20Assessment.pdf](http://www.ec.europa.eu/environment/waste/ships/pdf/Impact%20Assessment.pdf)

**Batteries & Accumulators**

- Proposal for a Directive amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators as regards the placing on the market of portable batteries and accumulators containing cadmium intended for use in cordless power tools – COM (2012) 136 final & associated Impact Assessment (SWD (2012) 66 final)

[www.ec.europa.eu/environment/waste/batteries/pdf/com\\_2012\\_0136\\_en.pdf](http://www.ec.europa.eu/environment/waste/batteries/pdf/com_2012_0136_en.pdf)

[www.ec.europa.eu/environment/waste/batteries/pdf/impact\\_assessment\\_part1.pdf](http://www.ec.europa.eu/environment/waste/batteries/pdf/impact_assessment_part1.pdf)

b. Air Quality & Noise

**Quality of Marine Fuels**

- Directive 2012/33/EU amending Directive 1999/32/EC as regards the sulphur content of marine fuels - COM ( 2011) 439 and associated impact assessment

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:327:0001:0013:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:327:0001:0013:EN:PDF)

[www.ec.europa.eu/environment/air/transport/pdf/ships/sec\\_2011\\_918\\_en.pdf](http://www.ec.europa.eu/environment/air/transport/pdf/ships/sec_2011_918_en.pdf)

**Ambient Air Quality**

- Air Quality policy framework review - two stakeholder consultation reports and a Euro-barometer consultation report

[www.ec.europa.eu/environment/air/pdf/Survey%20AQD%20review%20-%20Part%20II%20Detailed%20results.pdf](http://www.ec.europa.eu/environment/air/pdf/Survey%20AQD%20review%20-%20Part%20II%20Detailed%20results.pdf)

[www.ec.europa.eu/environment/air/pdf/TSAP%20Consultation%20report.pdf](http://www.ec.europa.eu/environment/air/pdf/TSAP%20Consultation%20report.pdf)  
[www.ec.europa.eu/public\\_opinion/flash/fl\\_360\\_en.pdf](http://www.ec.europa.eu/public_opinion/flash/fl_360_en.pdf)

- Commission Staff Working Paper establishing guidelines for the agreements on setting up common measuring stations for PM<sub>2.5</sub> under Directive 2008/50/EC on ambient air quality and cleaner air for Europe.

[www.ec.europa.eu/environment/air/quality/legislation/pdf/sec\\_2011\\_77.pdf](http://www.ec.europa.eu/environment/air/quality/legislation/pdf/sec_2011_77.pdf)

- Commission Implementing Decision of 12 December 2011 laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0086:0106:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0086:0106:EN:PDF)

- Best practices for short term air quality action plans

[www.ec.europa.eu/environment/air/quality/legislation/pdf/SC5\\_Task%201\\_report.pdf](http://www.ec.europa.eu/environment/air/quality/legislation/pdf/SC5_Task%201_report.pdf)

### ***Environmental Noise***

- Report on the implementation of the Environmental Noise Directive COM (2011) 321

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0321:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0321:FIN:EN:PDF)

## c. Industrial Emissions

### ***Integrated Pollution Prevention and Control***

- Report on the implementation of the Integrated Pollution Prevention and Control and Solvent Emission directives - COM (2010) 593

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0593:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0593:FIN:EN:PDF)

Report from the Commission to the European Parliament and the Council on the reviews undertaken under Article 30(9) and Article 73 of Directive 2010/75/EU on industrial emissions addressing emissions from intensive livestock rearing and combustion plants COM(2013) 286

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0286:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0286:FIN:EN:PDF)

- Report on the implementation and review of Directive 2004/42/EC of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products and amending Directive 1999/13/EC – COM (2011) 297

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0297:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0297:FIN:EN:PDF)

### ***Large Combustion Plants***

- Large Combustion Plant Directive: Evaluation of the Member States' emission inventories 2004-2006 for LCPs under the LCP Directive (2001/80/EC)

[www.forum.eionet.europa.eu/x\\_reporting-guidelines/library/lcp\\_reporting/summary\\_report/inventories\\_2004-06pdf](http://www.forum.eionet.europa.eu/x_reporting-guidelines/library/lcp_reporting/summary_report/inventories_2004-06pdf)

### ***Waste Incineration***

- Waste Incineration Directive: Analysis of the reports submitted by Member States on the implementation of Directive 2008/1/EC, Directive 2000/76/EC, Directive 1999/13/EC and further development of the web platform to publish the information

[www.forum.eionet.europa.eu/x\\_reporting-guidelines/library/wid\\_reporting/reporting-period-2006-08/analysis\\_2006-08](http://www.forum.eionet.europa.eu/x_reporting-guidelines/library/wid_reporting/reporting-period-2006-08/analysis_2006-08)

### ***European Pollutant Release and Transfer Register***

- Report from the Commission to the European Parliament and the Council on progress in implementing Regulation (EC) 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register (E-PRTR) COM(2013) 111

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0111:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0111:FIN:EN:PDF)

### ***Major Accidents***

- Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC and associated impact assessment- SEC (2010) 1590

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:197:0001:0037:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:197:0001:0037:EN:PDF)

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1590:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1590:FIN:EN:PDF)

d. Chemicals, Biocides & Plant Protection Products

### ***REACH***

- REACH Review – Report from the Commission SWD (2013) 25

[www.ec.europa.eu/enterprise/sectors/chemicals/files/reach/review2012/general-report-swd\\_en.pdf](http://www.ec.europa.eu/enterprise/sectors/chemicals/files/reach/review2012/general-report-swd_en.pdf)

### ***Laboratory Animals***

- Directive 2010/63/EC on the protection of animals used for scientific purposes

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:276:0033:0079:en:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:276:0033:0079:en:PDF)

### ***Biocides***

- Biocides Regulation No. 528/2012 and associated impact assessment

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:167:0001:0123:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:167:0001:0123:EN:PDF)

[http://ec.europa.eu/environment/biocides/pdf/sec\\_2009\\_773\\_en.pdf](http://ec.europa.eu/environment/biocides/pdf/sec_2009_773_en.pdf)

### ***Plant Protection Products***

- Impact Assessment on the Directive on plant protection products  
[www.ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2006/sec\\_2006\\_0931\\_en.pdf](http://www.ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2006/sec_2006_0931_en.pdf)
- Annual EU-wide Pesticide Residues Monitoring Report (Mandated to EFSA) - Article 32 of Regulation (EC) No 396/2005 of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin  
[www.ec.europa.eu/food/fvo/specialreports/pesticides\\_index\\_en.htm](http://www.ec.europa.eu/food/fvo/specialreports/pesticides_index_en.htm)

e. Biotechnology/Genetically Modified Organisms

- A full collection of Members states reports can be found at:  
[www.ec.europa.eu/food/food/biotechnology/reports\\_studies/contributions\\_en.htm](http://www.ec.europa.eu/food/food/biotechnology/reports_studies/contributions_en.htm)

f. Fresh Water & Marine

**Implementation**

- Report on the Implementation of the Water Framework Directive (River Basin Management Plans) – COM (2012) 670 and report on the implementation in the UK

[www.ec.europa.eu/environment/water/water-framework/pdf/COM-2012-670\\_EN.pdf](http://www.ec.europa.eu/environment/water/water-framework/pdf/COM-2012-670_EN.pdf)  
[www.ec.europa.eu/environment/water/water-framework/pdf/CWD-2012-379\\_EN-Vol3\\_UK.pdf](http://www.ec.europa.eu/environment/water/water-framework/pdf/CWD-2012-379_EN-Vol3_UK.pdf)

**Groundwater**

- Report on the Establishment of Groundwater Quality Standards C(2010) 1096  
[www.ec.europa.eu/environment/water/water-framework/groundwater/pdf/EN.pdf](http://www.ec.europa.eu/environment/water/water-framework/groundwater/pdf/EN.pdf)

**Nitrates**

- Report on the Implementation of the Nitrates Directive COM (2010) 47  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0047:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0047:FIN:EN:PDF)

**Urban Waste Water**

- Report on the Implementation of the Urban Waste Water Treatment Directive - SEC (2011) 1561

[www.ec.europa.eu/environment/water/water-urbanwaste/implementation/pdf/SEC\\_2011\\_1561\\_F\\_EN.pdf](http://www.ec.europa.eu/environment/water/water-urbanwaste/implementation/pdf/SEC_2011_1561_F_EN.pdf)

**Coastal Zone Management**

- Proposal for a Directive establishing a framework for maritime spatial planning & integrated coastal zone management COM (2013) 133 & Impact assessment SWD (2013) 64

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0133:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0133:FIN:EN:PDF)  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0064:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0064:FIN:EN:PDF)

**Status of Marine Waters**

- Commission Staff Working Paper on the relationship between the initial assessment of marine waters and the criteria for good environmental status - SEC(2011) 1255

[www.ec.europa.eu/environment/marine/pdf/SEC\\_2011\\_1255\\_F\\_DTS.pdf](http://www.ec.europa.eu/environment/marine/pdf/SEC_2011_1255_F_DTS.pdf)

### ***Bathing Water***

- Bathing Water Quality Report EEA Report No.3/2012

[www.ec.europa.eu/environment/water/water-bathing/report2012/report.pdf](http://www.ec.europa.eu/environment/water/water-bathing/report2012/report.pdf)

### ***Marine Litter***

- Commission Staff Working Document – Overview of EU policies, legislation and initiatives related to marine litter – SWD (2012) 365

[www.ec.europa.eu/environment/marine/pdf/SWD\\_2012\\_365.pdf](http://www.ec.europa.eu/environment/marine/pdf/SWD_2012_365.pdf)

### ***International Marine Issues***

- Report on the Contribution of the Marine Strategy Framework Directive (2008/56/EC) to the implementation of existing obligations, commitments and initiatives of the Member States or the EU at EU or international level in the sphere of environmental protection in marine waters – COM (2012) 662

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0662:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0662:FIN:EN:PDF)

- g. Biodiversity, Illegally Imported Timber & Trade in Endangered Species

### ***Habitat Protection***

- Report on the Conservation status of Habitats and Species in the EU- COM(2009) 358

<http://bd.eionet.europa.eu/article17>

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0358:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0358:FIN:EN:PDF)

### ***Imported Timber***

- Regulation laying down the obligations of operators who place timber and timber products on the market (995/2010) & associated guidance

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF)

[www.ec.europa.eu/environment/forests/pdf/Final%20Guidance%20document.pdf](http://www.ec.europa.eu/environment/forests/pdf/Final%20Guidance%20document.pdf)

### ***Trade in Endangered Species***

- Commission Recommendation identifying a set of actions for the enforcement of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (notified under document number C(2007) 2551

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:159:0045:0047:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:159:0045:0047:EN:PDF)



h. Impact Assessment

- Report on the application and effectiveness of the Environment Impact Assessment Directive COM (2009)0378

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0378:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0378:FIN:EN:PDF)

- Proposal amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment - COM (2012) 628 and associated impact assessment – SEC (2012) 355

[www.ec.europa.eu/environment/eia/pdf/COM-2012-628.pdf](http://www.ec.europa.eu/environment/eia/pdf/COM-2012-628.pdf)

[www.ec.europa.eu/environment/eia/pdf/IA%20SWD-2012-355.pdf](http://www.ec.europa.eu/environment/eia/pdf/IA%20SWD-2012-355.pdf)

i. Environmental Information, Liability & Public Participation

***Environmental Information***

- Report from the Commission to the Council and the European Parliament on the experience gained in the application of Directive 2003/4/EC on public access to environmental information – COM(2012) 774 final

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0774:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0774:FIN:EN:PDF)

- Report from the Commission – Aarhus Convention Implementation Report of 14 April 2011 – COM(2011)208 final

[www.ec.europa.eu/environment/aarhus/reporting.htm](http://www.ec.europa.eu/environment/aarhus/reporting.htm)

- Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007L0002:EN:NOT](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007L0002:EN:NOT)

***Environmental Liability***

- Report on the effectiveness of the Environmental Liability Directive – COM (2010) 581

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0581:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0581:FIN:EN:PDF)

***Public Participation***

Report on the implementation and effectiveness of the Public Participation Directive – COM (2010) 143

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0143:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0143:FIN:EN:PDF)

j. Financial Instruments

- LIFE proposal COM (2011) 874 & associated Impact Assessment SEC(2011) 1541

[www.ec.europa.eu/environment/life/about/documents/COMM\\_PDF\\_COM\\_2011\\_0874\\_F\\_EN.pdf?reference=IP/11/1526&format=PDF&aged=0&language=FR&guiLanguage=en](http://www.ec.europa.eu/environment/life/about/documents/COMM_PDF_COM_2011_0874_F_EN.pdf?reference=IP/11/1526&format=PDF&aged=0&language=FR&guiLanguage=en)

[www.ec.europa.eu/environment/life/about/documents/COMM\\_PDF\\_SEC\\_2011\\_1541\\_F\\_EN.pdf](http://www.ec.europa.eu/environment/life/about/documents/COMM_PDF_SEC_2011_1541_F_EN.pdf)

- Communication on the mid-term review of the LIFE+ Regulation COM(2010) 516  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0516:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0516:FIN:EN:PDF)

## 2. CLIMATE CHANGE

### 2.1 Overview of Climate Policy

- Green Paper of 27 March 2013 "A 2030 framework for climate and energy policies" –  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0169:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0169:FIN:EN:PDF)
- Commission Consultative Communication of 26 March 2013 " The 2015 International Climate Change Agreement: Shaping international climate policy beyond 2020" –  
[www.ec.europa.eu/clima/policies/international/negotiations/future/docs/com\\_2013\\_167\\_en.pdf](http://www.ec.europa.eu/clima/policies/international/negotiations/future/docs/com_2013_167_en.pdf)
- Commission Communication of 8 March 2011 "A Roadmap for moving to a competitive low carbon economy in 2050" – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0112:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0112:FIN:EN:PDF)
- Commission Communication of 26 May 2010 "Analysis of options to move beyond 20% greenhouse gas emission reductions and assessing the risk of carbon leakage" –  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0265:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0265:FIN:EN:PDF)

### 2.2 Legislative Documents

#### *a. Pending Proposals*

- Proposal of 28 June 2013 for a Regulation on Monitoring, reporting and verification of greenhouse gas emissions from maritime transport –  
[www.ec.europa.eu/clima/policies/transport/shipping/docs/com\\_2013\\_480\\_en.pdf](http://www.ec.europa.eu/clima/policies/transport/shipping/docs/com_2013_480_en.pdf)
- Proposal of 7 November 2012 for a Regulation on fluorinated greenhouse gases –  
[www.ec.europa.eu/clima/policies/f-gas/legislation/docs/com\\_2012\\_643\\_en.pdf](http://www.ec.europa.eu/clima/policies/f-gas/legislation/docs/com_2012_643_en.pdf)
- Proposal of 17 October 2012 for a directive of the European Parliament and of the Council amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources –  
[www.ec.europa.eu/clima/policies/transport/fuel/docs/com\\_2012\\_595\\_en.pdf](http://www.ec.europa.eu/clima/policies/transport/fuel/docs/com_2012_595_en.pdf)

- Proposal 25 July 2012 for a Decision of the European Parliament and of the Council amending Directive 2003/87/EC clarifying provisions on the timing of auctions of greenhouse gas allowances –

[www.ec.europa.eu/clima/policies/ets/cap/auctioning/docs/com\\_2012\\_416\\_en.pdf](http://www.ec.europa.eu/clima/policies/ets/cap/auctioning/docs/com_2012_416_en.pdf)

- Proposal of 11 July 2012 for a Regulation amending Regulation (EU) No 510/2011 to define the modalities for reaching the 2020 target to reduce CO<sub>2</sub> emissions from new light commercial vehicles – [www.eur-](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0394:FIN:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0394:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0394:FIN:EN:PDF)

- Proposal of 11 July 2012 for a Regulation amending Regulation 443/2009 to define the modalities for reaching the 2020 target to reduce CO<sub>2</sub> emissions from new passenger cars – [www.eur-](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0393:FIN:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0393:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0393:FIN:EN:PDF)

### ***b. Main existing Regulations***

- Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC – [www.eur-](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0013:0040:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0013:0040:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0013:0040:EN:PDF)

- Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 – [www.eur-](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013R0389:EN:NOT)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013R0389:EN:NOT](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013R0389:EN:NOT)

- Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles – [www.eur-](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:145:0001:0018:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:145:0001:0018:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:145:0001:0018:EN:PDF)

- Commission Regulation No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community – [www.eur-](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2010R1031:20111125:en:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2010R1031:20111125:en:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2010R1031:20111125:en:PDF)

- Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles

– [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0001:0015:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0001:0015:EN:PDF)

- Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:286:0001:0030:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:286:0001:0030:EN:PDF)

- Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:161:0001:0011:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:161:0001:0011:EN:PDF)

### ***c. Main existing Directives***

- Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0114:0135:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0114:0135:EN:PDF)

- Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0088:0113:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0088:0113:EN:PDF)

- Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0063:0087:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0063:0087:EN:PDF)

- Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:008:0003:0003:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:008:0003:0003:EN:PDF)

- Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:338:0018:0018:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:338:0018:0018:EN:PDF)

- Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:275:0032:0046:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:275:0032:0046:EN:PDF)

- Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO2 emissions in respect of the marketing of new passenger cars - [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1999L0094:20081211:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1999L0094:20081211:EN:PDF)
- Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:350:0058:0067:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:350:0058:0067:EN:PDF)

***d. Main existing Decisions***

- Decision No 529/2013/EU of the European Parliament and of the Council of 21 May 2013 on accounting rules on greenhouse gas emissions and removals resulting from activities relating to land use, land-use change and forestry and on information concerning actions relating to those activities – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0080:0097:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0080:0097:EN:PDF)
- Decision No 377/2013/EU of the European Parliament and of the Council of 24 April 2013 derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:113:0001:0004:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:113:0001:0004:EN:PDF)
- Commission Decision 2013/162/EU of 26 March 2013 on determining Member States' annual emission allocations for the period from 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:090:0106:0110:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:090:0106:0110:EN:PDF)
- Commission Implementing Decision of 18 December 2012 "Award Decision under the first call for proposals of the NER300 funding programme" - [http://ec.europa.eu/clima/news/docs/c\\_2012\\_9432\\_en.pdf](http://ec.europa.eu/clima/news/docs/c_2012_9432_en.pdf)
- Commission Decision No 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011D0278:EN:NOT](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011D0278:EN:NOT)
- Commission Decision of 29 March 2011 on guidance on the methodology to transitionally allocate free emission allowances to installations in respect of electricity production pursuant to Article 10c(3) of Directive 2003/87/EC – [www.ec.europa.eu/clima/policies/ets/cap/auctioning/docs/c\\_2011\\_1983\\_en.pdf](http://www.ec.europa.eu/clima/policies/ets/cap/auctioning/docs/c_2011_1983_en.pdf)
- Commission Decision 2010/778/EU of 15 December 2010 amending Decision 2006/944/EC determining the respective emission levels allocated to the Community and each of its Member States under the Kyoto Protocol pursuant to Council Decision

2002/358/EC – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:332:0041:0042:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:332:0041:0042:EN:PDF)

- Commission Decision 2010/2/EU of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage

– [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:001:0010:0018:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:001:0010:0018:EN:PDF)

- Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 –

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0136:0148:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0136:0148:EN:PDF)

- Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:049:0001:0008:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:049:0001:0008:EN:PDF)

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:049:0001:0008:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:049:0001:0008:EN:PDF)

- Council Decision of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:130:0001:0020:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:130:0001:0020:EN:PDF)

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:130:0001:0020:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:130:0001:0020:EN:PDF)

## 2.3 Policy Documents

### *a. International Climate Policy*

- Commission Communication of 26 March 2013 "The 2015 International Climate Change Agreement: Shaping international climate policy beyond 2020" –

[www.ec.europa.eu/clima/policies/international/negotiations/future/docs/com\\_2013\\_167\\_en.pdf](http://www.ec.europa.eu/clima/policies/international/negotiations/future/docs/com_2013_167_en.pdf)

- Report from the Commission of 24 October 2012 on "Progress towards achieving the Kyoto objectives" – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0626:FIN:en:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0626:FIN:en:PDF)

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0626:FIN:en:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0626:FIN:en:PDF)

- Commission Staff working document of 13 February 2012 "Preparing the EU's Quantified Emission Limitation or Reduction Objective (QELRO) based on the EU Climate and Energy Package" –

[www.ec.europa.eu/clima/policies/international/negotiations/docs/swd\\_13022012\\_en.pdf](http://www.ec.europa.eu/clima/policies/international/negotiations/docs/swd_13022012_en.pdf)

- Report 2010-2012 "European Union fast start funding for developing countries" - [www.ec.europa.eu/clima/policies/finance/international/faststart/docs/fast\\_start\\_2012\\_en.pdf](http://www.ec.europa.eu/clima/policies/finance/international/faststart/docs/fast_start_2012_en.pdf)

#### ***b. European Carbon Market***

- Report from the Commission of 14 November 2012 "The state of the European carbon market in 2012" – [www.ec.europa.eu/clima/policies/ets/reform/docs/com\\_2012\\_652\\_en.pdf](http://www.ec.europa.eu/clima/policies/ets/reform/docs/com_2012_652_en.pdf)

- Commission Staff Working Document of 25 July 2012 "Information provided on the functioning of the EU Emission Trading System, the volumes of greenhouse gas emission allowances auctioned and freely allocated and the impact on the surplus of allowances in the period up to 2020" – [www.ec.europa.eu/clima/policies/ets/cap/auctioning/docs/swd\\_2012\\_234\\_en.pdf](http://www.ec.europa.eu/clima/policies/ets/cap/auctioning/docs/swd_2012_234_en.pdf)

#### ***c. Adaptation to Climate Change***

- Commission Communication of 16 April 2013 "An EU Strategy on adaptation to climate change" – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0216:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0216:FIN:EN:PDF)

#### ***d. Low Carbon Technologies***

- Commission Communication of 27 March 2013 on the Future of Carbon Capture and Storage in Europe – [www.ec.europa.eu/clima/policies/lowcarbon/ccs/docs/com\\_2013\\_180\\_en.pdf](http://www.ec.europa.eu/clima/policies/lowcarbon/ccs/docs/com_2013_180_en.pdf)

- Commission Communication of 25 June 2009 demonstrating Carbon Capture and Geological Storage (CCS) in emerging developing countries: financing the EU-China Near Zero Emissions Coal Plant project – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0284:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0284:FIN:EN:PDF)

#### ***e. Transport and Fuel***

- Report from the Commission of 13 December 2012 on "Quality of petrol and diesel fuel used for road transport in the European Union: Ninth annual report (Reporting year 2010)" – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0749:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0749:FIN:EN:PDF)

- Report from the Commission of 22 December 2010 on "indirect land-use change related to biofuels and bioliquids" – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0811:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0811:FIN:EN:PDF)

- Report from the Commission of 10 November 2010 "Monitoring the CO2 emissions from new passenger cars in the EU: data for 2009" – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0655:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0655:FIN:EN:PDF)



- Report from the Commission of 10 November 2010 "Progress report on implementation of the Community's integrated approach to reduce CO2 emissions from light-duty vehicles" – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0656:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0656:FIN:EN:PDF)

#### ***f. Fluorinated Greenhouse Gases***

- Report from the Commission of 26 September 2011 "On the application, effects and adequacy of the Regulation on certain fluorinated greenhouse gases (Regulation (EC) No 842/2006)" – [www.ec.europa.eu/clima/policies/f-gas/docs/report\\_en.pdf](http://www.ec.europa.eu/clima/policies/f-gas/docs/report_en.pdf)

## **2.4 Financial Instruments**

- Proposal of the European Commission for the future EU financial instrument for the environment and climate protection (continuation of LIFE+) – [www.ec.europa.eu/environment/life/about/documents/COMM\\_PDF\\_COM\\_2011\\_0874\\_F\\_EN.pdf?reference=IP/11/1526&format=PDF&aged=0&language=EN&guiLanguage=en](http://www.ec.europa.eu/environment/life/about/documents/COMM_PDF_COM_2011_0874_F_EN.pdf?reference=IP/11/1526&format=PDF&aged=0&language=EN&guiLanguage=en)

- Mid-Term Evaluation of the LIFE+ Regulation - [http://life.lifevideos.eu/environment/life/publications/lifepublications/evaluation/document/s/LIFEplus\\_mte\\_report.pdf](http://life.lifevideos.eu/environment/life/publications/lifepublications/evaluation/document/s/LIFEplus_mte_report.pdf)

- Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23 May 2007 concerning the Financial Instrument for the Environment (LIFE+) - Commission statement – [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:149:0001:0016:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:149:0001:0016:EN:PDF)

## **Federation of Small Businesses**

### **Introduction**

The FSB accepts that when it comes to protecting the environment and human health it makes sense to often adopt a cross-border approach to regulation and mitigation of the damaging effects of human action on the environment. However, we believe that there is scope for member states to have a greater flexibility over how they transpose EU environmental legislation in some key areas.

Below we will consider questions 2 and 5 and outline the areas of EU legislation where we believe small firms would benefit from greater flexibility for member states in the implementation of environmental legislation.

Furthermore, we will illustrate with the REACH regulation in question 6 how the EU's current competence for the environment could be used more effectively. Question 8 will



consider what the UK Government could do for small businesses when implementing EU directives on the environment and climate change.

## **Questions Two and Five**

The FSB believes EU waste and environmental impact legislation are good examples of where there is scope for giving member states greater flexibility to ensure the transposition of directives are better suited to national circumstances.

**→ Considering specific examples, how might the national interest be better served if decisions:**

- **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?)**
- **currently made at another level were instead made at EU level?**

**→ Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

- **focused on outcomes (results)?**
- **based on an assessment of risk and scientific evidence?**

## **1. Waste legislation**

How businesses handle, transport and dispose of waste is subject to a number of EU regulations. While it is right to regulate how businesses handle their waste, micro and small businesses deal with very small quantities of waste, similar to domestic household volumes, as opposed to the far larger quantities dealt with by medium or large businesses. The associated paperwork for these small volumes of waste bears no relation to its potential environmental risk, so there is a need for a greater risk-based approach in terms of small business waste regulation.

### **1.1 The revised Waste Framework Directive**

'Duty of Care' was implemented under the Environmental Protection (Duty of Care) Regulations 1991 (as amended). It requires businesses to be responsible for the handling, disposal or recovery of waste produced, even when it has been sent to another party, such as a waste contractor or skip-hire business. This means that the 'Duty of Care' principle applies to a business that chooses to handle its own waste as well as to a designated waste handling company.

Furthermore, the European Waste Catalogue (EWC) under the Duty of Care Regulations places a significant amount of burden on small firms. The requirements to register as a waste carrier and to complete a 'Waste Transfer Note' place a high level of compliance burden on small firms that is disproportionate to the environmental risk they pose.

In terms of waste carrier registration, we believe registration should be as simple as possible for a small business, preferably adding a tick-box to an existing form that SMEs use on an annual basis.

The 'Waste Transfer Note' in article 15 requires small businesses to make an individual 200-word declaration to show that they have conformed to the waste hierarchy. This is potentially extremely onerous to a small business and is wholly disproportionate to the environmental risk involved. We therefore supported the UK's decision to use a standard declaration for each Waste Transfer Note. However, the FSB would like to see this go further and wants the Government to push for a far more small business friendly waste transfer note system under the EWC.

This high level of administrative and compliance burden of the 'Duty of Care' regulations can encourage firms to flout regulations and lead to poor waste management practices.

The Revised Waste Framework Directive is an example of the need for more flexibility for member states to adapt EU waste legislation to their specific economic and technical circumstances.

Article 11 requires waste management companies to offer separate collection of waste by 2015. Whilst broadly supportive of this objective, we are concerned that, given the difficulties UK small businesses have in accessing suitable waste and recycling services, many of our members face significant cost increases. This is especially concerning given the fact they are already economically unattractive to many commercial waste/recycling companies due to economies of scale, and are sometimes only able to access the services of one private waste/recycling company at high cost.

Therefore, the separate collection of waste duties under the revised Waste Framework Directive could potentially have large administrative and cost implications for small business. The derogation in the directive that allows national governments to take account of technical and economic considerations when interpreting the requirements is therefore to be welcomed. For example, city centre SMEs will struggle to provide the necessary storage facilities to store various waste streams separately.

The FSB believes it is essential for the economic viability of small and micro businesses that this caveat is maintained during the current EU review of waste legislation.

## **1.2 Guidance**

Whilst we are conscious that any guidance has to accurately reflect the legislation it is based on, we believe the complexity of the Waste Framework Directive regulations has led to onerous and highly technical guidance resulting from the domestic transposition of the Directive.

Therefore, there is scope for national governments to develop online tools that businesses can easily access. For example a webtool where they input the particular waste stream they are dealing with, and which then produces practical advice on how to adhere to the Waste Framework Directive. Furthermore, an online tool could give information on which suitable waste/recycling/reuse services are available to businesses in their locality, as used to be the case with Netregs.

## **2. Environmental Impact Assessment Directive**

Another key area where we believe member states should have some flexibility over the implementation of EU directives is the application of Environmental Impact assessments.

The Environmental Impact Assessment (EIA) Directive requires member states to ensure that an appropriate competent authority carries out an assessment of the environmental impact of major construction and planning projects such as building a new factory, road or quarry. It came into force in 1985 but a new version aims to correct certain shortcomings and to reflect developments in policy, law and technology over the past 25 years. In October 2012 the Commission published a proposal to amend the Directive. The overarching aim of the revision is to introduce a largely uniform system of EIA across member states.

Ensuring small firms can interact with a streamlined and responsive planning and development system is crucial to ensuring small businesses are able to grow and expand their business. However, the current proposal for the revision of the EIA Directive will have serious consequences for the UK's small firms and limit their ability to contribute to economic growth.

Proposals for major projects or developments are currently required to be subject to a 'screening' process that determines whether the project or installation requires an EIA. The Commission estimates that 16,000 EIAs are undertaken across the EU each year, with only around 600 of those being done in the UK. Currently, screening is done in the UK via certain thresholds, and only large projects are required to be screened.

Article 4(3-4) of the proposed revisions to the EIA Directive would make the current UK screening thresholds redundant. This means that thousands of small projects – anything from the installation of micro-generation power technologies to setting up a specialist cheese maker or micro-brewery – will have to be assessed for their potential impact on the environment. Businesses would have to pay for written screening reports for small projects that are below the current threshold and don't require screening assessment at the moment. This new requirement effectively amounts to mini-EIAs being required for even the smallest of projects which bear no risk to the environment.

The current proposal is clearly not proportionate and the FSB supports the retention of the existing flexible system which allows Member States the ability to set thresholds for screening depending on the size and the likely environmental impact of a project. The FSB believes this is a crystal clear example of where member states need the flexibility to decide as to how to implement EU legislation to take account of the specific needs and characteristics of each member state.

## **Question Six**

**➔ *How could the EU's current competence for the environment be used more effectively?***

### **3. REACH**

The FSB believes the current review of the REACH regulation is an example of where the EU can better use its competence in relation to environmental legislation. The FSB

recognises that REACH is effective in limiting the harm chemicals have to the environment and human health. However, we believe the way it is currently implemented takes little of any account of the costs and impacts its effect on SMEs. We believe there is significant scope for the review to deliver a more SME-friendly REACH Regulation. We are advocating the measures below.

### **3.1 Develop an effective system to monitor the impact of REACH on competitiveness**

The Commission's review pledged to monitor how REACH affects the competitiveness of SMEs but has yet to outline how this will work in practice. The FSB would like to see a monitoring programme that captures the wide range of impacts REACH has on the competitiveness of small firms.

From the effects on downstream users, the impact on innovation through to the effects on supply chains and product prices, REACH can have a significant impact on SMEs, both in terms of time and resources. There is therefore a pressing and urgent need for an effective system of monitoring to be developed to ensure that the economic effects of REACH are fully understood.

REACH presents unique challenges for SMEs. It creates a significant administrative burden for many small firms. The lack of sufficient awareness-raising, along with guidance that is ill-suited to SMEs, has meant many small firms have been caught out by the May 2013 deadline. This had led to the sudden halting of business operations in some cases, as well as businesses having to spend significant amounts of money on external consultants in order to advise them on their duties under REACH. The FSB believes that if the monitoring process reveals clear impacts on the competitiveness of the EU's SMEs due to REACH, then bold action needs to be taken ahead of the 2018 deadline when the threshold for registration is further lowered to one tonne.

### **3.2 Developing SME guidance**

The review has promised to deliver more SME-friendly guidance for SMEs. The current lack of suitable SME guidance has created a high level of administrative burden for small firms. The FSB wants to see that guidance is produced that is specifically tailored for small firms and not merely cut down versions of the existing guidance.

### **3.3 Put in place a system to monitor the authorisation process**

We believe a stakeholder group, similar to the Commission's Directors Contact Group (a group that gives feedback on industry's experience of the registration process to the Commission), should be created to give the everyday experiences of small firms on the practical difficulties of complying with the authorisation process and what can be done to make it easier.

### **3.4 Develop clear criteria for how authorisation applications will be decided**

SMEs take a significant financial risk when making applications for the authorisation of Substances of Very High Concern (SVHCs) due to the lack of clarity as to what makes a successful application. The FSB believes there needs to be clear guidance and practical examples of what constitutes an eligible case for authorisation. This would allow SMEs to make an informed judgement as to whether to risk the authorisation process and take on substantial financial and administrative burden.

## Question Eight

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

### **4 Implementation of environmental legislation at UK level**

Guidance for SMEs, awareness of the specific characteristics of SMEs and better enforcement are all elements that need to accompany the implementation of EU waste legislation at UK level. They will help small firms comply with waste legislation.

#### **4.1 Awareness raising**

When the UK transposes EU waste legislation there are often no accompanying measures to raise awareness of the new legislation. The FSB is concerned that new regulations are often introduced with little effort to explain their meaning and implications, to the small-business sector. For example, when the UK transposed the revised EU Waste Framework Directive there was no publicity or attempt to prepare the business community for the transposition of the directive and its implications. The FSB believes that Defra has often failed to raise the awareness of waste policies and their implications on small businesses. This is something the FSB is urging the Government to address.

#### **4.2 SME education**

Official waste regulation guidance can be bewildering for small businesses and more needs to be done to provide practical and easily accessible guidance for small businesses. Learning how to properly recover, recycle or dispose of a specific waste material is essential for small businesses to enjoy the benefits of being more resource efficient but, due to the highly technical nature of official waste guidance, it can be time consuming for a resource constrained small business. We believe there is greater scope for providing SMEs with better suited guidance to help them comply with waste legislation.

#### **4.3 Enforcement – a different approach**

The FSB believes enforcement bodies, such as the Environment Agency, can also play a role in helping small businesses increase their resource efficiency and prevent waste. Given the small volumes of waste produced, the FSB believes that the Environment Agency should adopt a lighter touch approach to small businesses that unintentionally fail to comply with waste regulation. Instead, it should focus on targeting larger companies that flout the law. The FSB also calls on the Environment Agency to work with small businesses in a constructive way to show them how to better comply with waste regulation and understand how minimising waste and increasing resource efficiency can help boost their economic performance.

**Fjordr Limited**

**Introduction**

Fjordr Ltd is a small UK company providing consultancy services to a range of public authorities and private developers in respect of marine and historic environment matters. European Union action on environment and climate change provides much of the framework within which Fjordr's services are applied. The comments below arise from three aspects of EU action: actions directed at management of the historic environment; actions directed at marine management; and actions directed in other fields that prompt development / activity that has direct implications for the marine historic environment, including renewable energy and water quality.

**1. What evidence is there that EU competence in the area of environment and/or climate change has:**

**i. benefited the UK / your sector?**

**ii. disadvantaged the UK / your sector?**

EU competence in environment and climate change has benefitted the sector in which Fjordr works in several respects:

The EIA Directive and to a lesser extent the SEA Directive have prompted developers and planners to consider in advance the possible environmental consequences of their proposals and, if the effects are significant, to reduce them. Both EIA and SEA regard the archaeological heritage as an integral element of the environment that EIA and SEA must address. EIA in particular has become central to dealing with the potential for and presence of heritage assets within the footprint of major developments. Consequently, it is European legislation that provides the current framework for delivering UK policies with respect to planning and archaeology as set out in the UK Marine Policy Statement, the National Planning Policy Framework, National Policy Statements for national infrastructure and so on.

Consideration of the historic environment through EIA results in very positive outcomes for society by safeguarding heritage assets that would otherwise be destroyed by development, or by improving scientific understanding of the UK's past and ensuring that this information is made available to the wider public. Public fascination with archaeology is often put down to the profile of TV programmes such as Time Team; but the day-to-day effect of EIA processes causing exciting new discoveries to be shared with the public in their local surroundings over the last 20 years has undoubtedly played an important role.

A fundamentally important aspect of EIA, however, is the effect it has on developers' own preparation of their proposals, understanding the environment and anticipating effects before construction starts. Developers certainly bemoan the costs of EIA and undoubtedly, more attention is required to ensure that UK implementation is as effective as possible in targeting real risks in a proportionate way. Nonetheless, it is Fjordr's experience that without EIA, construction would commence with developers ill-prepared for what might

occur, leading to cost and delay to the developer as well as loss and damage to significant historic assets.

By way of example, the initial proposal for the channel to be dredged for the new London Gateway port in the Thames Estuary would have cut through the site of the C17th wreck of the London and another wooden shipwreck. Without EIA these wrecks would have been completely destroyed or the developer would have had to resort to a disruptive and highly costly 'rescue' excavation, which is likely to have cost several millions. Investigation and further consideration in the course of EIA resulted in the channel being re-designed to avoid these sites (see pp. 6-7 [www.londongateway.com/upload/environment/environment-overview/a-maritime-history.pdf](http://www.londongateway.com/upload/environment/environment-overview/a-maritime-history.pdf)).

The principal disadvantage of EU action for the marine historic environment arises where the EU is not consistent in including the historic environment in its instruments, insofar as our domestic government gives much higher regard to issues addressed in EU instruments than to issues identified only in UK policy. The most striking example of this in Fjodr's sphere is the Marine Strategy Framework Directive, which – contrary to other EU environmental instruments – omits the archaeological heritage from the scope of 'Good Environmental Status' (GES). UK marine environmental policy – including data gathering and research – is driven (too) strongly by the need to deliver GES. Hence:

- 'All the actions we're taking to protect and sustainably use the marine environment are helping us to implement the Marine Strategy Framework Directive. We've set targets for a healthy marine environment by 2020 under this directive'
- [www.gov.uk/government/policies/protecting-and-sustainably-using-the-marine-environment](http://www.gov.uk/government/policies/protecting-and-sustainably-using-the-marine-environment)

Policies on the historic environment set out in the UK Marine Policy Statement effectively rank much lower than otherwise equivalent policies relating to topics included within GES, and opportunities for integrated data acquisition, research and management are being ignored. EU action disadvantages the UK when it distorts domestic policy priorities.

## **2. 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?**

No view.

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

EU environmental standards are necessary for the internal market on two counts:

First, EU action – at least to some degree – creates a level playing field with respect to considering the archaeological consequences of major development. Early consideration of the archaeological heritage to meet the EIA directive certainly increases the upfront costs of development. It can be argued that EIA reduces costs subsequently because it results in less damaging schemes and less disruption during construction. However, the fact that costs are incurred at an early stage is significant for the overall development process. Countries that do not require the upfront costs associated with EIA may appear more attractive to investors, which would place countries that require EIA at a competitive disadvantage. Hence, it is essential for environmental requirements to be as near uniform as possible.

Second, the sea is a shared space with natural processes that do not obey national boundaries. In the marine environment, it is essential that market forces are tempered by collective responsibility. Without collective action, lower marine environmental standards in one country will provide them with an economic advantage and also result in environmental degradation beyond their marine borders. An internal market without marine environmental protection would be very damaging to the UK's coasts and seas, including the heritage assets found within them.

**4. 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?**

With respect to EIA there is a good balance between protection and economic interest because, as noted above, developments whose environmental implications are carefully considered in advance are likely to be more cost-effective over their entire design life.

**5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

- i. focused on outcomes (results)?**
- ii. based on an assessment of risk and scientific evidence?**

No view

**6. 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?)**

The EU's current competence for the environment would be more effective if it was more consistent in recognising the importance of the historic environment. As noted above, some EU instruments take proper account of the archaeological heritage whereas others make no



reference. The EU should be expected to fully implement its obligations under Article 167 (Culture) of the Treaty on the Functioning of the European Union, notably: ‘The Union shall take cultural aspects into account in its action under other provisions of the Treaties’ (Article 167(4)). This article appears not to be implemented fully with respect to environmental instruments. The proposed framework directive on Maritime Spatial Planning and Integrated Coastal Management ([www.eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0133:FIN:EN:PDF](http://www.eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0133:FIN:EN:PDF)) is a recent example where the marine historic environment has been ignored contrary to the requirements of Article 167(4).

## **7. How far do you think the UK might benefit from the EU taking:**

### **i. More action on the environment/climate change?**

### **ii. Less action on the environment/climate change?**

The UK is at the forefront of developing renewable energies at sea – offshore wind, wave and tidal. In addition to European support for specific projects and initiatives, the EU’s role in setting targets for renewable energy is one of the factors stimulating the development of offshore wind, wave and tidal energy in the UK. This is resulting in a secure supply of low-carbon energy for the UK. As important, however, are the manufacturing and service capacities – including expertise in research and development – that are developing in the UK in response to EU obligations. These capabilities are becoming strongly established in the UK and are already being exported around the globe.

Marine renewables have a good track-record of taking proper account of archaeology in the UK, hence marine archaeology is one of the service areas that EU obligations with respect to renewables has fostered. Marine archaeological expertise and services are a microcosm of the benefits outlined above: EU obligations have encouraged marine renewables which have in turn stimulated the development of the marine archaeological profession. Other countries, including the US ([www.boemwindworkshop2.com/](http://www.boemwindworkshop2.com/)), are already looking towards UK expertise in marine archaeology to help deliver marine renewables in their own jurisdictions, so there is scope for UK skills to be exported.

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

UK implementation of the EIA Directive still tends to result in excessively long documents going through each environmental topic mechanistically instead of focussing more clearly on the environmental effects that are likely to be significant. EIA is, therefore, more onerous to developers than it need be. Achieving greater efficiency in EIA processes is likely to require more resources to be applied to casework by regulators and to the public authorities and agencies that advise them, so that they can engage actively in ensuring that EIAs are properly targeted.

**9. a. 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?**

**b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

No view

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

**b. 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?**

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

No view

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

No view

## **Food and Drink Federation**

This submission is made by the Food and Drink Federation, the trade association for food and drink manufacturing. Food and drink is the largest manufacturing sector in the UK (accounting for 16% of the total manufacturing sector) turning over £76bn per annum; creating Gross Value Added (GVA) of £20.6bn and employing up to 400,000 people.

Like any manufacturing sector, food and drink has both direct and indirect impacts on the environment. Direct impacts relate to issues like the energy and water used in processing operations and various forms of waste and discharge. Indirect impacts include the effect on natural resources of the raw materials employed in production, notably in our case from primary agriculture.

Many of these impacts occur at local level only. But others extend beyond national boundaries to EU or international level - the most obvious example being that of greenhouse gas emissions. Some, such as water, can be both local or international, depending on where and how raw materials are sourced.

This presents an extremely complex set of challenges in terms of regulation. Generally speaking the guiding principle should be one of **subsidiarity**, consistent with the potential

for the impact in question to have wider ranging consequences. The interpretation of this principle will, however, vary according to the geographical location of the Member State concerned, such as shared land borders, rivers, aquifers, forests etc. The UK has few, if any, of these transboundary issues. This is particularly relevant in the case of water and water quality. But even where a resource is totally under UK control, we would in any event want to ensure an appropriate level of protection for the environment and public health at national level. Similar considerations apply more widely in Europe in respect of soil and contaminated land.

The key issue is therefore the extent to which it is necessary to harmonise legislation at EU level in order to provide a level playing field for companies competing both within the Single Market and more globally. There is no simple answer to this. Even within a harmonised system, it is important to maintain a degree of flexibility to respond to particular local circumstances. This balance can really only be assessed on a case by case basis. And, for the reasons already given, a UK perspective will not necessarily be shared by a majority of EU Member States, which gives rise to a slightly different set of issues in respect of decision making. The ability to **derogate** is fundamental to this, subject to safeguards against distortion of competition and other unintended consequences.

As climate change is a global issue ideally greenhouse gas reduction targets should be agreed globally. We note the current work under the UNFCCC to deliver a global agreement by 2015. But in the absence of a global agreement at this point in time and the uncertainty as to whether one will be achieved in the near future setting GHG reduction targets at EU level is an appropriate course of action. We note the UK's Government position on this matter and the setting of carbon budgets under the Climate Change Act 2008 that are consistent with EU targets.

Installations operated by FDF members in the UK and all food and drink installations across the EU who meet the qualifying criteria of more than 20MW installed combustion plant are covered by Directive 2003/87/EC which established the EU Emissions Trading Scheme. The current scheme rules sets harmonised EU wide rules for allocating free allowances, determining which sectors are exposed to carbon leakage and ensures all participants are exposed to the same cost of carbon. We support this approach as it levels the playing field and ensures all companies affected are treated the same. The main issue we have on this matter is the UK's unilateral decision to introduce a minimum price for carbon through the introduction of the Carbon Price Support mechanism. This means UK companies are exposed to a much higher cost of carbon than our European competitors. This additional cost burden, which we estimate will cost our sector over £90 million per annum from 2020, will have a detrimental impact on the ability of UK food and drink manufacturers to compete in Europe.

Directive 2003/96/EC on the taxation of energy products and electricity sets minimum taxation rates for energy products. Whilst there is an argument that taxation is the sole preserve of individual member states the setting of minimum levels of taxation should in theory ensure equal costs across Europe – again setting a level playing field. In practice, however, most member states set energy taxes at higher levels. In the UK this is enacted

via the Climate Change Levy but as FDF members can participate in the FDF Climate Change Agreement they are entitled to a 90% discount in the CCL for electricity and 65% for gas. This means the actual taxation rate is close to the minimum level set out in the Directive.

Regulation 842/2006 on fluorinated greenhouse gases sets out EU harmonised rules for the reduction of emissions of these gases through a programme of inspection and testing of facilities using these gases by appropriately qualified and trained personnel. When introduced there was no equivalent regulation on the UK. Tens of thousands of refrigeration and cooling systems used by UK food and drink manufacturers and the probable hundreds of thousands across Europe use hydro fluorocarbon (HFC) refrigerants and are covered by this regulation. This regulation is viewed by many food and drink manufacturers as a sensible approach to reducing emissions of HFC refrigerant gases. The key is its consistent and effective implementation which not only cuts emissions but brings real business cost saving benefits. Again, to ensure a level playing field across Europe we believe EU competence on this matter is appropriate.

### **Fresh Start Project**

[www.eufreshstart.org/downloads/environment-chapter.pdf](http://www.eufreshstart.org/downloads/environment-chapter.pdf)

[www.eufreshstart.org/downloads/manifestoforchange.pdf](http://www.eufreshstart.org/downloads/manifestoforchange.pdf)

### **Friends of the Earth**

In response to the Balance of Competences review and in collaboration with other organisations, Friends of the Earth has produced the attached report.

In this covering email we wish to highlight some of the report's key findings, which substantiate its central conclusion and our overriding view – that the overall impact of EU membership in the environmental domain can be judged to be strongly positive to the UK, with benefits for human health and welfare and the sustainability of the economy as well as the environment itself.

The report describes EU law as “the most developed and influential body of environmental law and policy on the global stage as well as within Europe”. This is extremely important

when one recognises that environmental problems are essentially cross-border issues that require resolution at the international level. As a result, UK citizens benefit from measures taken both within and outside these shores – for example action to reduce pollution of the marine environment or the atmosphere. This will continue to be the case and therefore a key need is for greater or at least better (rather than less) engagement by the UK in the EU.

Moreover, the report highlights that rather than being a passive recipient of EU environmental policy, the UK has been actively engaged and continues to have a significant influence on policy. At the same time, the EU principle of “subsidiarity” ensures that consideration is given to whether an issue is best handled at the national or local, rather than regional, level.

The report shows how the impact of EU environmental policy on all member states, including the UK, has been “profound”, highlighting significant reductions in the amount of landfilled waste; rising standards on air and water pollution, with major health benefits; reductions in sulphur dioxide emissions; and a dramatic increase in renewable energy capacity throughout the EU. Because of tough sanctions, such as fines, EU legislation is often implemented more rigorously than purely national measures.

Such action has positive social, as well as environmental, impacts. The report points out that several EU measures target sources of pollution concentrated in urban areas that impact lower income groups, particularly as they are more likely to live in the vicinity of industrial plants. It also highlights how EU legislation galvanises action – until the implementation of the Urban Waste Water Treatment directive in 1991, sewage ran into the Mersey untreated.

At the European level, countries with the most thriving manufacturing sectors (such as Germany) are precisely those with high environmental standards. The report identifies that this is because environmental costs are frequently not a large component of production costs and that rising environmental standards can stimulate efficiency, innovation and contribute to new markets. It also provides evidence on the positive effect of this on job creation.

The EU is also able to take a forward-looking approach, set out in successive Environmental Action Plans and Road Maps. As the report points out, companies and utilities investing in large projects with long pay-back periods, such as renewable energy

plant and transmission lines, need policy certainty and therefore particularly benefit from the longer term approach taken by the EU. This stability also ensures the progressive and sustained action often required on environmental issues over a long period in order to see results – for instance through the Birds directive.

Conservation status granted through EU legislation has also had an economic benefit, the report points to research showing that Sites of Special Scientific Interest (SSSIs) provide ecosystem services valued at eight times the costs of protecting such sites.

EU law has also had an important impact on the ability of people to bring cases to court to protect the environment and ensuring that development respects the environment. The report refutes the misconception that such types of legislation place large costs on UK business and are a barrier to growth. For example, it points to studies showing that planning officers and developers or consultants felt that environmental impact assessment had been a net benefit in the cases in which they have been involved and costs are a fraction of the total costs of a project- at 1% or even 0.1%.

The EU has the power to make and enforce binding rather than advisory measures, machinery for making decisions on a democratic basis, the power to make and enforce binding rather than advisory measures, treaty-based legal foundations, common research and infrastructure and access to detailed expertise. These characteristics are what have persuaded governments to pool sovereignty for the benefit of both the environment and their own societies.

Last but certainly not least, it is also very important to highlight that there is no viable alternative to UK membership of the EU – countries such as Switzerland and Norway, which are members of the European Economic Area (EEA) but not the EU, are still subject to a substantial body of EU environmental legislation but have no say in its formulation and adoption. For example, in the case of Switzerland, 100 bilateral agreements are in place between it and the EU, resulting in a very cumbersome process which is creating tension between the two. In addition, non-EU members are required to make financial contributions to the EU budget in return for their participation in its activities and are still subject to significant pieces of environmental legislation.

Please consider this email and the attached report as our formal response to the call for evidence on the environment and climate change part of the UK Government's Review of the Balance of Competences between the UK and the European Union .

Attached report -

[www.ieep.eu/assets/1230/Final\\_Report\\_-\\_Influence\\_of\\_EU\\_Policies\\_on\\_the\\_Environment.pdf](http://www.ieep.eu/assets/1230/Final_Report_-_Influence_of_EU_Policies_on_the_Environment.pdf)

## **Future States (Global) Limited**

**Q1** My general sense is that without a strong EU competency, the UK would probably not be very proactive in either environmental protection or climate change. Principal evidence would be the National Planning Policy Framework which runs counter to environmental protection and climate change

**Q2 -Q3** No answer

**Q4** The UK stance on sustainable development is out of date and contradictory to sound environmental protection. Better "sustainable development" would be encouraged if the EU had supervision over the UK policy

**Q5** EU environmental standards are essential for a fairly operated functioning of the internal market, especially during times of so-called "austerity" when we see southern European countries cutting corners on environmental protection and using infrastructure as a proxy for "growth"

**Q6** EU legislation is rather weak and does not protect against poor planning in the UK (see NPPF which allows building almost wherever required e.g. west of Swindon, Wiltshire).

**Q7** Not very much because legislation tends to, say, fix a limit on some aspect but then the limits are circumvented in practice. An example is that a village in Wiltshire is designated a strategic waste management site through a series of expansions of the site, none of which on their own triggered an EIA yet taken as a whole would have triggered an EIA.

**Q8** That is itself the problem, the focus of the legislation is on "what can go wrong" rather than "what do we need to do to get success" the two are quite different. The recent "bee/pesticide" issue is one such example.

**Q9** By obtaining a better balance between environmental protection, economic growth and social development. Currently the balance is skewed towards more economic growth of the sort that has already compromised environmental protection and social development. Good (bad) example is the UK housing policy in southern England

**Q10** The EU could help to rein in the UK government's current approach to "build at any cost"

**Q11** This would be disastrous as this would provide no checks or balances to the UK policy on "growth"

**Q12** It could listen to science/technical stakeholders rather more than just the construction sector and industry generally

**Q13** The EU has far more international clout than just UK on its own and so could negotiate better

**Q14** Unless the UK can show some leadership it is embarrassing having the UK on Team EU. The lack of a decarbonisation target is just the reason that the UK should not be a significant player at UNFCCC summits since the UK cannot do the minimum itself.

**Q15** The continuing (bizarre) use of "sustainable development" as defined by the UK government is embarrassing and will lead to significant declines in natural resources (and therefore of social development) during the coming years

**Q16** Before playing any further role internationally, the UK should set the UK on a path to sustainable growth through appropriate environmental protection and social justice. It has to get into a position of leadership

**Q17** Without the UK being brought up short for being unable to "walk its own talk", the cost is a diminished EU in terms of global leadership. The benefit would be a much more balanced space and society.

**Q18** The UK government needs to appreciate that resilience has a much greater traction in terms of environmental protection, economic growth and social protection than the moribund concept of sustainable development as defined by UK government

## **Future Training College**

**Q1** Our organisation is a partner with an energy training college as well as Green Deal Advisor organisations and Green Deal Installers as well as MCS registered companies. We have found that people are very happy with an energy assessment to be carried out on their property and explore energy saving measures. In the main most have taken them up and also changed their behaviour to save energy

**Q2** There is a shortage of qualified workforce. Lack of funding and SME's have been severely disadvantaged to access the funding and getting payments from Green Deal and ECO providers

**Q3** For example the Energy Performance Certificate (EPC) and the Green Deal Advisory Report (GDAR) are not used effectively and the worse situation is that Trading Standards



are not enforcing compliance. This needs to be addressed. We see many examples of building control and planning officers totally unaware of the legislation requirements in terms of energy saving at planning and building control enforcement stages. For the Green Deal, there are so many bilateral agreements with Utility companies that householders are confused of the offering - an example is 'free boilers' - this does not address the main heat leakage from the property, in fact the energy bills go up

**Q4** See above

**Q5** Very necessary as we need standards to work towards and also have a competent set of skills to enhance projects

**Q6** There is a mis-match as the UK has very differing needs to the rest of the EU in terms of property types and to implement measures

**Q7** The fact that it is compulsory to have an EPC for sale, rent and construction of properties is a good outcome if implemented and enforced correctly MCS PV solar systems have gone through a bad patch with Government changes that are too sudden and not justified or properly consulted on

**Q8** No comment

**Q9** Wider consultations with stake holders and through briefings would be useful

**Q10** The UK can benefit from EU expertise but more specific to the UK would be useful

**Q11** This is not a good option since if we don't have EU directives and initiatives, it is unlikely that the UK market will take up the challenges to meet our commitments

**Q12** Yes, there needs to be a focus group from SME and stakeholders to decide on the best way to enhance the uptake and provide employment opportunities. These should have a wide range of people in the groups from training companies, colleges, universities and employers of different sizes

**Q13** The UK should undertake this for our own interests

**Q14** Important but needs to address our interests which are fundamentally different

**Q15** Qualified people is first. Then having our own systems that provide long term employment in the very important area. There is an enormous opportunity to develop systems for exporting expertise and systems

**Q16** The right balance is to participate and learn ways in which other countries are addressing their issues and also lead in key areas of training and systems designs

**Q17** The costs are going to happen anyway if don't do anything as energy is always on the agenda but the benefits are greater since we can develop a sustainable affordable

mechanism to reduce our energy demands and help people save and then spend the money in the economy wider than at present where a lot of the money goes on energy bills

**Q18** I am concerned that this new initiative will not get bogged down with the same delays and problems that the Green Deal has been through as the launch is delayed by almost a year.

I am concerned that the training and accreditation is looking at existing competence without further training for example where assessors need to be more aware of the finance and balance sheet issues of companies.

## **Greater London Authority**

### Advantages and disadvantages

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

### **Climate Change**

The Mayor's CCMES has a robust package of energy policies and programmes that are designed to encourage energy efficiency, reduce fossil fuel use, and realise investment in new energy infrastructure - including renewable energy, 25 per cent decentralised energy (with combined heat and power a key priority) and locally licensed energy generation. The targets in this strategy are considerably more ambitious than those set at the EU level, and the same applies to national targets for emission reduction.

The EU's 20-20-20 climate and energy package has benefited the Mayor's delivery of the CMMES, by supporting the delivery of his energy priorities and policies through EU financial instruments (LIFE+, Horizon 2020, JTI's). The Mayor has secured tens of millions of pounds in the recent years through direct funding from EU financial instruments, which may not have been available for project delivery if the 20-20-20 package and the EU's competence in this area were absent.

### **Waste**

The introduction of landfill tax at £7 per tonne in 1996 by the Government has been the main reason for London (and England's) significant improvement in 1) waste sent to landfill falling from 70 per cent in 2001 to 30 per cent in 2012, and 2) local authority recycling performance, moving from 8 per cent in 2001 to 30 per cent in 2012. The 1999 Landfill Directive is likely to have had an impact on the significant rate of landfill tax increase, rising from £10 per tonne in 1999 to £72 per tonne in 2012/13. This has helped to make other waste management methods (e.g. recycling and EFW) more competitive. We think it most likely that with a limited amount of land available for landfill the Government would have taken similar action in the absence of EU directives.

The 2008 Revised Waste Framework Directive resulted in the UK Government changing the definition of municipal waste to include more commercial waste than previously. The new definition transposed into UK law in 2012, will be a significant driver for London local

authorities to increase recycling performance of this new commercial waste, which would lead to improvement in overall municipal waste recycling performance.

### **Water Quality**

The Urban Waste Water Treatment Directive has driven the progression of the Thames Tideway Tunnel. This has both advantages and disadvantages. Although the proposed tunnel will improve river water quality, without the pressures of complying with the UWWTD London may have had more time to consider and implement other more sustainable options, such as green infrastructure and sustainable urban drainage systems. However, it is questionable whether such decentralised measures would have been pursued.

Water Framework Directive – transposed in to UK legislation in 2003, this promoted catchment management plans and tackling diffuse water pollution in London, which may not have been addressed to such an extent without the EU competence as a driver. However, it probably would have been possible for UK Government departments to achieve a less complex and bureaucratic method to address the requirements of this Directive in UK legislation.

### **Flood risk**

The 2007 EU Directive on Assessment and Management of Flood Risk largely focuses on tackling transboundary river flooding issues, which are not applicable to the UK. The Directive was transposed into the UK's 2009 Flood risk Regulations. The 2009 Regulations are consistent with the 2010 Floods and Water Management Act, driven by the Pitt Review. Our Drain London programme meets the requirements of the FWMA to enable London's Lead local flood authorities (LLFAs) to identify local sources of flood risk, in particular surface runoff.

### **Adaptation to climate change**

London was the first world city to publish a climate change adaptation strategy in 2011. The publication of the EU's Adaptation Strategy in 2013 encourages other cities to develop such strategies and indirectly assists policy-making in London by stimulating discussion between cities and sharing policies and best practice.

### **Biodiversity**

Many of the provisions of the Habitats and Birds Directive are replicated by earlier national legislation in the UK (e.g. Wildlife and Countryside Act 1981). Whilst some provisions of these Directives are important in a national context because they relate to maintaining the coherence and integrity of a pan-European network, which is important for migratory species in particular, the provisions have little additional relevance for protected sites in London other than to set the reasons for a sites protection into a European context.

However, the Directives ensure cross-boundary conservation of the habitats and staging posts of migratory birds. Without such Directives, other member states which have less robust national legislation may reduce their commitment to the conservation of wildlife sites. This in turn would affect migratory birds in particular, which would have a deleterious impact of the conservation status of a number of bird species which are part of London's natural heritage.

Trade in endangered species requires cross-boundary co-operation. Enforcement of CITES as an EU competence is particularly important in London because the city is a major

international transport and trade hub. Illegal trade in protected species is often linked to other aspects of organised crime.

### **Air Quality**

The Mayor of London is committed to improving air quality and the Ambient Air Quality Directive (Directive 2008/50/EC) provides a clear framework by which progress can be assessed and compared against other cities and regions across Europe. This has been a useful tool in focusing attention, securing additional resources and communicating the issue to the public.

Having a clear and non-negotiable standard for the Mayor to meet, supported by an enforcement regime for non-compliance, has resulted in a number of policies being established, including the Low Emission Zone, Mayor's Air Quality Fund, Clean Air Fund, Ultra Low Emission Zone and NRMM Low Emission Zone.

The National Emissions Ceiling Directive helps address transboundary pollution, which is a significant issue in the UK (and for London in particular). Without such a consistent European approach the UK may suffer from increased pollution from nearby Member States.

ii. disadvantaged the UK / your sector?

### **Climate Change**

The promotion of energy production from renewable sources has led to a distortion in the efficient generation of energy. The use of biomass in power-only technologies to achieve reductions in greenhouse gas emission associated with electricity production, as required by EU directives, is an inefficient use of a valuable resource. Around 35% of the energy content of biomass is used in such applications whereas the use of biomass in combined heat and power technology can use up to 90% of the energy in biomass. The full environmental benefit of using biomass for energy production is therefore lost.

### **Waste**

The Landfill Directive has resulted in the UK Government setting weight-based recycling and landfill diversion targets in order to fulfil its EU requirements. This approach, although necessary in improving London's transition, does not always support the progress of waste management techniques up the waste hierarchy achieving the greatest climate change mitigation and economic benefits. For example weight based targets incentivise local authorities to recycle glass over lighter weight metals or plastics. Recycling the latter materials achieves far greater greenhouse gas savings and typically fetches higher reprocessing price benefits.

### **Air Quality**

While the Mayor supports the EU framework and the standards in place, the Mayor has raised issues about the fairness of the enforcement process. Transboundary pollution makes the standards harder to meet and is a source of air pollution that the Mayor has no control over. Consequently the Mayor believes that where he is accountable for air quality, the actions he takes to address emissions within his scope of influence should be how he is judged.

In addition, the standards are not sufficiently focused on human health; with the latest health evidence suggests a great emphasis should be place on PM2.5.

In working to meet the EU limit values the Mayor has put in place a number of programmes such as the Low Emission Zone and taxi age limits which have imposed burdens on London businesses and residents. While the goal of improving air quality to protect human health justified the imposition of these costs a balance between economic, social and environmental costs and benefits does need to be struck if further measures are required in order to achieve full compliance with EU limit values.

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

2. 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?)

### **Climate Change**

The Mayor and the UK Government have set energy and emission target that are considerably more ambitious than those set at the EU level. The world's first legally binding Climate Change Act was legislated in the UK and the Mayor's ambitious Climate Change Mitigation and Energy Strategy demonstrates that national and regional government is responsibly equipped to set a clear low to zero carbon transition for the UK and London. By making decisions at the national and regional level a coordinated and funded programme of intervention could be delivered, including supporting the UK's market for low carbon and environmental goods and services and providing innovation finance – all of which are crucial to delivering sustainable economic growth, jobs and investments in London

### **Waste**

The introduction of a greenhouse gas emission metric to drive waste up the waste hierarchy achieving the greatest environmental and economic benefits should be introduced in place of weight-based targets. This approach has already been adopted by the Mayor of London for progressing the capital's waste management performance with a focus on cost and carbon without compromising London's contribution towards meeting national waste management targets. Such a metric, being considered at national level, should be consulted on with the EU to ensure consistency against the waste hierarchy, and encourage EU legislation to adopt this approach.

### **Biodiversity**

Transboundary issues such as prohibiting trade of endangered species or improving the network of habitats to allow migration of species need to be addressed at a regional or international level.

### **Air Quality**

Pollutants identified and tackled by 'Directive 2001/81/EC of the European Parliament and of the Council on national emission ceilings for certain atmospheric pollutants' contribute to transboundary pollution so it is appropriate national ceilings should be negotiated with member states at the European level to deliver EU wide benefits.

Decisions about priorities should be made at the local level but it is appropriate for these to be made in the context of a European framework. These standards are linked to human health and are not flexible.

ii. currently made at another level were instead made at EU level?

### **Waste**

If a CO<sub>2</sub>-eq metric was set at EU level using the approach taken by the Mayor of London, in place of weight-based targets, this would enable the Mayor to ensure that all London Boroughs are using this preferred and beneficial approach to waste management in London.

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

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

EU environmental standards ensure that distortions to industrial competitiveness are avoided, there is a 'level playing field' across the EU for business, and there is not a competitive disadvantage to the UK and London. The need for standards and the need for these standards to be consistent is required. However, there should not be exhaustive harmonisation across all standards, with minimum standards being set for energy efficiency, renewable energy and new energy infrastructure at the EU level but allowing for Member States and crucially cities to go further if they wish – as is the case for London. The maintenance of the subsidiarity principle and freedom to determine how and how far to achieve minimum standards is fundamental.

Implementing the waste hierarchy set by the EU Directive is imperative for aligning achievement of high environmental outcomes with economic benefit. In most cases waste activities up the waste hierarchy achieve the greatest economic benefits.

4. 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?

The Mayor recognises that strong and sustainable economic growth is dependent on healthy ecosystem services, technology innovation, efficient management and security of supply and demand for resources. All of the Mayor's environmental strategies and programmes are focussed on working to improve London's resilience – be that energy, flooding or other weather related issues in the face of more frequent extreme weather events. We are working to manage our waste in a more sensible and efficient way and maintaining and improving our quality of life through more and better green spaces and improving our air quality. These programmes not only create jobs and growth in their own right but will ensure that London develops sustainably and improves our international offer and therefore attracts inward investment and associated jobs and growth.

This vision and approach challenges the idea of the need for a balance between protecting the environment and the wider UK economic interest.

### **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

### **Climate Change**

The 20-20-20 climate and energy package, carbon emission targets and euro standards for vehicles have all focussed on outcomes. There are clear metrics to achieve across all these examples and have supported the achievement of energy and emissions targets set by the Mayor.

### **Waste**

The introduction of a landfill tax and increase in recycling service provision in the UK has resulted in a significant shift in achieving beneficial outcomes in terms of landfill diversion, resource efficiency and recycling performance in London (as set out above).

ii. based on an assessment of risk and scientific evidence?

### **Air Quality**

Pollutant limits established in 'Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe' are loosely based on World Health Organisation guidelines for human health and focused on achieving specific concentrations evidenced to reduce risk to human health. The latest health evidence suggests a great emphasis should be place on PM2.5.

'Directive 2001/81/EC of the European Parliament and of the Council on national emission ceilings for certain atmospheric pollutants' is heavily evidence led but there is some disconnect between these ceilings, the emission source control measures put in place (e.g. Euro standards for vehicles) and the achievement of EU Ambient AQ Directive limit values. This suggests that gaps remain in our technical and scientific understanding of the challenges and potential solutions.

### **Doing things differently**

6. 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?)

See response to 2 above.

On one hand or the other we feel that generally the compliance cost to the public and private sectors and wider society are not fully appreciated when EU directives and regulations are drawn up. This problem is exacerbated by the nature of UK "gold-plating"

when the directives and regulations are transcribed into national legislation. We have not had the opportunity to analyse the compliance cost in the scope of this consultation.

The Mayor does support reducing the EU regulatory and administrative burdens as well as costs on business. It is also crucial that EU environmental legislation and standards are fit for purpose and deliver EU and national targets (the failure of the Euro vehicle emission standards being a good example where they aren't), along with ensuring that city competitiveness is allowed to flourish.

### **Waste**

The EU could also look into 1) developing SRF standards to support the development of a market for high quality low carbon fuels for energy generation and 2) support the case for allowing waste-to-energy activities to be included in the emissions trading market.

### **Air Quality**

The Member States could set their own national emissions ceilings but this is unlikely to deliver the scale of reduction needed, as having an external framework with independent enforcement is critical to driving improvement. Consistency of approach across member states is also critical if transboundary pollution is to be effectively managed.

Alternative options for meeting the requirements of 'Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe' include: partnership agreements, additional funding through a new EU Urban Clean Air Fund and additional EU source control measures. The Mayor of London is working with the Commission to improve the air quality directive and the supporting Thematic Strategy on Air Quality.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

### **Climate Change**

A proposed 30 per cent reduction in EU greenhouse gas emissions from 1990 levels by 2020, alongside a more progressive targets for renewable energy generation and efficiency will support London's low carbon goods and services sector by encouraging and boosting innovation and demand for such goods and services; creating new jobs and investment opportunities, stimulating competitiveness and reducing business and household costs.

The continuing drive to reduce vehicle emissions with Euro and CO<sub>2</sub> standards will support the market for low and ultra-low emission vehicles, which are crucial to achieving emissions reductions in the transport sector and delivering health improvements.

ii. Less action on the environment/climate change?



The Mayor has gone further in his environmental targets than those set at the EU level.

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

Increased powers for the Mayor to interpret and implement EU Directives would be welcome, with proportionate funding to allow the Mayor to achieve the intended objectives of those Directives in a way that supports London's objectives

9. a. 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?

The EU's role in international climate action is crucial to ensuring that Europe is a strong negotiating bloc, and achieves outcomes for Member States that might not be achieved bilaterally between a Member State and other negotiating bloc. A lesser role for the EU in this space could have a detrimental impact on EU Member State's interests being best served.

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

As stated above, if the UK were not part of a strong EU Member States negotiating bloc, outcomes agreed at the UNFCCC may not be in the UK's best interest as the UK would have a weaker negotiating position being alone than in a strong EU-Member State bloc with expertise drawn from the Commission and the UK.

### **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

There are a number of growing challenges that London faces with regards to its environment and climate change: a growing population. Since the Mayor was elected 5 years ago London's population has increased by 400-600,000. There will be another million by 2021 and we'll reach 10 million by 2030); ensuring energy supply, demand management and distribution does not hold back London's development; building enough housing to accommodate growth; and building a transport network that is able to move people from A to B in an efficient way. These challenges will lead to pressures on natural assets and increasing demand for natural resources.

However, London's low carbon and environmental goods and services sector continues to grow by over four per cent per year, with sales to a value of over £23 billion in 2009-10

London. The Mayor is using London's inherent strengths and his environment programmes to build on this.

### **Air Quality**

Further reductions in Eastern European sources of pollutants (e.g. from delivering cleaner power stations etc.) will deliver broader EU benefits, including for London.

However, significant additional investment and action are required to improve air quality and meet EU limit values. The Commission needs to put in place an effective Euro VI standard and support its accelerated roll-out to make up for the failure of earlier emission standards. The Mayor has proposed an Ultra Low Emission Zone to deliver further improvements in London.

### **Adaptation**

Challenge of ensuring decarbonisation policies and actions do not have perverse impacts upon adaptation and resilience. Opportunity of developing an 'Adaptation' economy and trading skills, goods and expertise with other EU states

- b. 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?

### **Climate Change**

Climate Change requires an international response and this should remain the focus of international cooperation. The EU's Environmental Action Programmes and financial programmes such as LIFE and Horizon 2020, should continue to set a framework for action, ensuring that the internal market and environmental progress and protection are equally prioritised. The principle of subsidiarity, the flexibility to go further than EU standards and the freedom to determine how to achieve EU outcomes must be retained and protected. London should be given all necessary powers to achieve the Mayor's 2020 Vision for London as he is best placed to understand and deliver policies and programmes that address London's challenges and opportunities. Industry should be able and encouraged to innovate within a free-market, with that innovation addressing the challenges identified so that all Londoners benefit.

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

The challenges identified cannot be addressed entirely at the EU level, and, in many cases, have unique London characteristics. The addressing of these challenges at a London scale is most appropriate, whilst acknowledging that certain EU competencies with regards to environmental and climate change ensure that in certain areas the internal market functions properly, ensures environmental protection that addresses transboundary issues such as pollution, and drives key sectors to improve their performance, i.e. automotive.

## **Green Alliance**

Green Alliance has a long-standing expertise in environmental policy and is involved in researching, informing and influencing the development of UK climate and energy policy. Working closely together with other NGOs, academia, business and government, Green Alliance seeks to foster ambitious environmental policy and develops new policy insights.

We are currently conducting research that reviews past European climate and energy policy and its impact on the UK. As part of this research we have interviewed around 20 policy experts across business, academia, NGOs and government to seek their views on the weaknesses and strengths of common European climate and energy policy. In order to get an external perspective of the interaction between the UK and the Commission and other Member States, we have spoken to experts in Brussels and Germany as well as those based in the UK. We are focusing in particular on energy and climate change policy and less so on wider environmental policy, so more of our review will be relevant to the next call for evidence on Energy Policy.

Alongside our energy work we also have a theme of work on resource stewardship so we have also included some points on resource and waste policy.

**Q1: What evidence is there that EU competence in the area of environment and/or climate has:**

**i. benefited the UK / your sector? ii. disadvantaged the UK / your sector?**

Below we set out a number of areas where European policy has had both a positive and negative impact on environmental outcomes.

### **General**

- By doing things at a European level we can level the playing field so environmentally progressive companies are not put at a disadvantage. The adoption of common environmental standards reduces the regulatory burden for companies that operate on a pan European level. It also creates sufficiently large markets for abatement technologies to be developed and their costs reduced through economies of scale and widespread deployment.
- The large coverage and range of views covered mean that any policy position adopted by the EU as a whole has a strong impact on the global community. Although the decision making process can be protracted, this is seen as a real benefit by investors, especially those in sectors with long lived and capital intensive assets, as decision making is seen as more steadfast and less subject to short-term political intervention.
- Setting product and vehicle standards at an EU wide level is appropriate as national markets would be too small. Setting common standards across a larger market

enables innovation to take place and reduces the burden on manufacturers. The EU market is also large enough to influence manufacturers outside of Europe, improving product standards elsewhere.

- Dealing with long-range pollution such as NO<sub>x</sub> and SO<sub>x</sub> demands transboundary action.
- Many European policies have resulted in large net economic and societal benefits eg resulting from lower energy bills, improved air and water quality, protection of ecosystems and reduction in damage to building materials and crops.

## Climate

- Our work focuses on the rapid decarbonisation of the UK economy and beyond. As a global problem, it will require cooperation between large numbers of countries. Europe represents a sufficiently large group of countries that have historically had fairly similar ambitions in terms of carbon reduction, trade heavily with each other<sup>118</sup> and face with similar challenges along the road to decarbonisation. It therefore makes sense for us to cooperate – not doing so will only increase the cost for individual Member States, not least the UK which has signed up to an ambitious and legally binding GHG target for 2050.
- The EU has played an important role in setting out its ambition for Greenhouse Gas (GHG) reductions. It is important for both countries within the union and further afield to see the sense of travel clearly signposted and to know they are not going it alone. The legally binding limit of 20% reduction in GHG emissions across Europe in 2020 was extremely important in providing certainty for investors in the short to medium term and a number of roadmaps have signalled the longer term sense of travel. This longer term ambition now needs to be transferred into legal targets beyond 2020 to enable longer-term investment.
- A number of innovative carbon reduction policies have been adopted at European level, raising ambitions in many Member States, many which have spread to other jurisdictions and have raised the level of practise adopted by international companies.
- Although the EU Emission Trading System (ETS) is yet to deliver on its promises (see below), in many ways it constitutes a remarkable piece of policy and if significantly reformed has the potential to be a long-term driver for decarbonisation of the electricity and industrial sectors.
- Carbon leakage due to climate mitigation policy has been limited, in fact some industrial sectors have actually received windfall profits due to the over allocation of free carbon permits under the ETS.
- The UK has successfully used its membership of the EU to amplify its voice at international climate negotiations, and past EU leadership on the international stage

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<sup>118</sup> The Internal Market share of total EU-27 trade in goods was 63.7% in 2010, whereas intra EU-27 trade in services accounted for 56.1% of all exported services. Source: F Faes-Cannito, G Gambini, R Istatkov, *External Trade*, March 2012, Eurostat, European Commission.

has led to other major economies developing a significantly stronger domestic stance to GHG reduction than expected, even if this has not been matched by formal binding targets.

- European cooperation will be key if we are to commercialise important new technology required for climate mitigation such as Carbon Capture and Storage – by pooling funding into R&D and sharing lessons as we deploy the first and second generations of the technology we can achieve much more than an individual Member State on its own. However progress to date has been disappointing as the terms of the NER300 competition have been overly prescriptive and the programme has suffered from uncertain and inadequate funding due to the low carbon price.

## EU ETS

- Both energy and carbon trading is more efficient if done over a large area. Europe's flagship policy for reducing carbon emissions, the Emissions Trading Scheme (ETS) is more efficient than the trading scheme that preceded it in the UK. Member states are simply not big enough to create sufficiently liquid markets - the UK's emission trading scheme had less than 40 participants. The EU ETS includes around 11,000 installations in 31 countries accounting for about 45 per cent of EU carbon dioxide (CO<sub>2</sub>) emissions.<sup>119</sup>
- The EU ETS reduces price distortion, as the carbon price is the same in all countries. In this way it creates a level playing field for companies.
- Carbon trading across Europe should therefore be a more cost effective way to reduce emissions in the traded sector than a simple carbon tax or UK based trading scheme. Indeed it could be argued that it is domestic policies that put us out of step with the rest of Europe like the Carbon Floor Price that are most likely to have a negative impact on the UK economy, not those coming out of Brussels.
- The EU ETS is politically significant as it shows that carbon markets can be successfully created and integrated with conventional energy market and the EU ETS has led to a proliferation of similar schemes around the world.
- One of the major benefits that was highlighted in our interviews and tends to be overlooked is the compliance benefits of the ETS. It is legally binding on the operator and not on countries and in this way circumvents the Achilles heel of EU legislation, which is that countries often are slow or fail to properly implement EU directives. It also means that 11,000 installations are now being regularly monitored on a regular basis – no mean feat.
- However the mechanism is only as good as the political will underpinning it. Greater backing is needed to ensure it creates genuine scarcity in permits, even during

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<sup>119</sup> European Commission, *The Emissions Trading System (EU ETS)*, July 2013, [www.ec.europa.eu/clima/policies/ets/index\\_en.htm](http://www.ec.europa.eu/clima/policies/ets/index_en.htm)

rapidly changing external conditions like the recent recession. Without major reform it is unlikely to provide sufficiently high carbon prices to drive fuel switching let alone structural changes to the make-up of the traded sectors. As the flagship European climate policy, failure to rescue the scheme would put Europe's leadership role at risk and would reduce our influence at international negotiations.

### Tackling transboundary pollution: LCPD, IED

- European legislation such as the Large Combustion Plant Directive (and now the Industrial Emissions Directive) has driven the uptake of abatement technology on power stations, increasing the rate at which many Member States, including the UK have cleaned up their power stations. This has resulted in improved local air quality and reductions in regional pollution such as NO<sub>x</sub> and SO<sub>x</sub><sup>120</sup>. The commission estimates that the LCPD alone has resulted in net benefits of €7-28 billion per year, including the reduction of premature deaths and years of life lost by 13,000 and 125,000 respectively.<sup>121</sup> The Directives have also created new industries in abatement technologies.

### Product standards

- Ecodesign clearly benefits UK consumers. For example, bans on incandescent light bulbs alone should save consumers £108m on average per year between 2010 and 2020.<sup>122</sup> The ecodesign directive is projected to significantly increase savings to UK consumers by delivering much more efficient appliances. The overall benefits estimated by DECC are projected to be worth £26bn in total, or £158 per household per year by 2020, around 42% of savings delivered via energy policy. This is more than the savings expected from the Green Deal, ECO, and smart meters combined.<sup>123</sup> In the future, as emissions move from being generated by direct energy consumption to being generated in the manufacturing process, ecodesign regulations can help to increase material efficiency and reduce embedded emissions.

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<sup>120</sup> From 1990 to 2010 the [EU-27](#) recorded reductions in all ammonia (NH<sub>3</sub>), sulphur oxides (SO<sub>2</sub> and SO<sub>3</sub> as SO<sub>x</sub>), nitrogen oxides (NO and NO<sub>2</sub> as NO<sub>x</sub>), non-methane volatile organic compounds (NMVOCs), carbon monoxide (CO), and particulate matter. In the UK emissions of sulphur dioxide fell by 89 per cent between 1990 and 2010. Emissions of nitrogen oxides fell by 62 per cent between 1990 and 2010. Source: Eurostat, European Commission, *Air pollution statistics*, November 2012, [www.epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Air\\_pollution\\_statistics](http://www.epp.eurostat.ec.europa.eu/statistics_explained/index.php/Air_pollution_statistics)

<sup>121</sup> The IPPC Directive, Online: [www.ec.europa.eu/environment/air/pollutants/stationary/ippc/proposal.htm](http://www.ec.europa.eu/environment/air/pollutants/stationary/ippc/proposal.htm)

<sup>122</sup> Within the UK, the ban on incandescent light bulbs brought in via the ecodesign directive will mean net savings each year of 0.65 MtCO<sub>2</sub>e and 0.3 TWh by 2020. The average annual net benefit to the UK between 2010 and 2020 is predicted to be £108 million. Source:

[www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120522/halltext/120522h0002.htm](http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120522/halltext/120522h0002.htm)

<sup>123</sup> Household bill estimate from DECC, 2011, 'Estimated impact of energy and climate change policies on average household energy bills in year 2020'. Overall, ecodesign regulations are expected to save £26bn between 2009 – 2030, from Defra's impact assessment for ecodesign product regulations: [www.defra.gov.uk/publications/files/pb13559-energy-products-101124.pdf](http://www.defra.gov.uk/publications/files/pb13559-energy-products-101124.pdf)

## End of Life Vehicles Directive

- The End of Life Vehicles Directive (EoLV) has been highly successful at increasing resource recovery. The directive has turned the disposal cost of old cars, estimated at £88m per year in 2003 due to landfilling and the cost of collecting abandoned vehicles, into a saving of £29m in 2008, mainly comprised of avoided landfill costs and the additional value of recyclate collected from old cars. By 2015, this saving is projected to increase to £58m per year. This is the result of collection requirements and the clear market signal driven by rising recycling targets, which underpinned investment in better recovery infrastructure.<sup>124</sup>

## Waste Electrical and Electronic Equipment Directive:

- The WEEE directive has been essential to recovering value embedded in products which would otherwise end up in landfill, at a cost to society. Comparing the UK with the US, which has a patchwork of often-ineffective policy on waste electronics, 92% of mobile devices end up in landfill. In contrast, the WEEE directive has meant that 25% of mobile devices are recovered in the UK. By 2020, 80% will be recovered, keeping £13m of raw materials in the economy.<sup>125</sup>

## *Where should decision be made?*

**Q.2: Considering specific examples, how might the national interest be better served if decisions:**

- currently made at EU level were instead made at national, regional or international level?**
- currently made at another level were instead made at EU level?**

- Setting a clear and ambitious **GHG target** across Europe is extremely important politically. Leadership at a European level also makes international progress more likely. Common action on climate across Europe maximises benefits and reduces costs. It enables companies that work across Europe to see a clear market opportunity for low carbon products and services. It also reduces carbon leakage. Sharing R&D costs and co-funding common infrastructure significantly reduces costs.
- As set out in our answer to Q1 **carbon and energy trading** is best done over as large a region as possible as it is more efficient. The EU is the largest region over which a common carbon trading scheme has been developed.<sup>126</sup>

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<sup>124</sup> ibid

<sup>125</sup> Green Alliance, *Why we need landfill bans*, available from [www.green-alliance.org.uk/uploadedFiles/Publications/reports/Why%20we%20need%20landfill%20bans%20WEB.pdf](http://www.green-alliance.org.uk/uploadedFiles/Publications/reports/Why%20we%20need%20landfill%20bans%20WEB.pdf)

<sup>126</sup> European Commission, *The Emissions Trading System (EU ETS)*, July 2013, [www.ec.europa.eu/clima/policies/ets/index\\_en.htm](http://www.ec.europa.eu/clima/policies/ets/index_en.htm)

- **Transboundary** environmental problems such as acid rain are best dealt with over a large region.
- **The ecodesign directive** is a necessarily EU wide policy for two main reasons. First, manufacturers clearly prefer a single standard for efficiency across the EU's single market. This decreases the costs of design and manufacturing. Second, it ensures that UK consumers who purchase products in other parts of the EU benefit from the same minimum standards as in the UK.
- **The WEEE directive's** focus on producer responsibility requires an EU-wide approach so that companies selling in one member state face the same regulatory requirements across the EU's single market. Similarly, stricter individual producer responsibility in the EU wide recast WEEE directive will increase incentives for manufacturers to redesign their products. The discussions of the Circular Economy Task Force, which Green Alliance convenes, have suggested that the lack of EU-wide coverage of many eco-labels is a barrier to redesign.
- Although recovery requirements driven by the **End of Life Vehicles Directive** (EoLV) could have been delivered at UK level, recyclability requirements may have been more difficult to implement given the relative size of the UK car market compared to the size of the single market.

Some issues are best dealt with at a Member State level however. Directives can set the sense of travel and the high level framework and then let individual countries develop their own bespoke mechanisms to achieve the overall goals.

- For example **building regulations** need to be strengthened across Europe but there needs to be flexibility as to the exact design within each country – you don't want the same building standards in Finland and Portugal. Enforcement can also be an issue so flexibility is required to enable Member States to develop proposals that work for them to reduce the risk of non-compliance.

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

#### **Q.3: To what extent do you consider EU environmental standards necessary for the functioning of the internal market?**

- Industry at large is interested in the creation of a common playing field and EU regulation and legislation provides businesses with this. Common and compatible EU regulation facilitates the operation of companies and industries that are located in multiple EU member states and reduce compliance cost as well as competitive distortion.
- Product standards enable products sold across a region to be compared on a like for like basis.
- Having similar standards in other Member States creates export markets for environmental goods and services. European countries are still our biggest trading



partner: in 2010 53.9% of UK goods and 39.5% of UK services are exported to the rest of the EU.<sup>127</sup>

- Operators of power plants should have to face similar environmental standards otherwise those that have fitted pollution or carbon abatement technology are penalised. This is particularly important as many utilities operate at a pan European level.
- Europe continues to be enormously influential and still constitutes the largest economy in the world<sup>128</sup>. Leading companies that operate in Europe adopt European environmental standards in their operations outside of the EU, raising standards elsewhere.

### ***Doing things differently***

#### **Q.6: 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?)**

- There needs to be earlier consultation and better communication between the commission and industry and other stakeholders. Sometimes proposals are developed in isolation and presented to industry, rather than seeking input from the start.
- Decision making at a European level is seen to be fairly arm's length and somewhat less open to civil society input than that done on a national level. There needs to be more effort to seek the input from smaller organisations that don't have the resources to participate. One interviewee suggested that commission officials should do more secondments into NGOs and other small organisations to gain better understanding of their issues.
- Despite its success, the **ecodesign directive** has suffered from very slow implementation, partly as a result of poorly design processes, and partly due to relatively low resources available at EU level. Our own work suggests this puts around 40% of potential ecodesign savings at risk.<sup>129</sup> To fix this, the Government can push for a Japanese 'top-runner' style approach to regulation, where the best available technology in the market automatically sets a benchmark for the rest of the market. This approach would reduce bureaucratic burdens and increase the pace at which energy saving occurs.

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<sup>127</sup> F Faes-Cannito, G Gambini, R Istatkov, *External Trade*, March 2012, Eurostat, European Commission

<sup>128</sup> In 2010 the EU-27 accounted for a 25.8 % share of the world's GDP in 2010, while the second largest economy, the United States accounted for a 22.9 % share. Source:

[www.epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/The\\_EU\\_in\\_the\\_world\\_-\\_economy\\_and\\_finance](http://www.epp.eurostat.ec.europa.eu/statistics_explained/index.php/The_EU_in_the_world_-_economy_and_finance)

<sup>129</sup> D Benton and T Turnbull, *Cutting Britain's Energy Bill*, Sept 2012, [www.green-alliance.org.uk/uploadedFiles/Publications/reports/Cutting\\_Britain%27s\\_energy\\_bill\\_web.pdf](http://www.green-alliance.org.uk/uploadedFiles/Publications/reports/Cutting_Britain%27s_energy_bill_web.pdf)

**Q.7: How far do you think the UK might benefit from the EU taking: i. More action on the environment/climate change? ii. Less action on the environment/climate change?**

- The failure to develop a stable and adequately high carbon price under the ETS across Europe has led to individual Member States such as the UK putting in underpins. There urgently needs to be structural reform and increased political momentum to salvage the scheme.
- Many utilities and manufacturers work on a pan European basis and need clarity on future markets if they are going to invest in R&D and build long lived assets. Greater long term visibility on GHG targets and a series of sectoral and technology specific targets (for early technologies) to 2030 is urgently needed to put us on track to achieve the deep reductions needed by 2050.
- There will need to be an increasing focus on infrastructure. The creation of the European network of transmission system operators for electricity (ENTSO-E) and the move to some pan European planning of electricity networks is to be welcomed. However going forward it will be important for it to be backed up by adequate levels of funding. This will be particularly important for large, long-term projects such as the North Sea grid. CCS pipelines across Europe will also need adequate funding.
- To develop a CCS industry, there needs to be a move away from the competition approach which is very resource intensive and doesn't give a long-term market signal, to an enduring policy instrument that creates a European wide market for CCS.

**Q.9: a. 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?**

- The use of international credits in the EU ETS has further pushed down the price and has led to investment in a number of project types which have had a questionable impact on sustainable development. According to EU Climate Commissioner Connie Hedegaard the supply-demand imbalance has further worsened in 2012 in large part due to a record use of international credits. At the start of phase 3 earlier this year, there was a surplus of almost two billion allowances<sup>130</sup>. In future greater linkage with trading schemes in other countries which have a cap on emissions should be the preferred route and the use of international credits should be minimised.
- A number of other jurisdictions have developed product standard schemes – we should seek to benchmark the European standards against these and raise the bar if schemes elsewhere are outperforming us eg the top-runner scheme in Japan.

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<sup>130</sup> Connie Hedegaard: "Emissions trading data underline need for swift action on back-loading", Online: [www.ec.europa.eu/commission\\_2010-2014/hedegaard/headlines/news/2013-05-16\\_01\\_en.htm](http://www.ec.europa.eu/commission_2010-2014/hedegaard/headlines/news/2013-05-16_01_en.htm)

- Global sectorial agreements and roadmaps will be increasingly important for globally traded sectors, and those that face unique challenges decarbonising eg those that require industrial CCS. Agreeing a common decarbonisation trajectory levels the playing field ensuring no one operator is penalised by its location. By identifying common barriers and technology needs, players in these sectors can pool resources and more effectively use public funding to ensure the technology they require is available and barriers effectively reduced.

#### **b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

- All of the participants in our review thought it was extremely important for the UK to be part of the Team EU. Such an approach allows the UK to exert considerable influence over the EU’s position and maximises UK leverage by operating as an EU bloc.
- It was noted that the UK has a lot of respected experts and has had a significant impact on the position developed by the EU team.
- Any policy position has had to be run past all 27 Member States and is therefore seen to be pretty water tight.
- As EU is major donor it already has relationships with small island states – this has been increasingly useful for international negotiations.
- The EU block is seen as neutral as it doesn’t represent one country and doesn’t have much of an army.
- The EU team has a significant diplomacy resource – using this tool effectively magnifies our messages. Without it, the UK government would struggle to adequately increase its diplomacy staff to make up for the loss.

## **Greenpeace**

August 2013

Greenpeace UK welcomes the opportunity to respond to this consultation. Given capacity constraints, our response focuses on the balance of competencies between the UK and the EU with specific regard to some of the questions around climate change.

First, the consultation document is weak on the rationale for global action on climate change. The largest ever scientific consensus process is clear that emissions of greenhouse gases pose severe threats to our climate as we know it<sup>131</sup>, and to the natural world. The Stern Review<sup>132</sup> several years ago identified climate change as the greatest

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<sup>131</sup> [www.ipcc.ch/publications\\_and\\_data/ar4/syr/en/spms5.html](http://www.ipcc.ch/publications_and_data/ar4/syr/en/spms5.html)

<sup>132</sup> [http://mudancasclimaticas.cptec.inpe.br/~rmclima/pdfs/destaques/sternreview\\_report\\_complete.pdf](http://mudancasclimaticas.cptec.inpe.br/~rmclima/pdfs/destaques/sternreview_report_complete.pdf)

market failure ever, that the cost of tackling it would be much less than the cost of the impacts, and thus concerted policy action to deal with it was appropriate. Concluding that

“The costs of stabilising the climate are significant but manageable; delay would be dangerous and much more costly.”

There are reasons for thinking that the Stern Review underestimated the severity of the climate threat<sup>133</sup>. Specifically it should be noted that there is more evidence linking climate change to prosperity and security in developed countries<sup>134</sup>.

All that follows from EU and UK policy is based on this premise that it is a moral imperative as well as a legal obligation, and that global action cannot be postponed until a more convenient moment.

Turning to the specific areas of the Call for Evidence

### **Advantages/Disadvantages & Where decisions should be taken**

In short, Greenpeace UK fully supports the current level of competency the EU has in establishing and enforcing EU climate change legislation and in acting collaboratively in negotiations at the international level for the following key reasons:

1. As the consultation document notes many forms of pollution are cross-border in their effects. In order to maximise the mitigation potential therefore a co-operative or shared approach is absolutely necessary. The release of greenhouse gases and the subsequent impact of these on the global climate is a key example of such a form of pollution. As the European Commission note in their Communication on the 2015 International Climate Change Agreement “*only by acting collectively, and with greater urgency and ambition, can we avoid the worst consequences of a rapidly warming planet*”<sup>135</sup>. Hence, action to mitigate (and adapt to the impacts of) climate change is required at the global, European and national level. Collectively the EU is responsible for 10% of global greenhouse gas emissions and it is currently the only major group of countries committed to tackling climate change. It therefore has a unique role to play in establishing both domestic policy which could have an important impact on global greenhouse gas emissions, in influencing the nature of the global response to this issue through the global climate change negotiations (see point 2 below) and by sharing lessons learnt with other countries around the world seeking to design and implement national policies and measures.
2. Despite frustrations regarding the ongoing lack of concrete post-2012 climate change commitments it is widely accepted that the EU has had a key role in determining the

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<sup>133</sup> [www.theguardian.com/environment/2013/jan/27/nicholas-stern-climate-change-davos](http://www.theguardian.com/environment/2013/jan/27/nicholas-stern-climate-change-davos)

<sup>134</sup> [www.ipsnews.net/2013/02/u-s-security-establishment-increasingly-worried-about-climate-change/](http://www.ipsnews.net/2013/02/u-s-security-establishment-increasingly-worried-about-climate-change/)

<sup>135</sup> [www.ec.europa.eu/clima/policies/international/negotiations/future/docs/com\\_2013\\_167\\_en.pdf](http://www.ec.europa.eu/clima/policies/international/negotiations/future/docs/com_2013_167_en.pdf)

shape of the international climate change negotiations and regime<sup>136</sup>. Indeed by leading by example the EU's 2008 climate and energy package, which established key emission reduction and renewable energy targets and levels of ambition on energy efficiency for delivery by 2020, has played a major role in contributing to the EU's ability to act in this strong leadership role. By acting as a block of countries the EU is having and will likely continue to have a greater level of influence in shaping any future international climate change regime than if member states such as the UK acted independently. Indeed with regards to the UK specifically it has played (in conjunction with France and Germany) a significant part in the EU in moulding international climate policy. (Key negotiating roles are also frequently granted to the UK at the UNFCCC CoPs). It will be important for the UK to continue in this role and carry on advocating a progressive approach to addressing climate change.

3. In comparison to Member States acting independently, acting collaboratively at the EU level will reduce the costs of delivering emission reductions and transitioning to a low carbon economy within the next few decades. For example in a low carbon electricity system with high levels of renewables greater electricity interconnection between European power grids would enable the amount of back-up power stations needed to provide electricity when renewables output was low to be reduced. Indeed the European Climate Foundation's Roadmap 2050 report found that the amount of back up under such a scenario could be reduced by 35-40% with high levels of interconnection<sup>137</sup>. Across Europe, according to E3G, this could deliver savings of €34.3 billion in back-up plant<sup>138</sup>. With specific regard to the UK, a report by WWF also concluded that an electricity system powered substantially by renewables could be achieved at a lower cost if greater levels of interconnection with the EU were adopted<sup>139</sup>.

### **Internal Market & economic growth**

The EU is an appropriate level at which to address climate change via economic instruments because it is intended to operate as a single market. Action at an EU level also works to create a sufficiently large market in climate mitigation technologies to stimulate investment in a way that individual nation state action is less likely to achieve (although it also requires large individual states like Germany support this with domestic policy). Key examples of this would be in product standards, where on vehicles and electrical appliances. In these sectors there tend to be relatively small numbers of international product suppliers, such that effective action is best taken at EU level – this is a natural evolution of single market policy. Greenpeace's response to the Call for Evidence is not

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<sup>136</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>137</sup> [www.roadmap2050.eu/downloads](http://www.roadmap2050.eu/downloads)

<sup>138</sup> <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmenergy/1040/104007.htm>

<sup>139</sup> [http://assets.wwf.org.uk/downloads/positive\\_energy\\_final\\_designed.pdf](http://assets.wwf.org.uk/downloads/positive_energy_final_designed.pdf)

intended to argue that EU policy making has been perfect, merely to point out that it is an appropriate level for competence to lie.

We examine more closely here two specific pieces of EU climate and energy legislation – the EU Emissions Trading System and the Renewable Energy Directive (which combined with the Effort Sharing agreement formed the key legislation in the 2008 climate and energy package) as they have been subject to some criticism. We would note the following:

- Renewable Energy Directive (RED) – The Renewable Energy Directive which established individual renewable energy targets for Member States to be delivered by 2020, combined with national support mechanisms, has been crucial in providing the confidence needed for investors to substantially invest in this market. Renewable electricity generation for example now contributes over 20% of the total electricity consumption. With regards to the UK, binding targets and dedicated national support mechanisms, combined with the fact that we have the best wind resource in Europe, have contributed to the UK's position as a world leader in offshore wind deployment. Current capacity in the UK exceeds 3.6 GW and by 2020 it is anticipated that around 18 GW will be installed supplying 18-20% of the UK's electricity needs each year<sup>140</sup>. The economic benefits that have resulted from binding EU renewable energy targets have also been felt by the UK and most EU Member States. Across Europe, for example the wind industry contributed €32 billion to the EU economy between 2007 and 2010. In this period unemployment rose by 9.6% but jobs in the wind industry went up by 30% to employ nearly 240,000 people<sup>141</sup>.

The sustained demand for renewable energy created by the RED has also contributed to the drop in the costs of technologies including onshore wind and solar PV. Indeed as noted by the European Wind Energy Association “*Due to the early adoption of binding national and EU energy targets, European companies are world leaders in wind power technology, and have a leading share of the world market. Renewable energy targets have been successful in driving investments and cost reductions in renewable energy technologies such as onshore wind. If the right framework for 2030 is set, the success of onshore wind in bringing down costs will be replicated offshore*”<sup>142</sup>.

It is noteworthy that the EU has hosted a series of companies such as Vestas (Denmark), Siemens (Germany), and Gamesa (Spain) who have turned into global leaders in the wind energy, being substantial manufacturing and exporting companies. Despite being a leader in wind energy in the 1980s, the UK failed to capitalise on this because of domestic policy failure, whilst other countries have used the platform provided by EU policy to

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<sup>140</sup> [www.renewableuk.com/en/renewable-energy/wind-energy/offshore-wind/index.cfm](http://www.renewableuk.com/en/renewable-energy/wind-energy/offshore-wind/index.cfm)

<sup>141</sup> [www.earthhour.wwf.org.uk/renewable-energy/busting-the-wind-power-myth](http://www.earthhour.wwf.org.uk/renewable-energy/busting-the-wind-power-myth)

<sup>142</sup> [www.ewea.org/fileadmin/files/members-area/information-services/stable-regulatory-framework/post-2020\\_legal\\_framework/130617\\_EWEA\\_Response\\_to\\_2030\\_Climate\\_and\\_Energy\\_GP\\_questions.pdf](http://www.ewea.org/fileadmin/files/members-area/information-services/stable-regulatory-framework/post-2020_legal_framework/130617_EWEA_Response_to_2030_Climate_and_Energy_GP_questions.pdf)



boost economic wealth. UK renewables generation remains amongst the lowest in EU<sup>143</sup>.

- The Emissions Trading System (ETS) – The UK Government has long been a supporter of market based mechanisms to achieve greenhouse gas emission reductions at lowest cost via technology neutral approaches. This has been exhibited for example through the design and implementation of its own Emission's Trading Scheme and through its support for the EU ETS since its initiation<sup>144</sup>. However in practice the performance of the EU ETS has been unsatisfactory and the emission allowance market is significantly over allocated. This state of affairs has been exacerbated by the economic recession which has reduced industrial output and hence greenhouse gas emissions, and by an influx of international offset credits from Clean Development Mechanism projects. Indeed estimates from the Commission suggest that the surplus of allowances increased from 955 million at the end of 2011 to 1.7 billion by December 2012<sup>145</sup>.

As a consequence of this massive over allocation the carbon market has done little to incentivise investment in clean energy infrastructure. This has been recognised in the European Commission's Green Paper on a 2030 framework for climate and energy policies which observes that *"Despite the fact that the ETS emission cap decreases to around -21% by 2020 compared to 2005 and continues to decrease after 2020, in principle giving a legal guarantee that major low carbon investments will be needed, the current large surplus of allowances, caused in part by the economic crisis, prevents this from being reflected in the carbon price. The low carbon price is not providing investors with sufficient incentive to invest and increases the risk of "carbon lock-in". Some Member States are concerned with this evolution and have taken, or are considering taking national measures"*<sup>146</sup>. One such Member State which has adopted a national measure is the UK which has introduced a carbon price floor through a tax on fossil fuels used to generate electricity in order provide a higher longer term price signal to help reduce emissions and to stimulate greater investment in low carbon energy infrastructure within the UK. Much greater levels of investment will be necessary if the UK is to meet its ambitious greenhouse gas reduction target established in the 2008 Climate Change Act of at least an 80% reduction below 1990 levels by 2050. Initially the price has been set at £16 per tonne but is due to rise to £30 per tonne by 2020 and £70 per tonne by 2030. To put this into context the current price of EU allowances is under €5<sup>147</sup>.

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<sup>143</sup> [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Renewable\\_energy\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Renewable_energy_statistics)

<sup>144</sup> Skjærseth, J.B. & Wettestad, J. (2008) *EU Emissions Trading: Initiation, Decision-making and Implementation*. Aldershot, Ashgate.

<sup>145</sup> [www.caneurope.org/resources/publications/can-europe-publications/climate-finance/doc\\_download/2134-eu-ets-at-a-crossroads-ngo-briefing-january-2013](http://www.caneurope.org/resources/publications/can-europe-publications/climate-finance/doc_download/2134-eu-ets-at-a-crossroads-ngo-briefing-january-2013)

<sup>146</sup> [http://ec.europa.eu/energy/consultations/doc/com\\_2013\\_0169\\_green\\_paper\\_2030\\_en.pdf](http://ec.europa.eu/energy/consultations/doc/com_2013_0169_green_paper_2030_en.pdf)

<sup>147</sup> [www.businessgreen.com/bg/news/2258336/carbon-floor-price-launches-at-gbp16-per-tonne](http://www.businessgreen.com/bg/news/2258336/carbon-floor-price-launches-at-gbp16-per-tonne)

Such unilateral action has, however, been criticised by UK businesses and other groups such as IPPR who have warned that it could undermine UK competitiveness by driving energy intensive industries out of the UK<sup>148</sup>. Whilst the reality of such criticisms remains to be seen there is certainly a need to provide a higher longer-term carbon price signal if national emission reduction targets are to be achieved. The ideal solution would be to significantly improve the functioning and hence effectiveness of the EU ETS thereby avoiding any competitive distortions that domestic policies may lead to. It is indeed in the UK's best interests, given its ambitious national emission reduction targets, to support endeavours for such improvements<sup>149</sup>. The current weakness of the EU ETS in driving low carbon investment does not mean it is not an appropriate level to take such action, even if, in the short term, member state action may be appropriate.

## **Current legislation**

Difficult to see what the questions in this section are getting at as no-one would presumably argue that EU climate action should be geared around processes, speculation and prejudice. We refer to the introductory paras of this response and note that there is essentially no good evidence - other than political expediency - for delays on climate mitigation.

## **Doing things differently**

Whilst we welcome the fact that EU attention now shifted to delivery and implementation of its' polices, as noted in the consultation document, it is crucially important that it also maintain focus on developing a robust climate and energy package for 2030. A stable long-term market and legislative framework are key for maintaining investor confidence in renewable energy and energy efficiency markets and in driving down costs. In contrast the absence of a robust 2030 package could cause an investment hiatus which could derail a rapid transition to a low carbon economy.

In March 2013 the European Commission published a green paper on a 2030 framework for climate and energy policies and there is now an increasingly active debate on this with proposals expected before the end of 2014<sup>150</sup>. The UK has a key role to play in keeping these discussions on track and, with specific regards to the promotion of renewable energy, ensure that the EU supports a package which encourages those sources which are truly low carbon and have a low environmental impact<sup>151</sup>.

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<sup>148</sup> Ibid.

<sup>149</sup> For example see the NGO briefing from CAN Europe, Greenpeace and WWF regarding how the ETS should be reformed: [www.caneurope.org/resources/publications/can-europe-publications/climate-finance/doc\\_download/2134-eu-ets-at-a-crossroads-ngo-briefing-january-2013](http://www.caneurope.org/resources/publications/can-europe-publications/climate-finance/doc_download/2134-eu-ets-at-a-crossroads-ngo-briefing-january-2013)

<sup>150</sup> [www.ewea.org/blog/2013/02/eu-energy-commissioner-promises-post-2020-policy-next-year/](http://www.ewea.org/blog/2013/02/eu-energy-commissioner-promises-post-2020-policy-next-year/)

<sup>151</sup> In the EU it is currently expected that over 10% of final energy consumption will be provided by biomass in 2020 with these resources then making up over 50% of the overall renewable energy consumption in the



Further climate ambition provides opportunities for UK economic benefit in especially the fields of low-carbon vehicles and marine renewables. The UK Society of Motor Manufacturers and Traders identifies low-carbon as a key component of an industrial strategy<sup>152</sup>. And the Prime minister and others like ippr<sup>153</sup> have identified offshore wind as representing such an opportunity, as well as UK being a leader in the wave and tidal energy sector<sup>154</sup> which will require policy support for some years despite its long term potential.

Specifically in response to question 9b, in addition to the points made above in para 2 of the first section, we know of no-one who has attended the UNFCCC negotiations – and who therefore understand the political dynamics of those negotiations - who can see UK influence being enhanced by sitting outside the EU bloc.

### **Anything else/summary**

Climate Change poses a serious threat requiring immediate action.

The ultimate solution will be a global agreement. The best way for the UK to address it is diplomatically, and in climate mitigation actions, which mutually support each other. Given the political situation at the UNFCCC talks, a credible EU bloc in favour of greater ambition is an essential pre-requisite to success. EU credibility in turn depends on demonstrable climate action at home. Whilst a single market in products, commodities and (increasingly) energy exists, the EU will need to have competency to act on climate mitigation.

Fortunately for the UK, acting within the EU bloc makes its voice stronger, and climate action at the level of the single market plays to a number of existing and future industrial strengths. This means the right EU climate policy creates genuine opportunities in certain industries by driving innovation in the creation of stable and transparent markets for clean energy goods and services. In turn this gives EU & UK businesses a platform for capitalising on the success of international negotiations, creating non-EU markets in those same goods and services. Meanwhile the innovation which drives the creation of those low-cost mitigation technologies can demonstrate to other countries that the cost of the low-carbon transition is feasible and manageable.

### **Haigh, Nigel**

This evidence is submitted in a personal capacity with the agreement of the Institute for European Environmental Policy ( IEEP). As the then Director of IEEP I conducted and

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region. There is some concern that the heavy reliance on the use of biomass to meet current 2020 renewable energy and greenhouse gas emission reductions targets will lead to the substantial use of biomass from unsustainable sources.

<sup>152</sup> [www.smmmt.co.uk/2012/09/auto-industry-gives-government-steer-on-industrial-strategy/](http://www.smmmt.co.uk/2012/09/auto-industry-gives-government-steer-on-industrial-strategy/)

<sup>153</sup> [www.ippr.org/publication/55/11006/pump-up-the-volume-bringing-down-costs-and-increasing-jobs-in-the-offshore-wind-sector](http://www.ippr.org/publication/55/11006/pump-up-the-volume-bringing-down-costs-and-increasing-jobs-in-the-offshore-wind-sector)

<sup>154</sup> [www.theguardian.com/environment/2012/feb/20/uk-exporter-wave-tidal-power](http://www.theguardian.com/environment/2012/feb/20/uk-exporter-wave-tidal-power)

managed research and analysis in the 1980s and 90s into the impact of EU environmental policy on the UK . This evidence draws on that experience and related publications.

#### 1. SUBSIDIARITY - a topic omitted from the Call for Evidence - Reply to Q. 11

The balance of competences between the EU and its Member States is governed by a Treaty Article<sup>155</sup> introduced at Maastricht in 1992, and by the subsequent Protocol 'On the Application of the Principles of Subsidiarity and Proportionality'. It is a surprise that the Legal Annex makes no mention of this. The Protocol sets out a mechanism, first introduced in 1993, for continuously reviewing the balance of competences when new proposals are made. It includes the following elements:

- all the EU institutions must respect the principle of subsidiarity;
- the Commission must consult widely when making proposals and must justify them with regard to subsidiarity;
- national parliaments are to have a say; and,
- annual reports on the application of the subsidiarity Article are to be submitted by the Commission to the Council and Parliament.

Nineteen annual reports have been submitted since 1993 and contain observations from national parliaments. It can be argued that if the mechanism is working well then the current UK review is redundant. If the mechanism is not working well, then the deficiencies could usefully be exposed so they can be remedied. The report resulting from the current review will be open to criticism if it does not acknowledge the evidence in the annual reports.

The principle of subsidiarity came under intense discussion in 1992 and 1993 at the time of the Maastricht Treaty. The debate was Europe wide and, in the UK, for example, The Times of London published a leading article headed *That dreaded S-word* (4 July 1992) suggesting that some legislation, such as the bathing water Directive, be repatriated. The principle was discussed at no less than three separate Summit Meetings and the Edinburgh Summit in December 1992, chaired by the British Prime Minister John Major, issued a document on subsidiarity and called for an Inter Institutional Agreement (Council, Commission and Parliament). This was personally driven by the Prime Minister. The Agreement was adopted in October 1993 and established the mechanism mentioned above that was later embodied in the Protocol.

Three guidelines were set out in the Edinburgh document to answer the question whether the Community should act in any particular case:

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<sup>155</sup> Article 5(1) (Treaty of the European Union -2012 consolidation) states that 'the use of Union competences is governed by the principle of subsidiarity and proportionality'. Article 5(3) defines the meaning of subsidiarity in an EU context: 'the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States either at a central level or at a regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'.

- issues having transnational aspects,
- actions by Member States that distort competition,
- action at Community level producing clear benefits by reason of scale or effects compared with action at national level.

It is the last of these that is the most problematic because, more than the first two, it is a matter of judgement. Bathing water and drinking water hardly fall under the first two but do fall under the third: drinking water is an essential commodity and the travelling public need to know that water is safe to drink; bathing is an important aspect of tourism which is a major economic sector.

The Lisbon Summit (June 1992) had called for a re-examination of certain rules to adapt them to the principle of subsidiarity and the Commission began a review. The document from the Edinburgh Summit made the following comments which were widely interpreted at the time as the abandonment of repatriation of environmental legislation: *On the environment, the Commission intends to simplify, consolidate and update existing texts, particularly those on air and water, to take new knowledge and technical progress into account.*' During 1993 an Anglo-French list of legislation for repeal or amendment was sent to the Commission. It included Directives on air quality, quality of water (for shellfish, freshwater fish, bathing) and drinking water. These were all eventually amended or modified by incorporation into other Directives. The drinking water Directive, for example, was amended so that while the health standards remained mandatory, those for taste or turbidity became discretionary. Thus peaty water can now be supplied legally in areas where people are used to it, or like it.

As a contribution to the subsidiarity debate I gave a paper to conferences in Brussels and London called *The Environment as a Test Case for Subsidiarity* (1). My main argument was that subsidiarity had been part of EU environmental policy since its inception so that it was no surprise that there were no serious candidates for repatriation. The paper noted that the first Action Programme on the Environment of 1973 had set out eleven principles including:

*'In each category of pollution, it is necessary to establish the level of action (local, regional, national, Community, international) best suited to the type of pollution and to the geographical zone to be protected. Actions likely to be most effective at Community level should be concentrated at that level; priorities should be determined with special care.'*

When the Single European Act of 1986 introduced a Title on the Environment the following words were used, which later provided a model for the subsidiarity Article of the Maastricht Treaty of 1992 :

*'The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the Member States' .*

The paper also pointed out that the subsidiarity principle had long been understood when allocating the balance of competences between different levels within Member States. I had explored this topic in an earlier paper '*Devolved Responsibility and Centralization: Effects of EEC Environmental Policy*' (2). The argument here was that in Britain competences had shifted between different levels over time as circumstances changed and that the introduction of the new EEC level - the paper was given in 1984- had concentrated into the national government's hands powers that were previously exercised at lower levels thus helping to modernise British policy. This was a surprise to many who had thought of the EEC as diminishing the powers of national governments and parliaments.

The concluding paragraph of my subsidiarity paper still holds today:

*'Environmental policy has long been the subject of subsidiarity within Member States and has been the test bed for the development of the concept in the EC. All existing EC environmental legislation has been based upon it and although the debate about subsidiarity had not been particularly prominent before 1992, the idea had always been there. As a result, very few existing items concerning the environment are serious candidates for repeal. The end result of the great debate is likely to be the modification of a few environmental Directives and a general tendency for the EC's hand to be lighter rather than heavier in future. The Inter-Institutional Agreement with its requirements for an annual report from the Commission and an annual debate in the Parliament will ensure that the issue of subsidiarity does not go away. We will continue to discuss whether the EC's hand is a heavy hand or a light one.'*

Although the current review is a continuation of that discussion it is not happening because of the subsidiarity mechanism. Indeed the mechanism is hardly known. Is this because Ministers do not mention it in their speeches? The current review provides an opportunity to explain to the public that the mechanism not only exists, but provides the means for the British Parliament to make its views known on any new item EU legislation.

Since no EU environmental legislation was repatriated after the 1992/3 review, one would not expect there to be any candidates for repeal today given the increased attention to subsidiarity that followed. That is unless new criteria are devised. If there is to be a serious debate about repatriation a first step must be to reaffirm the existing criteria or seek agreement on better ones.

## 2. MODERNISING BRISH ENVIRONMENTAL POLICY - Reply to Q. 1 (i)

It is well known that EU environmental legislation has raised certain standards in the UK but it is less well known that it has helped to modernise British policy by introducing certain

concepts and policy tools which were not previously in the mind or hands of the Government. These include:

- targets to be met by deadlines,
- mandatory water quality standards,
- mandatory air quality standards,
- mandatory emission standards for discharges to water and air (instead of being set administratively by the Air Pollution Inspectorate or Regional Water Authorities though there had been a very few historic exceptions),
- 'volume control' or a cap on some activity e.g. the total emissions of certain substances (e.g. ozone depleting substances, sulphur dioxide from power stations, greenhouse gases, landfill)
- environmental impact assessment for both projects and plans,
- sharing administrative burdens with other Member States (e.g. risk assessments for new chemicals).

Evidence for this influence can be found in my 1984 book *EEC Environmental Policy and Britain: An Essay and a Handbook* (3) in particular in Chapter 5 *River Quality Objectives in Britain*; Chapter 13 *Effect on British Legislation*; Chapter 15 *Effect on British Policy and Practice* ; in the paper mentioned above *Devolved Responsibility and Centralization* (2) and in *New Tools for European Air Pollution Control* (4) as well as elsewhere.

It can always be argued that Britain would have adopted these tools anyway (the counterfactual argument) and the point cannot always be proved either way. What can be shown is who came first and who applied pressure on whom. The considered evidence of experienced professionals in the field can also be compelling. I give as an example below EU influence in the water pollution field as it was treated at length in my 1984 book because of a major clash between the UK and other Member States over the appropriate approach to the discharge of dangerous substances to water (Directive 76/764).

It must be remembered that before the formation of the Department of the Environment (DOE) in 1970 competence for water, air and waste were largely in the hands of local authorities or specialised agencies, and that the Secretary of State had very limited powers over them - see the *Devolved responsibility and Centralization* article (2) mentioned above. The argument there was that since the Government, in agreeing a Directive, undertook an obligation to see that its objectives were fulfilled it had to acquire competence for subjects previously devolved..

The first Acts of Parliament following the formation of DOE were the Water Act 1973 and the Control of Pollution Act 1974 which coincided with the beginnings of EU environmental policy. The 1973 Act was highly original in creating river basin based Regional Water Authorities but surprisingly neither it, nor the 1974 Act, gave the Secretary of State powers to set emission

standards or water quality standards/ objectives, although the latter had been under discussion for very many years. The tradition of leaving such matters to sub-national bodies continued. (The 1974 Act did however provide the model for the EU's first waste framework Directive 75/442 by requiring local authorities to prepare waste disposal plans. However it was the Directive that compelled the UK to bring into force the relevant sections of the Act so that influence flowed in both directions in that instance.)

It was not until sixteen years later that the next major Act - the Environmental Protection Act 1990 - gave the Secretary of State powers to set a) emission standards, b) quality standards, and c) to exercise 'volume control' (i.e. to limit the total amount of any substance which may be released - Section 3(5)(a) ). These were all policy tools already embodied in various EU Directives and mostly transposed into UK law under the European Communities Act 1972. (Reliance on this Act is an indication that powers did not otherwise exist in the UK.) For these matters the EU clearly legislated first and it is doubtful that these powers would have been introduced without the EU. The 1990 Act was original in introducing integrated pollution control for industrial plants, that is to say having a single authorization for discharges to air, water and the generation of waste so as to minimise the impact on the environment as a whole. This was to influence the IPPC Directive 96/61. Influence between the EU and the UK is a two way process.

To demonstrate that the EU had indeed influenced UK policy on water quality I quoted three experienced water professionals in my 1984 book:

Hugh Fish in 1973 (then Chief Purification Officer of the Thames Conservancy, later Chief Executive of Thames Water Authority): *'It is perhaps surprising, but true, that the nation has been struggling towards cleaner rivers for twenty years without any precise instructions having been given as to the why and wherefore of the struggle. The preambles of the Pollution Prevention Acts indicate that the aim of these is to make provisions "for maintaining or restoring the wholesomeness of rivers and other inland and coastal waters". This is perhaps a clear enough statement of a vague intention. If we could establish what 'wholesomeness' really meant then we should know better what is to be done.'* (5)

T.A.Dick in 1978 *'Whatever one's views of the desirability or otherwise of the Directives, they are undoubtedly resulting in a fresh look at the whole water cycle. In particular they have shown a need in the UK to define and refine more clearly the concept of environmental quality objectives for fresh, estuarial and coastal waters.'* (6)

D.H.A. Price in 1979 *'It was, I believe, the uniform emissions standards of the EEC which provoked us into formulating a coherent system for controlling emissions by reference to their effect upon the receiving water and its required use.'* (7)

Lord Ashby in reviewing my 1984 book had this to say: *'He admits that it is hard to isolate the influence of the Community from other contemporary influences .....but he does make a case for some impact from Brussels: the belated decision to set (rather than just waffle about) environmental quality objectives in rivers; the agreement to adopt mandatory air quality*

*standards for sulphur dioxide and particulates; some features of the Wildlife and Countryside Act; and (a more dubious benefit) the substitution of control by regulation in place of voluntary agreements (which for detergents have been entirely successful).'* (8)

Ashby's use of the phrase 'waffle about' is apt. There is no denying that the subject of water quality is difficult, but for years the British government just could not bring itself to grasp the nettle - it was simply not a high enough priority to compete with other claims on the Government's attention and Parliament's timetable. . The EU, with its entirely different structure in which different formations of the Council - agriculture, transport, environment etc - can set their own agendas in their own time, could force the pace as a result of the need to agree a particular Directive once proposed. Mandatory air quality standards would also not have been introduced without the EU. The RCEP had considered them but recommended against, and it was an EU Directive that compelled some reluctant local authorities finally to introduce smoke control orders. It is also interesting to observe that despite Ashby's experience of EU matters - he had been chairman and a longstanding member of the environment sub-committee of the House of Lords EU scrutiny committee which produced several reports critical of EU proposals - he appears not to have understood that product standards for a traded product such as detergents had to be set at EU level to ensure the integrity of the common market.

Other examples could be given of EU introducing policy tools. Its development and use of 'volume control' for international issues is discussed in the next section.

### 3. THE EU AND INTERNATIONAL AGREEMENTS - Reply to Q. 9

The Member States acting together through the EU can exert much more influence internationally than countries acting on their own. The EU can also be more effective than international conventions. Several examples can be given:

#### Chemicals

When Directive 79/831 requiring new chemicals to be tested before being marketed was being negotiated (it is now incorporated into REACH) the European chemicals industry supported it for two reasons: they could see that a single procedure was preferable to different procedures in different Member States; and they were concerned that rules being made in the USA under the Toxic Substances Control Act 1976 might be used to discriminate against imports into the USA from Europe. They believed that an EU regime would provide greater negotiating power than any individual Member State could on its own.

#### Ozone layer

The first EU legislative response to the hypothesis that chlorofluorocarbons (CFCs) were destroying the ozone layer was Council Decision 80/372. This placed a cap on production capacity of certain CFCs and also required a 30% cut in the use of CFCs in aerosol

cans. The preamble said this was 'a precautionary measure' - the first use of the precautionary principle in EU legislation. It was also the first use of 'volume control' in EU legislation, although the Commission had in 1977 proposed the idea in a recommendation. Critics pointed out that the EU production capacity cap was ineffective as actual production in the EU was well below production capacity, whereas the US approach of banning CFCs in aerosol cans in 1979 had significantly reduced emissions. The USA advocated that their approach be adopted internationally. The EU pointed out that rapidly increasing uses of CFCs for other purposes would remain uncontrolled. The USA then changed its position and proposed a freeze on production followed by a series of reductions leading to a production ban. The Montreal Protocol signed in 1987 followed this approach : a freeze, followed by a 50% cut. A total ban came later. The US deserves the credit for pressing for a result that reduced emissions but the EU deserves the credit for introducing the intellectually tenable concept of controlling the volume of total production. The EU concept of 'volume control' thus became embodied in a global agreement and was to provide a precedent for dealing with climate change. One can only speculate as to what might have happened if the UK was not then part of the EU. It might well have sided with Canada, Finland, Norway and Sweden who had all supported the USA in its initial desire that the first protocol be confined to an aerosol ban.

No UK legislation then existed that gave the Government powers to place a freeze on CFC production or to cut it, or to ban it. The same is likely to have been true in most Member States. EC Regulation 3322/88 enabled the Montreal Protocol to be ratified by all Member States far more quickly than would have been possible if each had to introduce its own legislation. It is sometimes said that the EU legislative process is slow. In this instance it was fast and almost certainly faster than the UK introducing a Bill into Parliament.

The EU thus made two major contributions to repairing the 'hole in the ozone layer': an intellectual one and a practical one. It proposed 'volume control' as the appropriate approach, and it enabled twelve countries to ratify quickly and so to bring the Protocol into force.

## Acid rain

The '30% club' - as it was called - of countries committed to reducing their total sulphur dioxide emissions by 30% by 1993 from a 1980 baseline was established by the 1985 Helsinki Protocol to the 1979 UNECE Convention on long range transboundary air pollution. Although the UK was a party to the Convention it did not join the club on the grounds that the deadline and figure of 30% were arbitrary. The 30% club was proposed in 1983 following the about turn by Germany in 1982 on the acid rain issue. Having, in alliance with the UK, opposed any action it became a committed proponent, following the discovery of the death of German forests. The EU's response to the acid rain issue was to propose a Directive in 1983 under pressure from Germany which, perhaps not surprisingly, suggested that it replicate the stringent emission standards for individual power stations that it had recently introduced. The eventually adopted Directive 88/609 on large combustion plants combined the German emission standards for new plants with an overall reduction from existing plants. Both the



30% club and the Directive are examples of 'volume control', though the Directive introduced a refinement. These developments were described in an article I called '*New Tools for European Air Pollution Control*' (4).

The draft Directive proposed a uniform reduction for all Member States of 60% by 1995 from a 1980 baseline of total emissions of sulphur dioxide from existing power stations. It soon became clear that this would never be agreed as energy supplies differed so markedly between Member States. Eventually after long and difficult negotiations the Directive was agreed unanimously with every Member State accepting different reductions totalling an EU wide reduction of 57% by 2003 ( 3% less and eight years later than the Commission's original proposal). Small developing countries such as Portugal, Ireland and Greece were allowed increases. The UK, because of its reliance on coal was allowed a smaller reduction than the other big Member States. Thus 'volume control' for dealing with acid rain differed from that for the ozone layer, in that different countries had different reductions.

Several conclusions can be drawn from the acid rain story:

- the 'one size fits all' characterisation of EU legislation is an oversimplification. Legislation has been tailored to differing national circumstances. ( Para. 29 of the Call for Evidence talks of 'one size fits all' in a discussion of implementation).

- discussion of environmental issues can bounce between international organisations. My '*New Tools ...*' (4) article shows the acid rain issue bouncing between the great UN Stockholm conference of 1972 (which highlighted the issue), the OECD (which did research showing that sulphur did move long distances) , the Helsinki Conference on Security and Cooperation ( which proposed East-West collaboration on the issue) , as well as UNECE and EU. Despite the contribution of all those other international organisations, the EU proved the most effective forum in producing a workable policy that resulted in action..

- the weakness of international conventions is shown by the fact that any country that does not like a proposal - such as the 30% club - can opt out,

- the EU has machinery for continuous negotiation between the Member States from which they cannot opt out. Member States were put under continual pressure to hammer out a workable solution on acid rain.

- the EU machinery allows political pressure at the highest level to be exerted on what might appear to some as a rather specialised issue. It is said that the German Chancellor Kohl would continually ask Prime Minister Thatcher at Summit meetings when she was going to agree to the Directive

Climate Change

When Mrs. Thatcher made her speech in August 1989 at the United Nations calling for a convention on climate change she said '*fortunately we have a model in the action already taken to protect the ozone layer*'. The model had, however, to be modified. Although the Montreal Protocol clearly controlled the volume of CFCs produced, the climate Convention is more ambiguous in embodying 'volume control'. It is well known that the EU set the pace for the Convention by deciding that CO<sub>2</sub> emissions should be stabilised in the EU by 2000 at 1990 levels, and that it proved impossible to incorporate this into the Convention for developed countries largely because of opposition from the USA. Article 4(2) of the convention sets out a commitment in convoluted language that amounts only to 'aiming to return to 1990 levels by 2000'. The convoluted language was needed to persuade the USA to sign the Convention. In my account of the EU's involvement I describe how there were two views among EU Member States: those who wanted a strong Convention even if this meant the USA not signing, and those who argued that without US participation the Convention would hardly be worth while, since the USA was the world's largest emitter, and without the USA other countries would have an excuse not to sign. I quote from my account in a discussion of the EU contribution :

*'During these discussions the UK Secretary of State for the Environment, Michael Howard, allegedly with the encouragement of some other Environment Ministers from EC Member States , travelled to the United States and agreed a form of words with US officials which forms the basis of Article 4(2) of the Convention. Whether this can be regarded as an EC contribution to the framing of the Convention is a matter of opinion. Formally it was not since no formal Council decisions were taken on the subject, but without the machinery provided by the EC for discussion between ministers it may never have happened.'*(9)

Without this intervention by Michael Howard it is possible that the USA might not have signed the Convention. Whether he could have had the same influence if he was simply speaking on behalf of the UK rather than the EU, however informally, must be in doubt.

When the Kyoto Protocol was adopted in 1997 it set different targets for the reduction of greenhouse gases by a given date for different parties. E.g the EU accepted a reduction of 8% as against 7% for the USA and 6% for Japan. The EU then agreed how to share the burden of 8% among themselves with Germany accepting a 21% reduction and the UK 12.5. The experience of the acid rain Directive had provided the model and not just the Montreal Protocol.

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NH

2 August 2013

### **Hamza-Goodacre, Dan**

I am writing to share my views regarding the balance of competencies for climate change negotiations. These views are my personal ones and do not necessarily reflect the views of PwC, for whom I currently work as a sustainability and climate change consultant.

The current arrangements under which the UK negotiates international climate change, namely agreeing a joint position with EU member states and negotiating as a bloc, have the following benefits.

1. Influence: The EU has a more powerful voice in international climate negotiations (and in many other areas of foreign policy) than the UK does. In a world where other countries are increasing their political and economic power, the UK needs to ensure it can maintain its position as an influential country. The EU provides the UK with an opportunity to do so. The UK won't tackle climate change by itself.
2. Simplifying negotiations: The UNFCCC is highly complex and benefits from negotiating parties harmonising their positions in advance. The UK does this through the EU. It is hard to see how another voice in the UNFCCC would simplify negotiations, rather than complicate them further.
3. Two way sharing of knowledge and skills with EU counterparts
4. Cutting the costs of negotiating (the UNFCCC is a high maintenance negotiation to engage in)
5. Flexibility to share implementation of negotiated outcomes with EU partners (and to trade off undertakings both inside and outside of climate change)
6. Credibility for the UK when times are hard. This can result in an increase in negotiating capital in the UNFCCC. And the UK can show leadership when opportunities arise (this can also increase negotiating capital, both inside and outside the EU)

The drawback of a joint negotiating approach seems mainly to be less flexibility regarding the UK's negotiating position, however it is likely that at least one other member state will often be both more and at least one other member states less ambitious than the UK. In reality therefore, being part of the EU results in the option of being able to push in different directions. This optionality can negate the benefit of flexibility gained through independent negotiating.

Any change to the balance of competencies, for example the UK negotiating separately, should ensure that the benefits above are not lost, or are compensated for, or else negotiating capital is likely to go down and costs up. While the UK pushes for an ambitious global deal, such compensation is likely to prove challenging.

### **Independent Consultant on International Climate Change Policy**

## **Q1 Internationally**

- Climate change is a global problem and the more countries acting concertedly to reduce emissions the greater the probability that the ultimate objective of the UNFCCC – “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”
- the UK is a small country and would have very little influence in the UNFCCC were it not part of a bloc. The EU is that bloc

### **EU**

- the EU has traditionally been the bloc that creates the center ground for compromise in the UNFCCC, and EU countries are seen as better faith actors than most developed countries
- the EU is a large enough bloc that policy decisions it takes in climate and energy can create a push factor for the wider market to adopt climate-friendlier policies eg through setting standards
- EU leadership in setting its own policy frameworks has been a testbed for what works and what other countries can learn from
- the EU includes many small Member States that would not otherwise prioritize climate action, and benefit from the experience and information from the Commission and larger Member States: EU action on climate has forced some of these Member States to increase their climate teams: one entered the EU with one civil servant working on climate: this will have increased considerably because of the agreements reached for climate action through the EU

### **UK**

- The UK's ultimate advantage is in not suffering the impacts of run away climate change. No other policy area (with the possible exception of preventing all-out nuclear war) will have such all-pervasive negative effects. Only by working with others – and the EU is the only body that has a strong enforcement arm through the ECJ – will strong enough, and widespread enough, policy frameworks be developed to effect near-complete decarbonization by 2050
- the UK benefits in cooperation with the EU by having more of its ideas and policies carried forward in a broader political setting (eg the UK and Finland were pioneers on climate adaptation in 2004 – it was not on the radar of most other Member States)

## **Q2 ii. disadvantaged the UK / your sector?**

Since the UK's ultimate self interest is to avoid national harm, and climate change represents the greatest threat, especially in the longer-term, to its interests, the greatest disadvantage to the UK's interests in working within the EU context is that climate actions agreed at EU level are seen as a ceiling, not the floor. 'harmonization' of policy at the national level usually implies an unacceptable, and inimical threat to the UK's fundamental interests, by watering down existing national standards.

It must be a fundamental principle that any Member State can progress with stronger climate actions than agreed across the EU-28.

**Q3** The UK's ultimate self interest is to avoid environmental, economic and social harm through climate impacts.

In an ideal world, a global carbon budget commensurate with the Ultimate Objective of the Convention would be agreed at the international level and shared out in a fair manner. An international agreement is very much needed, and ideally would look something like this: [http://assets.wwf.org.uk/downloads/ngo\\_cph\\_treaty\\_final\\_040609.pdf](http://assets.wwf.org.uk/downloads/ngo_cph_treaty_final_040609.pdf) International agreement – to give confidence that all are acting in accordance with the principle of “common but differentiated responsibilities and respective capabilities” - is needed to solve what is a global problem and ameliorate dangers of free riding which will undermine the overall effort. The EU is currently an essential player in these talks, and should retain its current competence.

As important as the international level is for addressing climate change, leadership on policy initiatives at the national level are important, but must be seen as test beds and experiences to be rolled out on a larger scale if successful. The UK's Climate Change Act is a hugely important initiative that has created momentum for similar national frameworks in a number of other EU and other countries and helped to drive the Commission's 2050 roadmaps, which so far unfortunately have not been transformed into a legally binding framework for the EU-28. Spanish and German experience on feed-in tariffs has informed UK renewables policy. The UK participating in other regional efforts might have uses in specific cases, such as a European-Mediterranean power grid that generates and distributes renewable power across the EU and North Africa, but outside of the EU framework these lack the legal basis and enforcement capabilities the EU has through the ECJ.

**Q4** The EU has become far less proactive on climate change in recent years than it was in the first Barroso Commission, in part through lack of leadership by larger Member States. The EU really needs to take some of the best examples of climate policy from its Member States and roll them out on a larger scale, not least to address some of the issues of the EU economic crisis. Strong requirements on energy efficiency would reduce costs of fuel imports, and similarly requirements for strong investments in renewables would also provide more-or-less free energy once capital costs had been covered.

**Q5** This question is posed in such a way as to presume the supremacy of the internal market over preventing environmental damage. Standards set by the EU can certainly provide a baseline minimum standards for environmental quality, but it should not prevent individual or groups of Member States establishing higher sustainability standards.

**Q6** Again, this question is posed in a manner that presupposes that economic interests are of a higher importance than environmental ones. The 1989 Brundtland report demonstrated that both environmental and social considerations are vital should any development be considered 'sustainable'. An unsustainable economy cannot in any way be seen to be in the

UK national interest.

It is also important to note that the economy is a short-term instrument, while environmental capital may well be irreplaceable on timescales of tens of millions of years. Even quite conservative studies show that the costs of climate inaction may be considerable on the decadal timescale – economically and socially – even as unusual weather patterns now inflict economic costs on key UK sectors. The costs of climate impacts tend to be carefully ignored by those that would dash for gas, would prevent the UK having a positive position on a strong EU 2030 renewables target, would ignore the evaluations of the Climate Change Committee calling for a decarbonized UK power sector by 2030.

There is a great need to pursue stronger environmental and climate change action. In many cases this creates real opportunities for greater economic efficiencies and new jobs. But those sectors that need to lose out, especially the fossil industries need to have clear signals that this will be so, so that they start to diversify their economic activity into areas that are sustainable, and not those that endanger the national interest

**Q7** In general, the Commission has done a decent job of deciding a level of ambition and then setting its policy proposals to fit that, as in the 2020 climate and energy package, which was based on the 2007 Commission Communication and Staff Working Paper, which was based on models working to a 450ppmv stabilization scenario. The climate targets were set to be consistent with this, albeit with a pretty low probability – then 50% - of achieving that goal. The renewables and energy efficiency targets were set also to be consistent with that scenario. This Communication was a follow up to the 2005 one, which modelled 500 and 650 ppm scenarios, and led on Cion official I was working with at the time to pronounce “we are fucked”. The most recent ‘post2012’ Communication gained Council agreement that the EU should aim to transform itself to have emissions of minus 80-95% on 1990 levels by 2050. The Commission took it upon itself to ignore the higher targets agreed by the Council and prepared roadmaps that were only consistent with the 80% target, adding as an afterthought that higher ambition could be achieved by offsets, fundamentally misunderstanding the degree of global decarbonization required.

On other areas, such as the Energy Using Products Directive, the focus on outcomes in transforming the electrical appliance market towards the top end of technological capability was reduced by initially pretty weak proposals from the Commission that were further watered down by the Council (an all too often occurrence). While these were focused on the outcome of setting standards, the standards agreed were hardly focused on the outcome of avoiding dangerous climate change.

**Q8** The Commission’s assessment of climate risk are unfortunately very outdated. The <2°C global average temperature increase limit on which EU climate policy rests is a relic from the time of the IPCC’s second assessment report and was agreed in the EU Council conclusions going into the Kyoto negotiations in the mid-1990s. The science has not gotten less concerning in that time – on the contrary – and in addition, the 450ppm stabilization scenario used by Commission has in its own estimation a 50% probability of the 2°C goal being achieved. In its greater favor, the Commission was among the first to do

assessments of the costs of inaction on climate change, an important part of the overall calculation that has fallen somewhat to the political wayside in recent years.

Clear peer-reviewed scientific evidence, like the April 2009 Nature by Meinshausen et al [www.nature.com/nature/journal/v458/n7242/abs/nature08017.html](http://www.nature.com/nature/journal/v458/n7242/abs/nature08017.html) on the remaining global carbon budget consistent with a 2°C scenario with 75% probability of success has apparently been ignored in EU modelling and by the Member States who could have pushed for more realistic scenarios to be considered and to form the basis of EU climate action.

In short, while the Commission does base its scenarios on scientific evidence and on the risks of climate impacts, what has passed through the College in the Communications is woefully on the weak end of what climate science says is required. The Member States have similarly so far failed to act in their own national interests in reducing the risks of severe climate impacts across most economic sectors through more ambitious climate action.

**Q9** The EU's current competence for the environment could be enhanced by a greater push for stronger action from the Members States, particularly from the larger ones and a requirement that it actually uphold the principles of its guiding Treaties, notably the precautionary principle and the polluter pays principle.

Paragraph 2 of Article 191 of the Lisbon treaty reads:

"Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."

Thus the Commissions needs to achieve a higher level of ambition in its assessments and scenarios for climate policy, in line with the precautionary principle: a 50% chance of reaching the rather outdated 2°C temperature target is hardly precautionary. It is notable that those countries, the Members of the Alliance of Small Island States and the Least Developed Countries call for the more precautionary global average temperature increase limit of <1.5°C. Scenarios to achieve this with a high (greater than 75%) probability should be the guiding focus for EU policy making on climate directly, and for all sectors that would impact achieving this goal.

'Greater recognition of national circumstances' is usually coupled with the weasel word 'flexibility'. The political consequence of trying to limit global average temperature increases even to below 2°C is that all developed economies must be near or at least zero carbon in their emissions by 2050 in order to stay within the remaining global carbon budget and allow some equitable sharing of that budget for countries still in a low state of development.

A study by WWF-Germany [www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/blueprint\\_germany\\_wwf.pdf](http://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/blueprint_germany_wwf.pdf), which has been very influential in the German domestic discourse, demonstrates that to achieve this, decisions being made NOW define whether the country gets locked in to high carbon infrastructure, where returning to a low carbon



pathways becomes far more expensive, or whether it sets itself on a realistic pathway to achieving that goal. All developed countries need to be planning to decarbonize across the economy by 2050.

Alternatives to legislation are usually invoked by those that don't understand the crisis of urgency to act on climate change. Legislation has the possibility of putting in legally-binding goals on legally-binding timeframes. The EU has the great benefit of having the ECJ and other enforcement mechanisms to ensure compliance. While it is often argued that stronger targets might be possible without the enforcement mechanisms, this does not provide an external impetus to ensure that they actually happen, a particular danger with a change of government.

For issues like adaptation, where the costs of inaction fall in most cases directly on the Member State, the EU may be better placed to require national action plans with facilitative oversight by the Commission, and with greater powers for convening and requiring transnational cooperation between Member States in areas where a common adaptation plan is required, such as management of transnational river basins.

**Q10** Climate change is the greatest and most all-pervasive threat to life as we know it, with the possible exception of all-out nuclear war, and all life depends on the environmental services received as the result of complex co-evolution of members of complex ecosystems over the course of tens of millions of years.

The more action that is taken, the more the UK benefits. The more action the UK itself takes, the greater it is able to claim a leadership role through experience and moral example in the EU; the more the EU is able to take domestic action, the greater its credibility in reaching a global climate deal that will prevent the worst impacts of climate change. Strong action by the EU to reduce its domestic emissions is a prerequisite for the climate crisis to be managed and minimized.

**Q11** There would be no benefit. It is against the national interest.

Combatting climate change and conserving the environment that we rely on for our very survival require strong action from as broad a base as possible. The EU has been successful in getting countries that would not otherwise prioritize these issues to take action.

**Q12** I don't feel I have the experience to respond to this question

**Q13** Currently the EU negotiates with a split competence on international negotiations, which means that in order for the agreement to come into effect for the EU and its Member States, both national legislatures and the EU need to ratify for the agreement to come into effect across the Union. There may be some reluctance from some Member States to sign, or at least the current may cause significant delays that could have very negative implications for the perception of the EU's good will with its negotiating partners. A greater competence may well ease this tension.

Member States should, however, still be able to contribute experienced and expert

negotiators to the overall working of the EU negotiating team, in order to best use the EU's available shared resources.

**Q14** Without doubt, absolutely essential. Negotiations at the UNFCCC are streamlined by countries working in blocs, and the trend has been for countries not in blocs to create new alliances so that they can be better heard. The UK would have no voice if it was not operating as part of the EU negotiating team.

The UK actually has quite a strong voice through the EU on international climate. The UK has provided the EU with one of the lead negotiators for one of the most politically sensitive parts of the negotiations in recent years (the LCA), a job Pete Betts has done well, within his mandate. Having personally participated in the Council expert groups and Working Party on International Environmental Issues, I have seen that the capacity the UK has developed on climate issues has meant that it can be a leading and influential voice in setting the EU mandate, not least through the advantage of operating in its native language. As an aside, "Team EU" is a rather naff title.

**Q15** With on-going climate and biodiversity crises, and lack of sufficient action to address them, and indeed completely counter-productive policies such as the UK's current dash for gas being promoted, the impacts of human mismanagement of planet earth will present a huge variety of resulting challenges. The greatest opportunity we have is to act effectively and sufficiently now.

**Q16** With the climate change situation at such a crisis point – global emissions should peak within the next 2-4 years in order for subsequent emissions reduction commensurate with the remaining global carbon budget to be realistically achievable – the strongest possible action at any level where it is possible to achieve it is needed. In each case, successful experiences should be shared to reduce time on the learning curve for the next adopter of a similar policy or action. A global agreement is needed to give everyone confidence that all are acting in line with the principle of 'common but differentiated responsibilities and respective capabilities'. The Kyoto Protocol helped drive EU and national ambition in the past, and a comparable, but wider framework is needed in 2015.

At the same time, strong policies are needed by the EU to help ensure that it enters Paris with a very strong negotiating mandate underpinned by a clear commitment to EU action. The EU needs its own legally binding renewables and energy efficiency targets for 2030, and a legally-binding climate target for 2025 and an indicative 2030 climate target that will be re-evaluated and renegotiated upwards through a legal trigger in the EU legislation. The UK needs to show its commitment to decarbonization through policies that learn much from Germany's Energiewende and move to renewables. There is no room in the remaining global carbon budget for the UK's retrograde move back towards gas. Idiomatic and unscientific in the extreme.

Industries need to decarbonize, but it will take political vision to understand that some industries will not survive the decarbonization, notably the fossil fuel industry (other than as a source of chemical feedstocks). While some will have the in-house expertise and vision to decarbonize and policy frameworks need to favor and reward them, others will not have this

vision and remain clinging desperately to the status quo. These will need to be made to decarbonize through ambitious policy frameworks.

**Q17** As argued in answers above, concerted action is needed if the worst impacts of climate change are to be avoided and to avoid the risk that sovereign countries do not disappear under the rising sea through others' addictions to fossil fuels and lack of vision for a zero-carbon emissions future. The EU is an important level for the UK to operate at, although its provisions should be a minimum, not a high water mark for Member State ambition and action.

## **Institute for Archaeologists**

The Institute for Archaeologists (IfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

IfA has over 3,000 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors. IfA's Wales / Cymru Group has over 100 members practising in the public, private and voluntary sector in Wales.

IfA's evidence focuses on the EU's effect on the management and protection of the historic environment.

## **Review of Balance of Competences – Environment and Climate Change Report**

### **General**

The 'historic environment' comprises:

*'All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible or buried, and deliberately planted or managed flora.'* (English Heritage: *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment* (2008), page 71)

This includes both terrestrial and marine heritage assets<sup>156</sup> Moreover, those assets can be either designated (for instance, through the scheduling of an ancient monument or the listing of a building) or undesignated. It is important to note that the vast majority of the historic environment (around 95%) is undesignated and is consequently regulated primarily through the planning regime (which recognises the impact of development upon the historic environment as a material consideration).

*The Government's Statement on the Historic Environment for England 2010* set out a vision

*'That the value of the historic environment is recognised by all who have the power to shape it; that Government gives it proper recognition and that it is managed intelligently and in a way that fully realises its contribution to the economic, social and cultural life of the nation.'*

Those sentiments continue broadly to be echoed by all administrations throughout the United Kingdom.

Although designated heritage assets are subject to specific regulation<sup>157</sup>, the planning process is fundamental to the management and protection of the historic environment (particularly given the proportion of the historic environment which is undesignated). It is also the source of the majority of funding for archaeological research through the application of the 'polluter pays principle'. In recent years the framework provided by the Town and Country Planning Acts on land has been supplemented by the development of a marine planning system (introduced through the Marine and Coastal Access Act 2009 and other marine legislation of the devolved administrations).

Although land-use planning remains a Member State competence, a crucial component underpinning this framework (so far as the historic environment is concerned) is the Environmental Impact Assessment (EIA) regime and (given the plan-led nature of the planning system) the Strategic Environmental Assessment (SEA) regime. Any undermining of those regimes would be viewed with great concern by the Institute.

EU competence is also particularly relevant to the historic environment in the context of the Common Agricultural Policy. Invaluable support has been given to the historic environment through the operation of Pillar II and agri-environment schemes in their various guises. Furthermore, there is scope to support the management and protection of the marine historic environment through the Common Fisheries Policy, but that potential has not, as yet, been realised in any meaningful way.

## **Specific Questions**

### **Advantages and disadvantages**

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<sup>156</sup> *'Those elements of the historic environment – buildings, monuments, sites or landscapes – that have been positively identified as holding a degree of significance meriting consideration are called "heritage assets"', UK Marine Policy Statement (2011) paragraph 2.6.6.1. This is a planning policy definition.*

<sup>157</sup> For instance, through the Ancient Monuments and Archaeological Areas Act 1979, the Protection of Wrecks Act 1973 and listed buildings and conservation area legislation.

## **1. What evidence is there that EU competence in the area of environment and/or climate change has:**

### **i. benefited the UK / your sector?**

1.1 The EIA and SEA requirements emanating from Europe have played a large part in ensuring that the planning and related consent regimes consistently and rigorously address the implications of development and other activities for the historic environment. The EIA process, in particular, has produced research, analysis and public engagement with the historic environment which was largely, if not wholly, lacking prior to its adoption. This has in turn resulted in better management and protection of the historic environment.

1.2 In addition, the Common Agricultural Policy has delivered very significant benefits for the historic environment. For instance, the High Level Stewardship scheme in England

*'...has been able to bring together the management of key aspects of the environment (both natural and historic) on a whole farm basis to deliver protection for some of our most important archaeological monuments and historic landscape features, removing them from inappropriate cultivation, managing vegetation and dealing with erosion. Many thousands of hectares of land have in this way been brought into beneficial management, delivering significant conservation benefits over the lifetime of the schemes, and helping to discharge the UK's national and international obligations – for example under the European Landscape Convention.'* (letter, Mike Heyworth, Council for British Archaeology to Defra, 28 June 2013)

### **ii. disadvantaged the UK / your sector?**

1.3 The historic environment sector has been disadvantaged by a lack of provision specifically directed at the historic environment and a failure fully (or, in some cases, at all) to integrate the historic environment within EU measures directed at the environment, generally.

1.4 Many historic environment practitioners regret the lack of a Directive or Directives aimed specifically at the historic environment in the way that the Birds and Habitat Directives are aimed at the natural environment. This lack of provision is seen to disadvantage the historic environment since, in the planning process, any impact upon it is weighed as a material consideration to be balanced with many other factors, by contrast with those elements of the natural environment which are singled out for additional consideration. Ideally IfA would like to see a Directive on the management and protection of the historic environment.

1.5 Even where Directives address the environment specifically they are often couched in terms which exclude the historic environment from consideration. This lack of integration reflects a failure generally to recognise that the 'environment' includes the historic environment. A prime example of this is the Marine Strategy Framework Directive (MSFD) whose definition of 'Good Environmental Status' excludes the historic environment. The result, in practice, is that the historic environment is excluded from consideration in the UK legislation which implements the Directive regardless of the merits of the case put forward for its inclusion at a national level. Similarly, the draft Framework Directive on Maritime

Spatial Planning and Integrated Coastal Zone Management fails properly to address the historic environment.

1.6 It might be said that national governments can supplement EU provision in such regards, but in practice this does not happen.

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

#### **2. 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?)**

2.1 Taking EIA as an example, primary legislation could be introduced at a national level to replace EU Directives and validate the secondary legislation already in place. However, the management and protection of the historic environment would be less secure since national legislation would be more vulnerable to change, particularly in recession. This is one instance where a relatively cumbersome procedure for change at a European level (having to convince national partners of the desirability of change) may work in UK's interest. If A sees great value in the EIA process being rooted in EU law.

##### **ii. currently made at another level were instead made at EU level?**

2.2 See above under paragraph 1.4. A Directive aimed specifically at the historic environment would facilitate sustainable development, a key component of which is the management and protection of the historic environment.

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

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

3.1 We consider that environmental standards are necessary for the proper functioning of the internal market. Without such consistent standards, it would no doubt be argued that businesses were subject to onerous obligations by comparison with regulation elsewhere in the EU.

#### **4. 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?**

4.1. EU legislation relating to the environment plays a significant part in providing an appropriate balance between protection of the environment and wider UK economic interest. In the planning system the economic crisis has lent added impetus to attempts to tip the balance in policy in favour of economic growth (potentially at the expense of the environment) and EU provision provides one of the safeguards against unsustainable development.

## **Current legislation**

**5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

**i. focused on outcomes (results)?**

**ii. based on an assessment of risk and scientific evidence?**

5.1 Both approaches are used. With regard to the historic environment, those based on an assessment of risk (such as the EIA Directives) have been more successful than those focused on outcomes (such as the MSFD), largely because outcomes have tended to exclude consideration of the historic environment (see above).

## **Doing things differently**

**6. 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?)**

6.1 By fully embracing the historic environment within legislation for protecting / improving the environment.

**7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change?**

7.1 The following actions would benefit the UK by strengthening the management and protection of the historic environment and facilitating sustainable development:

(1) Adopting a Directive aimed specifically at the management and protection of the historic environment.

(2) Strengthening provisions relating to EIA. IfA welcomes the draft amending Directive (2012/0297 (COD)) and, in particular, strongly supports the proposed requirement (in Article 1(5) of the draft amending Directive) for accreditation of practitioners involved in EIA. This would do much to ensure that professional standards were consistently applied by competent practitioners and go some way to remedying the failure of national governments to implement the provisions of the *Valetta Convention on the Protection of the Archaeological Heritage* which require States 'to ensure that excavations and other potentially destructive techniques are carried out only by qualified, specially authorised persons' (Article 3(ii)).

## **ii. Less action on the environment/climate change?**

7.2 See under paragraph 2.1.

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

8.1 No comment.

## **9. a. 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?**

9.1 There could be disadvantages if UK Government were to be prevented from entering into international agreements in areas in which it has a primary interest but other EU states were only peripherally involved. For instance, the UNESCO Convention on the Protection of Underwater Cultural Heritage (2001) concerns maritime states throughout the world. EU involvement would be welcome but it should not inhibit the UK Government from ratifying the Convention at an early juncture.



**b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

9.2 It is important for UK influence to be exerted at a European level.

**Future challenges and opportunities**

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

10.1 A fit-for-purpose framework for environmental protection will not be effective in the absence of resource with which to implement it.

**b. 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?**

10.2 A clear lead should be given at a European level with flexibility to exceed European provision if deemed appropriate at a national or local level.

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

10.3 The benefit would be a historic environment which realises its potential and facilitates (rather than inhibits) sustainable development. The cost would include the necessary resource to implement any European measures.

**Anything else?**

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

11.1 No comment.

## **Institute for European Environmental Policy**

### Introduction

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

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

### Sources of Evidence

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

- More than 30 years of experience of EU policy, primarily in the environmental domain, by staff, associates and trustees, stretching back to the 1970s. This has included an extensive range of activities, amongst them both academic and applied research work, sustained interaction with the European Institutions, national officials engaged in EU matters and other stakeholders from civil society, business, science, research and elsewhere, the organisation of conferences and events, evidence to the European Parliament, parliamentary committees in the UK, etc.
- A number of published reports covering both specific issues and the broader generality of EU environmental policy. Amongst the latter are reports on the early EC environmental policy and Britain (Haigh, 1987) and the subsequent Manual of EU Environmental Policy in Britain, later published as the Manual of European Environmental Policy (IEEP, 2011). In recent months we completed a report sponsored by a range of environmental organisations in the UK under the title "Report on the Influence of EU Policies on the Environment" (IEEP, 2013) which we are attaching as an Annex.
- Experience gained in undertaking work relating to environmental legislation commissioned by different DGs within the European Commission, including drafting

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

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

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

### The counterfactual

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

### The Review in context

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

Within the UK, there has been an active debate on the topic of “better regulation” and the merits of regulatory interventions for many years. Within this process, EU legislation, which

is particularly prominent in the environmental domain, has figured to no small degree. It was considered in the Davidson Review on the “implementation of EU legislation” (BRE, 2006) which pointed out that perceptions of “gold plating” in the UK were generally exaggerated.

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

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

#### The changing role of environmental policy

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

In this scenario, the merits of developing and applying policy at an EU level will remain very considerable and the linkages between the internal market and the application of environmental policy could increase rather than fall. At the same time, more attention could shift to the implementation of existing policy both to secure improved environmental effectiveness and an economic playing field which is both more level and more transparent. Improved implementation is indeed a key theme of the Seventh Environmental Action Programme. It corresponds to a traditional emphasis on better implementation in the UK

and one which is now particularly relevant given the considerable gap between measures agreed at the EU level and the actual level of implementation on the ground (see for example EC, 2012a).

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

Responses to specific questions

#### Advantages and Disadvantages

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

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

Without EU interventions in the environment it is reasonable to anticipate that standards in most sectors would be lower in Europe as a whole and in many individual countries. If standards had been set primarily at the national level this would have resulted in fragmentation and both commercial and political disputes. This is because a significant proportion of issues cannot be addressed without cooperative action by more than one country and also because of the economic sensitivity of policies which have effects on production costs, the competitiveness of companies and countries and on trade. There was some illustration of this in the tensions between the UK and Scandinavian countries over acid rain in the 1970s and 1980s, leading ultimately to agreement on the Large Combustion Plant Directive in 1998. The UK benefits from improvements in its own environment and also from many of the advances made in the European and global environment, albeit less directly.

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

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

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

The drawbacks to the EU competence in this domain are outweighed by benefits but clearly do exist. Policy is made through a process in which political compromises need to be made between the different institutions and the outcome is now always ideal. The objectives and the obligations set out in legislation may not be as precise as they could be as a result of the decision making process and the interests of one country will not always correspond to those of the majority. On some occasions measures may prove ineffective or the objectives may turn out to be inappropriate. One example is the target for renewable energy under the Renewable Energy Directive (2009/28/EC) which has resulted in levels of

incentivisation for first generation biofuels which are not appropriate in the light of their contribution to climate change mitigation (Skinner, 2013). EU measures will not be as influenced by the institutional arrangements for delivering them in the UK as national measures often would be. So the level of adjustment required is often greater. Nonetheless the advantages of a concerted approach at a European level are often overlooked by Institutions which focus on the immediate impact of EU measures on themselves.

## 2 Where should decisions be made?

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

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

The EU has the economic and political weight to influence global negotiations in the way that individual countries cannot. Indeed many other countries outside the EU, such as Norway and Switzerland, are now negotiating inside less formal blocs.

Many climate related measures either have or are seen to have significant economic implications and it is difficult to sustain progress in an individual country without sufficiently supportive action amongst at least some trade partners. National policy in the UK on climate issues may be inhibited in future if the EU does not progress climate mitigation policies to our higher level of ambition.

The EU has at its disposal the capacity to adopt policies in several different spheres, including burden sharing between Member States so that it can address internally some of the conflicts holding back progress at a global level. This is beneficial both for the EU's own Members and at a global level, since others can draw on this experience.

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

## 3 & 4 Internal market and economic growth

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

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

## 5 Current Legislation

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

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

### 6/7/8 Doing things differently

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

A stronger scientific and technical database for policy and greater capacity to draw on the centres of expertise throughout Europe. This is flagged in the Seventh Environmental Action Programme (EC, 2012b).



Greater transparency in the decision making process, particularly in the European Council. It is not always clear precisely why certain decisions have been made and where support for them lies.

Greater emphasis on effective implementation of measures that have been agreed.

Within the UK a more strategic and proactive approach to engagement with EU environment and climate policy. This could include a more active engagement in stimulating EU debate on issues regarded as priorities by the UK, for example organising European conferences and seminars. In the 1990s a senior Defra official took a group of his staff for a whole day meeting with DG Environment officials so that greater mutual understanding could be achieved. Although this becomes more difficult in a larger Union the proactive approach is more likely to result in new ways of thinking than a purely defensive one.

In terms of policy instruments there is an increasing academic literature examining the benefits of environmental taxes replacing other forms of taxation and encouraging a better use of natural resources. There would be benefits to considering environmental taxation more widely in the EU much as the UK does domestically. However, at present the UK's strong opposition to fiscal measures at the EU level inhibits further exploration of this option.

In the UK there has been a tendency to assume that alternatives to regulation are preferable to the regulatory approach. However, the evidence for this is far from clear. There are several examples of where a voluntary approach at the European level has not led to the level of progress intended. In the case of CO<sub>2</sub> emissions from passenger cars, the voluntary approach was potentially promising because of the rather small number of producers involved. Nonetheless it proved unsatisfactory and led in due course to regulation 443/2009/EC on average CO<sub>2</sub> emission limits for new cars. At present manufacturers are meeting the current target under this regulation earlier than the regulation requires them to.

## 9 International Agreements

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

However, in the larger picture there are strong benefits from a collective European position in most international agreements where this occurs. Over time individual countries within

Europe are losing political and economic weight relative to emerging new players and so the relevance of the EU as a negotiating forum and force is unlikely to diminish.

## 10 Future Challenges

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

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

Annex 1: [www.ieep.eu/assets/1230/Final\\_Report\\_-\\_Influence\\_of\\_EU\\_Policies\\_on\\_the\\_Environment.pdf](http://www.ieep.eu/assets/1230/Final_Report_-_Influence_of_EU_Policies_on_the_Environment.pdf)

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**Institute of Environmental Management and Assessment**

## Introduction

1. The Institute of Environmental Management and Assessment (IEMA) is the UK's leading environmental professional membership body, with a growing membership of 15,000 multi-disciplinary environment and sustainability professionals.
2. IEMA is dedicated to creating a sustainable future through environmental skills, knowledge and thought leadership, working with the private sector to deliver low carbon, resource efficiency and environmental skills into the economy. IEMA's professional qualifications are well regarded by employers across all sectors of the economy, regularly being cited as a requirement for people being employed in environmental management roles.
3. Many IEMA members work internationally, with roles and responsibilities that cover environmental performance in multiple countries within the EU and globally. Their experiences are directly relevant to the balances of competence review.
4. IEMA also has direct experience in the development and implementation of European environmental management legislation and standards, which is relevant to this consultation:
  - a. IEMA is appointed by Defra as the UK's Competent Body for the European Union's Eco-Management and Audit Scheme (EMAS) Regulation (EC 1221/2009). Through this role IEMA has direct experience of developing and implementing European legislation.
  - b. Through the UK's national standards body BSI Standards, IEMA leads the UK's input to the European standard's body (CEN) Strategic Advisory Body on the Environment (SABE) and chairs the SABE Environmental Management Team. This is important as agreements are in place between the European Commission and CEN on the use of voluntary standards to achieve European environmental policy outcomes.
  - c. IEMA also heads the UK delegation to the International Organisation for Standardisation (ISO) on environmental management standardisation. This is important as formal agreements are in place regarding the development and adoption of International standards at a European level, including for standards that have been directly linked to European policy and legislation.
  - d. IEMA's active engagement with members provided a significant body of evidence to the European Commission, as part of the review of the Environmental Impact Assessment Directive, which is currently being revised.
5. IEMA would be happy to discuss the issues raised in this response with Defra and DECC officials, if that would be helpful. IEMA is happy for its response to be published – we will also make our response available on IEMA's website.

## Overview

6. The environment, and the natural resources and services that it provides, underpin economic activity and prosperity. While there has long been a recognition of the impact of economic activity on the environment, there is growing evidence to show

that the environment will limit and constrain economic activity (e.g. through resource availability and impacts from climate change). To ensure the effective functioning of the European single market, it is therefore essential that the costs of environmental damage and pollution are internalised in economic decision making, providing a level playing field through the application of the 'polluter-pays' principle.

7. Given the strong links between environment and economy, IEMA believes that mechanisms to address market failure within the European single market are, in the first instance, best addressed at the European level.
8. European and international environmental standards play an important role in the effective functioning of the European single market and are increasingly being used by the European Commission to support environment and climate change policy outcomes. It is essential that Defra and DECC play an active role in the standards development process in order to influence how policy is implemented.
9. In developing this response, IEMA members have not identified areas where the current balance of competences is inappropriate. However, issues that have been raised relate to:
  - a. overlaps/inconsistencies between different EU instruments
  - b. differences in approach to implementation between member states and within member states, increasing the costs of managing compliance without making any appreciable environmental improvements
  - c. challenges in critical policy areas<sup>1</sup>, such as the lack of progress in international climate change agreements.

It is in these areas where improvements need to be made.

10. For many areas of environmental policy, significant improvements can be achieved through the application of appropriate environmental skills and competence. However, this rarely forms the basis of implementation plans at national and European level and a more structured approach to embedding skills provision in the delivery of European environment and climate change policy is urgently required. IEMA would welcome the opportunity to work with Defra/DECC to develop this theme further.
11. Mechanisms for the review of the effectiveness of European environmental policy measures at the EU level seem to be poorly developed, and the quality of regulatory impact assessments is highly variable. Consideration should be given to developing review mechanisms that are independent of those who have developed proposals, for example in a similar way to the role played by the UK's Regulatory Policy Committee. IEMA would be happy to explore how environment and sustainability professionals could support such an approach.

## UK Influence

12. It is important that the UK plays an active role in the development of European environment and climate change policy and regulation and that it uses its influence to shape policy. There are a number of areas of success in environmental policy where the UK has developed a national approach that has subsequently been adopted at the EU level, including:
  - a. the UK's Integrated Pollution Control regime from 1991, that became the EU Integrated Pollution Prevention and Control directive in 1996
  - b. more recently, the UK developed its own national carbon emissions trading scheme (ETS), prior to the EU ETS being launched in 2005.
13. However, to sustain influence across the breadth of environment and climate change policy areas, it is essential that Defra and DECC provide adequate resources to ensure that the UK's position is developed early such that it can influence other member states. It is also important to be clear about the priorities that the UK will focus on and ensure that UK stakeholders are involved in developing these priorities through open and transparent engagement.

## **Flexibility**

14. European directives set the minimum criteria that need to be implemented to achieve a particular policy outcome, and member states have significant freedom on the approach that they use to comply. In addition, member states can go further than the minimum criteria (or standards) than are set in directives. While the application of the 'subsidiarity' principle is often hard won by member states, giving them opportunities to make decisions at the national level, it can have the effect of creating additional costs and uncertainty for business if different approaches are taken by member states. This is particularly noticeable for those businesses that operate across multiple countries. This isn't confined to examples between member states, the devolution of energy and climate policy in the UK has led to a situation where European directives are being implemented in different ways in Scotland and England, for example the water framework directive.
15. In some situations, it would appear that the UK implements provisions somewhat less vigorously than other member states. There are also cases where the UK supplements the approach taken at the European level. The following examples of the Environmental Impact Assessment Directive and the EU Emissions Trading Scheme highlight these situations.

### ***European Directive on Environmental Impact Assessment (EIA)***

16. IEMA's special report on EIA<sup>ii</sup> analysed UK EIA activity and compared it with European Commission research<sup>iii</sup>. IEMA's findings indicate that the UK appears to have the lowest level of EIA activity of the EU's member states that have a population over 20 million. The Commission's study shows that both Spain and Germany undertake over 1,000 EIAs a year, nearly twice that of the current level of UK EIA activity, with both Poland and France undertaking nearly 4,000 EIAs a year.

As such, it would appear that the UK is undertaking hundreds of fewer EIAs each year than Member States with similar sized populations.

17. IEMA's research also identified significant variation between UK devolved administrations in the average number of Environmental Statements published under the EIA directive per million head of population per year submitted in relation to applications for planning consent (see box below).

**Average number of Environmental Statements per million head of population per year submitted in relation to applications for planning consent**

UK Nation	EIA per million head of population
England	<b>6.9</b>
Scotland	<b>13.1</b>
Wales	<b>13.0</b>
Northern Ireland	<b>29.2</b>

**Notes:** England data 1999-08, Scotland 1999-08, Wales 1999 - 2005 (between 2006-08 no Welsh data was available within the DCLG data), Northern Ireland 2005 - 2008 (between 1999-04 the DCLG's data did not provide sufficient clarity to identify only those EIAs related to planning applications from Northern Ireland).

***European Union Emissions Trading Scheme (EU ETS)***

18. The EU ETS sets a cap and trade scheme for reducing CO<sub>2</sub> emissions from industrial activities. Participants in the scheme can trade allowances, with the intention that investment in cleaner technology will be supported by a reducing cap (and an increasing price of allowances). However, with carbon allowances regularly trading below €5/tCO<sub>2</sub>e, the EU ETS is suffering from over-supply, in turn jeopardising its ability to drive the intended levels of low-carbon investment.
19. The UK government has subsequently introduced a carbon floor price, to supplement the EU price of allowances and stimulate low-carbon investment. This will raise the effective price of EU ETS allowances in the UK, compared with operators in other member states.

**Environmental Taxes**

20. The UK government has a stated policy<sup>iv v</sup> of increasing the proportion of revenue that comes from environmental taxes. Over the summer of 2012, the Treasury defined environmental taxes as those which meet all of the following three principles<sup>vi</sup>:
  - the tax is explicitly linked to the government's environmental objectives;
  - the primary objective of the tax is to encourage environmentally positive behaviour change; and

- the tax is structured in relation to environmental objectives – the more polluting the behaviour, the greater the tax levied.
21. Treasury-classified UK environmental taxes include the Landfill Tax and the Carbon Reduction Commitment, as well as the EU ETS and the carbon floor price. Environmental taxation at the European level is currently limited to the EU ETS, although it is an area of EU environment and climate change policy where it is unclear whether member states retain a veto. The European Commission has identified fiscal measures, including tax<sup>vii</sup>, to support the transition to a Resource Efficient Europe – how this relates to existing UK environmental taxes will be important to consider.

## Role of Standards

22. EU (and international) standards are important to the effective functioning of the European single market. EU Regulation (1025/2012) on European Standardisation sets the framework for using European standards and other standardisation deliverables in support of EU legislation and policies. European standards are widely used to support the achievement of European environmental policy outcomes and can broadly be split into a number of areas:
- a. Product standards that specify the minimum criteria, which can include environmental factors relating to materials used in manufacture (e.g. phase-out of certain hazardous substances) or the performance of the product in use (e.g. water or energy consumption)
  - b. Management standards and methods that specify the way organisations should undertake, control and improve certain activities (e.g. environmental management systems, life-cycle assessment)
  - c. Monitoring and measurement standards that specify certain protocols for measuring/monitoring pollutants.
23. European standards are typically developed following mandates issued by the European Commission to CEN, the European standards organisation. Standards are then developed through consensus processes, before being adopted through votes cast by national standards bodies (BSI Standards casts the UK's vote).
24. The European Commission issues mandates to CEN on various topic areas. It is not clear that UK government sees these in advance or is involved in their development, nor when they are out for comment in CEN member bodies. Why does this matter? - there is the potential that the Commission develops mandates that are, in effect, regulation by the back door or against the position that the UK has taken - a risk if Government doesn't engage at the national standards body level. Active engagement from Government would help to avoid this potential.
25. Given that the Commission is utilising standards as a tool to support the delivery of environmental policy outcomes, UK government's lack of engagement in the standards making process at a national level leaves them without a voice in the



development of policy implementation measures at the European (CEN) level. This disconnect is a weakness - particularly given that:

- a. European and international standards are written into certain European directives and regulations, either as offering exemptions from certain legal requirements (e.g. the energy management system standard ISO 50001 offers exemptions to large companies to the requirements of Article 8 of the Energy Efficiency Directive); or as being a core requirement (e.g. the environmental management system standard ISO 14001 is a requirement under the European Eco-Management and Audit Scheme regulation).
  - b. Standards will play a role in the implementation of the Resource Efficiency Roadmap 2020 (including sustainable materials management) and in climate-change related policy (e.g. the European Commission is due to launch a mandate for European standardisation organisations to start mapping industry-relevant standards in the area of energy, transport and buildings, identifying standards to be revised for better inclusion of climate adaptation considerations<sup>viii</sup>).
26. We have also seen that standards are being politically influenced at an international level. The objections of India in the balloting process and subsequent meetings in the development of the international carbon footprinting standard, citing breach of World Trade Organisation rule, is something that UK government should be aware of (and concerned about), particularly given the strong support for international take up of PAS2050 (UK carbon footprint standard). That the approach adopted by India on carbon footprinting is being broadened into water footprinting is an additional concern. This is of importance because European (including UK) standards bodies have been broadly supportive of these standards to help internalise environmental impacts (carbon, water) into product development and therefore consumption decisions. It is also important as some European-originated standards development is "elevated" to ISO under the Vienna Agreement.

### **Overlap and/or Inconsistency**

27. A key issue that causes concern and can increase costs for business without providing additional environmental benefit, is where European legal instruments either overlap or are inconsistent. For example, the recast directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS2) has overlap with some aspects of the regulation on the registration, evaluation, authorisation and Restriction of chemical substances (REACH), particularly where use of a substance has been exempted under RoHS2 but a REACH authorisation is needed for the same substance, in the same products and processes.
28. Under the Energy Efficiency Directive (EED), large organisations are required to undertake an energy audit carried out by qualified or accredited experts. The EED doesn't provide for mutual recognition of qualified experts, which might act as a

barrier to experts working in different member states, contrary to the services directive and provision for the cross-border provision of expertise (particularly where a company might want to use the same expert for sites used in multiple member states).

## Summary

- Mechanisms to address market failure within the European single market are, in the first instance, best addressed at the European level.
- The key issue to address is the consistency of implementation of EU policy and regulation, within and between member states.
- Environment and sustainability professionals have a key role to play in ensuring European environmental policy outcomes are achieved in an effective and efficient way.

## International Air Transport Association

The International Air Transport Association welcomes the opportunity to the Transport-focused call for evidence regarding the Balance of Competences Review. Our submission focuses uniquely on the aviation mode of transport.

### **What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

While the EU Regulation 261/2004 has allowed for harmonization of passenger rights regimes in the internal EU air transport market, the prescriptive nature of the regulation has not struck the right balance between consumers and transport operators. Indeed, requiring open-ended care and assistance in the event of circumstances beyond an airline's control places an undue burden on carriers.

As mentioned in the call for evidence the European Commission is currently undertaking a revision of this regulation. Recognizing this undue burden, it has proposed limiting care and

assistance in the event of extraordinary circumstances. Another element in the revision which further balances the rights of the passenger with the operator impact is the introduction of “trigger points” of 5, 9 and 12 hours (depending on the journey length) for delay compensation provisions. This will provide airlines with sufficient time to fix the problem causing the delay instead of cancelling the flight to avoid the high twin costs of compensation and delayed operation.

However, in its proposals for revision the EC has also incorporated concerning elements that place an undue burden on European airlines and that have unintended consequences for the consumer:

- Diversions, which are inevitably for safety, security or medical emergency reasons, should not be treated as delays or cancellations (which could possibly trigger compensation payments). Even if they may be classified as extraordinary circumstances, pilots or other operations staff should not have to take into consideration the potential costs associated with passenger rights when making such decisions.
- The notion of defining a delay when arriving at final destination and therefore applying delay provisions to missed connections on multi-sector journeys is misguided:
  - It places the onerous financial compensation liability on the first airline, which may be a regional feeder and which may have experienced only a short delay not actionable under the Regulation in other respects;
  - It places assistance obligations on the receiving carrier, which has departed with no delay at all;
  - If the connecting flight is from a non-EU to a EU country on a non-EU airline (example: ATH-IST-HEL with IST-HEL on a Turkish carrier), it purports to extend the Regulation’s provisions to flights from a non-EU state into the EU which are otherwise excluded from the Regulation for reasons of extraterritoriality;
  - Industry standards have been in place for years and offer protection to passengers who experience missed connections in the interlining environment. These standards are followed by 350 airlines worldwide and should not be destroyed by divergent regional rules.

The impact of this proposal would be significant on regional EU connectivity and smaller, regional carriers, as airlines may not be willing to assume such large liability outlays for short-haul feeder services to European hubs.

- The revision would treat as denied boarding the cancellation of a passenger’s bookings in the event that he or she no-shows for an onward flight of a return journey. The consequences would be either that the airline compensates the no-shows by increasing overbooking or alternatively by flying with empty seats which is not environmentally responsible. This rule would undermine the airlines’ pricing

policies based on directional imbalances, and would have as an immediate consequence an increase in fares.

- The provision that extraordinary circumstances can be invoked only for the flight on which the disruption occurred and the flight immediately following it, fails to recognize the realities of scheduled air transport operation, in which reactionary delays can have a much longer-lasting impact. Such a proposal would incentivize airlines to resolve schedule disruptions simply with a cancellation rather than work to progressively eliminate a delay.
- The revision proposes that if a flight is cancelled and no further seats are available on its own services within 12 hours, the airline must re-route passengers on other airlines or modes of transport. Twelve hours is not a reasonable timeframe for instance if the disruption happens late in the evening. In addition there should be a limit on cost or class of service.

**The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would benefit the UK?**

The approach of case law clarifying legislation has been detrimental to airlines and passengers in the case of passenger rights. EU Regulation 261/2004 has given rise to a large number of cases at the Court of Justice of the European Union, which has added more complexity to the existing regulation. The existence of that large number of cases attempting to clarify the Regulation creates legal uncertainty for airlines and passengers. Indeed, according to an external study half the claims filed by passengers with national enforcement bodies were unfounded<sup>158</sup>. In addition, the prospect of different courts across the EU interpreting the regulation differently adds to the confusion. Legislation should be clear and unambiguous from the outset, so passengers understand what their rights are in a given situations and plan to meet their obligations under the Regulation.

**To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice-versa?**

While EU Regulation in the area of passenger rights has created harmonization as far as the internal EU air transport market is concerned, a growing patchwork of regimes internationally creates difficulties for airlines and confusion for passengers. Today, there are 55 jurisdictions that have adopted a passenger rights regime of some form. The multitude of regimes today are not mutually recognized or coordinated. For example, assume a passenger is travelling on a UK carrier from the US to Israel via London Heathrow. If he is denied boarding at the US airport, potentially three passenger rights regimes would apply: the US DOT Consumer Protection Rules, EU Regulation 261 and the Israeli Aviation Services Law. Although certain laws recognize the possibility of concurrent claims, they do

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<sup>158</sup> PriceWaterhouseCoopers study, 2007-2009.

not go far enough in ensuring that multiple claims do not arise. The potential for duplication in claims has profound cost implications for the industry.

Action taken at a wider international level, in the form of ICAO core principles on consumer protection, would serve to ensure convergence and compatibility among passenger rights regimes around the world, in line with existing international agreements such as the Montreal Convention 1999. Such an approach would result in clearer passenger entitlements for UK passengers and UK airlines, creating more certainty for both consumers and the industry. A patchwork approach increases complexity and cost for our industry, which results in greater complexity and cost for consumers and businesses. In a business with thin profit margins, the cost of complying with numerous consumer protection rules can also damage competitiveness and render routes unprofitable, reducing connectivity and its associated benefits on economies and societies, including small communities dependent on air service. For tourist destinations, this could make competing locations more attractive for airlines to operate in and for cost conscious tourists to visit. For consumers, this means less choice.

### **Competences in respect to environmental matters**

IATA will submit evidence to the separate call and report on environment and climate change. However, our main considerations are summarized below, with a focus on the question to what extent the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice-versa?

Environmental standards for noise and emissions from aircraft are established at the global level by the International Civil Aviation Organization (ICAO). ICAO international standards have been adopted for noise emissions and local air quality emissions, and have periodically been made more stringent. In addition, a certification standard for CO<sub>2</sub> emissions from aircraft is currently under development in ICAO. Considering the global nature of aviation, action in respect to emissions standards for aviation must continue to be taken at the wider international level, rather than at national or European level. The safe, orderly and efficient functioning of today's air transport system relies on a high degree of uniformity in regulations, standards and procedures.

Where the benefits achieved through technology and new certification standards for aircraft are not sufficient to address demonstrated local environmental problems (noise and local air quality), further measures may be considered. IATA would however like to insist that the UK national interest will be better served by action taken at the local level, rather than at the EU or even national level in order to fully take into account local circumstances. This principle is notably recognized in the ICAO Balanced Approach to noise management which requires solutions to be tailored to the specific characteristics of the airport concerned.

As regards climate change, IATA believes that any market-based measure applied to aviation must be global in scope, preserve fair competition, and take account of different types and levels of operator activity. ICAO must continue to play the leading role in efforts to reach an agreement on a single global market-based measure for aviation.

## **IATA submission to the Call for evidence on Environment and climate change**

The International Air Transport Association (IATA) welcomes the opportunity to provide input in the review of the balance of competences in the areas of environment and climate change. Our submission focuses on competences related to aviation.

### **1. What evidence is there that EU competence in the area of environment and/or climate change has:**

#### **i. benefited the UK / your sector?**

The existing EU pieces of legislation that apply to the environmental impact of aviation have had limited benefits for the sector. For example, the existing Directive on airport noise (Directive 2002/30/EC) has not laid down sufficient guarantees that noise-related action be taken in accordance with the applicable international rules and policies.

However, EU competence in the area of environment and climate change has an important role to play to ensure international policies are uniformly implemented across the European Union. A harmonised implementation of international policies would firstly ensure that EU Member States are in compliance with international agreements including air services agreements concluded with third countries, but it would also ensure a level playing field in air transport.

#### **ii. disadvantaged the UK / your sector?**

If exercised in accordance with international policies, EU competence in the area of environment and/or climate change should a priori not disadvantage the UK or the aviation sector.

Examples of EU acts that have or could have been prejudicial to the aviation sector because they were at odds with international policies include the repealed EC Regulation 925/99 on aircraft noise and Directive 2008/101 (inclusion of aviation in EU ETS). Both have triggered disputes with third countries and did not sufficiently take into account the fact that, given the global nature of aviation, the safe, orderly and efficient functioning of today's air transport system relies on a high degree of uniformity in regulations, standards and procedures.

### **2. 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?**

Environmental standards for noise and emissions from aircraft are established at the global level by the International Civil Aviation Organization (ICAO). ICAO international standards have been adopted for noise emissions and local air quality emissions, and have periodically been made more stringent. In addition, a certification standard for CO<sub>2</sub> emissions from aircraft is currently under development in ICAO.

Considering the global nature of aviation, action in respect to emissions standards for aviation must continue to be taken at the wider international level, rather than at national or European level. The safe, orderly and efficient functioning of today's air transport system relies on a high degree of uniformity in regulations, standards and procedures.

Where the benefits achieved through technology and new certification standards for aircraft are not sufficient to address demonstrated local environmental problems (noise and local air quality), further measures may be considered. IATA would however like to insist that the UK national interest will be better served by action taken at the local level, rather than at the EU or even national level in order to fully take into account local circumstances. This principle is notably recognised in the ICAO Balanced Approach to noise management which requires solutions to be tailored to the specific characteristics of the airport concerned.

#### **ii. currently made at another level were instead made at EU level?**

In the area of climate change, IATA believes that any market-based measure applied to aviation must be global in scope, preserve fair competition, and take account of different types and levels of operator activity. ICAO must continue to play the leading role in efforts to reach an agreement on a single global market-based measure for aviation and the inclusion of international aviation in regional or national schemes such as EU ETS avoided.

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

Environmental standards for noise and emissions from aircraft are established at the global level by the International Civil Aviation Organization (ICAO). ICAO international standards have been adopted for noise emissions and local air quality emissions, and have periodically been made more stringent. In addition, a certification standard for CO<sub>2</sub> emissions from aircraft is currently under development in ICAO. Considering the global nature of aviation, action in respect to emissions standards for aviation must continue to be taken at the wider international level, rather than at national or European level. The safe, orderly and efficient functioning of today's air transport system relies on a high degree of uniformity in regulations, standards and procedures.

Any EU regulatory action in respect to environmental standards for aircraft should therefore be limited to ensuring the correct implementation of ICAO standards.

**4. 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?**

No comments.

**5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

**i. focused on outcomes?**

No comments

**ii. based on an assessment of risk and scientific evidence?**

No comments

**6. How could the EU's current competence for the environment be used more effectively?**

In the area of aviation, EU competences should focus more on ensuring a harmonised and consistent implementation of international policies and less on imposing one-size-fits-all solutions to local environment problems.

**7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change?**

The EU should play a stronger role in ensuring national and local authorities respect the international framework when making decisions. Given the implications a national and local decision can have on the whole European transport system, guarantees that international policies and rules are being followed throughout the European Union would benefit the UK. For example, in the past, a closure of three runways at Amsterdam Schiphol airport, after noise limits were exceeded, caused disruptions throughout the European aviation system. According to the European Commission, the measure at Amsterdam resulted in delays increasing from 2-3 minutes to more than 30 minutes for departures and up to 50 minutes for arrivals and cost the industry 1 billion Euros (European Commission, SEC(2011) 1455 final, p. 25). The consistent implementation of international policies in Europe would also contribute to ensuring a level playing field in air transport.

**ii. Less action on the environment/climate change?**

The EU should not take any action which may undermine the role of local authorities in managing local environment problems. IATA for example does not believe the EU should prescribe any specific measures to deal with noise or local air quality at and around airports, nor should it impose "one-size-fits-all" noise or emissions limit values.



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

No comments.

**9. a. 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?**

**b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

No comments.

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

No comments.

**b. 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?**

Environmental standards for noise and emissions from aircraft are established at the global level by the International Civil Aviation Organization (ICAO). ICAO international standards have been adopted for noise emissions and local air quality emissions, and have periodically been made more stringent. In addition, a certification standard for CO<sub>2</sub> emissions from aircraft is currently under development in ICAO. Considering the global nature of aviation, action in respect to emissions standards for aviation must continue to be taken at the wider international level, rather than at national or European level. The safe, orderly and efficient functioning of today’s air transport system relies on a high degree of uniformity in regulations, standards and procedures.

Where the benefits achieved through technology and new certification standards for aircraft are not sufficient to address demonstrated local environmental problems (noise and local air quality), further measures may be considered. IATA would however like to insist that the UK national interest will be better served by action taken at the local level, rather than at the EU or even national level in order to fully take into account local circumstances. This principle is notably recognised in the ICAO Balanced Approach to noise management which requires solutions to be tailored to the specific characteristics of the airport concerned.

As regards climate change, IATA believes that any market-based measure applied to aviation must be global in scope, preserve fair competition, and take account of different types and levels of operator activity. ICAO must continue to play the leading role in efforts to reach an agreement on a single global market-based measure for aviation.

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

No comments.

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

No comments.

**International Meat Trade Association**

**General Comments:**

- IMTA advocates that wherever competence lies for the environment and climate change that a science based approach is taken. There is a danger that environmental policy can be implemented without any real scientific basis and therefore unnecessarily adding barriers to trade and detrimentally impacting EU competitiveness. i.e. GMO's The UK government should lobby where necessary to ensure the EU is taking a science based and proportional approach.
- It is important to take into account other environmental impacts other than climate change such as the positive social and environmental contributions provided by livestock. There is often a focus on only measuring Green House Gases where other areas of climate change are overlooked and the wider picture needs to be considered i.e. potential for carbon sequestration through livestock production.
- For real progress regarding sustainability there should be better consultation and engagement with the meat sector, rather than vilification which often occurs. A more consultative approach both by the UK government and EU is more likely to see positive outcomes.

**GMO's:**

There needs to be a science based policy approach with regards to GMO's. Food security is an increasingly pressing issue and GMO's provide a means to help ensure it. EFSA's advice should take precedent for decision making on issues such as GMO's. The UK benefits from the pooled resource which goes in to EFSA for scientific opinions to underpin policy.

**Joint Links - Wildlife and Countryside Link, Wales Environment Link and Northern Ireland Environment Link**

**August 2013**

Wildlife and Countryside Link, Wales Environment Link and Northern Ireland Environment Link are each a coalition of environmental voluntary organisations, united by a common interest in the conservation and enjoyment of wildlife, the countryside and the marine environment. A list of the supporting members of each coalition is provided in the Appendix to this document. This is a Joint Links response, but it is anticipated that each of the Joint Links, as well as some of their individual members, may also provide their own separate responses. Please let us know if you would like further clarification on any of the points raised in this joint response.

## Introduction

The Joint Links welcome the opportunity to respond to this Review. EU policy on the environment has been introduced gradually 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, reinforced by the increasing size and economic importance of the EU.

As such, EU environmental legislation and policy 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, in respect of which EU action is essential to establish common standards through a shared approach.

There are also significant economic, commercial and social benefits to establishing common EU standards for environmental protection and business practice. Moreover, as a result of the *Millennium Ecosystem Assessment*<sup>159</sup>, the *UK National Ecosystem Assessment*<sup>160</sup> and *The Economics of Ecosystems and Biodiversity*<sup>161</sup> (TEEB), we now understand better than ever that here, and across the world, a healthy environment provides us with a vast range of essential services which underpin all activities, including the economy. These themes are considered briefly in this response and developed more fully in a report<sup>162</sup> prepared by the Institute of European Environmental Policy (IEEP) for a number of NGOs as evidence for this Review. Where appropriate, we refer to relevant sections of this report.

At times, 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. However, the relationship between the UK and the EU is not one-way. The UK has, and continues to play, a central role in shaping the development and

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<sup>159</sup> See [www.millenniumassessment.org/en/Condition.html](http://www.millenniumassessment.org/en/Condition.html)

<sup>160</sup> See Defra Archive:

[www.archive.defra.gov.uk/environment/natural/documents/UKNEA\\_SynthesisReport.pdf](http://www.archive.defra.gov.uk/environment/natural/documents/UKNEA_SynthesisReport.pdf)

<sup>161</sup> See <http://www.teebweb.org/publications/>

<sup>162</sup> Institute of European Environmental Policy (IEEP). 2013. *A report on the influence of EU policies on the environment*. See [www.ieep.eu/publications/2013/08/does-the-eu-benefit-the-uk-environment](http://www.ieep.eu/publications/2013/08/does-the-eu-benefit-the-uk-environment)

establishment of EU legislation, at times providing a leadership role on progressive EU legislation, such as the Habitats Directive, the Water Framework Directive (WFD) and a draft Directive on Marine Spatial Planning. EU and UK legislation and policy are therefore no longer distinct – separating the two now would be difficult.

Furthermore, the legally binding nature of most EU policy has been at the root of its influence in driving change, delivering conservation outcomes, and achieving common standards in a way which is not possible in other international bodies such as the European Free Trade Association (EFTA) or the Council of Europe.

The Joint Links believe that any decision to undermine the EU's role in developing and enforcing environmental law and policy, or to weaken the effect of the measures themselves, would have serious, long-term and potentially irreversible impacts on not only the UK, but the natural environment of the EU and beyond. Moreover, it is far from clear that the UK would gain any advantages by avoiding the influence of European environmental policy. In order to retain invaluable trade links, EU legislation – or something substantially similar to it – would need to be maintained in any event.

### **Advantages of EU law and policy**

There are numerous benefits associated with developing and enforcing environmental law and policy at a European level. These include:

- the **global nature** of many environmental issues. Where Europe acts as a bloc it is often easier to lever global change than where countries act in isolation or in shifting alliances;
- the adoption of **common standards** in both environmental and economic competition terms in support of the EU's single market;
- the advantages of **sharing resources; benefits and costs** of policy initiatives between co-operating countries (clearly apparent in climate change);
- **consistency across land boundaries**, e.g. in Northern Ireland where EU legislation acts as a leveller in respect of differences in law and market values across the border;
- **economies of scale** which can be captured in some instances;
- the **trans-boundary nature** of many environmental issues and natural resources, including migratory species, air pollution and marine conservation;
- the inclusion of clear **environmental principles and provisions** in the Treaty (TFEU), which have subsequently been enforced by Member States, such as the polluter pays principle, the precautionary principle and the concept of sustainable development;
- the ability to impose **penalties** in respect of non-compliance with EU legislation (including the introduction of fines in recent years), which motivates 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).

In practice, the EU has also helped crystallise Member State concerns about the environment around a common sense of direction and momentum in a way no single

Member State could deliver. The EU Treaty binds Member States to a common set of environmental provisions and gives priority to an agreed concept of sustainable development in a way that has no parallel beyond the EU's borders.

### **Influence of EU law and policy on the UK**

In the 1970s and 1980s, the UK carried the reputation of being the 'Dirty Man of Europe' for its failure to protect its environment and tackle its emissions of atmospheric pollution, water pollution and hazardous waste. The UK's approach was generally pragmatic, responding to domestic political concerns, advancing incrementally and, in many cases, seeking to utilise the capacity of the environment to absorb pollution and other pressures rather than to set binding standards of the kind preferred in certain continental countries. This gave rise to tensions between different philosophies as EU policy was hammered out, particularly in areas such as air and water pollution in which a shift in policy style and goals were required (e.g. Jordan 2002<sup>163</sup>, Wurzel 2005<sup>164</sup>). The result was, in some cases, a compromise with significant British influence on the evolution of EU policy which has continued over time and been reflected in the formulation of several measures, including the Integrated Pollution Prevention and Control (IPPC) Directive and the WFD. The latter Directive has helped to start transforming once heavily polluted UK rivers into habitats that support a wide range of freshwater fish, mammals and invertebrates, by making functioning ecosystems the criteria for success. The Thames, which was declared biologically dead fifty years ago, now supports more than 100 fish species.

The extension of EU policy into pollution control, policy on waste disposal and recycling, biodiversity, chemicals and dangerous substances, environmental impact and liability and, more recently, into climate, has had a profound effect on all Member States, including the UK. There is evidence of both changes in practice and measurable improvements in the quality of the environment in most of these areas. The IEEP report sets out evidence of these benefits.

Other areas of environmental protection have been strengthened as well. The IEEP report discusses recent measures to improve access to justice on environmental issues and the development of Environmental Impact Assessment (EIA) procedures, which at the time were in their infancy in the UK.

### **Economic benefits of EU law and policy**

In economic terms, the creation of European standards provides a reasonably level playing field for British and other companies which need protection against low standards as a means of creating competitive advantage. There are also many industries working at a European level which are anxious to avoid the need to comply with a myriad of national

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<sup>163</sup> Jordan, A. 2002. *The Europeanization of British Environmental Policy*. Basingstoke, Palgrave, Macmillan.

<sup>164</sup> Wurzel, R. 2005. *Environmental Policy-Making in Britain, Germany and the European Union*. Manchester, Manchester University Press.

legislation creating both costs and barriers to trade. EU measures have helped to stimulate innovation, for example in the car industry which has been subject to binding standards on emissions following the demise of a voluntary approach. This has helped the industry to remain competitive at a time when manufacturers in less regulated zones such as the US failed to adapt so rapidly.

The IEEP report evidences some of the employment benefits of EU legislation<sup>165</sup>. The report also asserts that a substantial number of further jobs could be created with more vigorous implementation of environmental legislation. 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>166</sup>.

The UK's natural environment supports almost 750,000 full-time equivalent (FTE) jobs and £27.5 billion economic output<sup>167</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>168</sup>. Environmental policy, much of it established at the EU level, will have contributed significantly to the growth of the environmental sector.

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>169</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.

Because of the potential sanctions entailed in failure to comply with EU legislation, it has been implemented more rigorously than is always achieved for purely national measures, although there are exceptions to this rule (such as the Air Quality Framework Directive). Within the UK itself, there remains some flexibility for devolved administrations to adopt their own approaches to meeting European requirements. At the same time, they are exposed to the same pressures as national administrations and this has helped to contain a tendency for some administrations, such as Northern Ireland, to fall behind other parts of the UK. The framework of European requirements provides some reassurance that certain high standards (or ambitions) will be retained even as the legislative frameworks in the four UK countries evolve independently in the context of devolution.

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<sup>165</sup> IEEP Report, s. 4.3

<sup>166</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: [www.foe.co.uk/resource/reports/jobs\\_recycling.pdf](http://www.foe.co.uk/resource/reports/jobs_recycling.pdf)

<sup>167</sup> RSPB 2011b. *RSPB reserves and local economies*. RSPB, The Lodge, Sandy

<sup>168</sup> RSPB 2011a. *Natural Foundations: Conservation and local employment in the UK*. RSPB, The Lodge, Sandy

<sup>169</sup> *Ibid*

The IEEP report includes a number of case studies to illustrate the more specific and local impacts of EU measures. In several cases, these set out institutional changes which it seems unlikely that any future government will wish to reverse. EU objectives, procedures, reporting systems and modes of thinking are now deeply embedded in British practice and to separate them would be difficult as well as unwelcome.

Many environmental issues require progressive and sustained action over a long period of time. Some depend on relatively large investments with medium to long term paybacks, such as the construction of new power stations. The stability of EU policy can be particularly valuable in this context. Whereas it sometimes can be difficult to amend in the short term, equally it is relatively resistant to political fashion and can offer sufficiently stable conditions to consolidate environmental progress.

Since it has developed in a politicised international framework based on compromise, EU policy will not always precisely suit the conditions in the UK or elsewhere, and in some cases legislation is not well drafted or can even be ill-advised. These drawbacks should not be glossed over - but we believe that they are very substantially outweighed by the benefits of a set of EU policies which is still in the process of adapting to new conditions. Climate policy is a good example of where the UK would benefit from a more vigorous and ambitious approach at EU level and argues for such, recognising that it does not have exactly the same priority in every other Member State.

### **The wildlife dimension**

The broad principles set out in the IEEP report as a whole apply to a considerable degree to wildlife and protection of natural resources, particularly water, as well. However, several points are worth noting:

- d. The UK played a significant role in the drafting of the Birds Directive, which as a result reflects the UK's approach to wildlife issues at the time. Nevertheless the UK has lagged behind many other Member States in implementing the Directive, particularly in the marine environment.
- e. Nonetheless, both the Birds Directive and subsequently the Habitats Directive, amongst other measures, have had a significant impact on UK law and practice. Several Joint Links members have contributed case studies to the IEEP report illustrating this point in both the terrestrial and marine environments. The Natura 2000 network has been instrumental in delivering improvements in the status of several UK priority species, including the Bittern, while at the same time ensuring that economic development is delivered in a truly environmentally sustainable way. The UK's approach to the Natura 2000 network has not always supported this approach, and on several occasions, NGOs in the UK have appealed directly to the European Commission in relation to the protection of specific sites as well as in pursuit of general principles.
- f. The Nature Directives not only provide invaluable protection for Europe's rarest and most threatened habitats and species - they 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. 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>170</sup>. Furthermore, 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>171</sup>.

- g. 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. The 2012 Government Review of the Habitats and Birds Directives<sup>172</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. 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.
- h. Whilst the implementation of the Directives is far from perfect, and is often slow (as in the case of the marine environment) the nature conservation successes that have been delivered through the Natura 2000 network are the result of its binding nature - in contrast to other international agreements, including the Bern and Ramsar Conventions.
- i. Some EU measures protecting wildlife also have a trade dimension. Most prominent is CITES, which needs to be established at the EU level because the EU has exclusive competence over trade affairs. A new measure is being developed to control invasive alien species, which also needs to be set out at a European level, for similar reasons.
- j. Of course, there are negative aspects of the EU for wildlife in the countryside, such as the damaging aspects of the Common Agriculture Policy and Common Fisheries Policy. These must be acknowledged, although not necessarily in this response, as they are addressed in the next semester of the Competences Review. Also it must be borne in mind that EU funding channelled through agri-environment schemes, LIFE projects, etc offers benefits too, which a budget conscious government may choose to cut.

## **The implications of changing the relationship between the EU and the UK**

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<sup>170</sup> UK National Ecosystem Assessment Technical Report (Chapter 5: Broad Habitats) available at: <http://uknea.unep-wcmc.org/LinkClick.aspx?fileticket=CZHaB2%2FJKIo%3D&tabid=82>

<sup>171</sup> See “*Estimating the Overall Economic Value of the Benefits provided by the Natura 2000 Network*” (2013) available at [www.ec.europa.eu/environment/nature/natura2000/financing/](http://www.ec.europa.eu/environment/nature/natura2000/financing/) and ‘Assessing Socio-economic Benefits of Natura 2000 – a Toolkit for Practitioners’ (September 2009 Edition) available at [www.ec.europa.eu/environment/nature/natura2000/financing/docs/benefits\\_toolkit.pdf](http://www.ec.europa.eu/environment/nature/natura2000/financing/docs/benefits_toolkit.pdf)

HM Government (2012) Report of the Habitats and Wild Birds Directives Implementation Review. Department for Environment, Food & Rural Affairs. [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)



If the UK decided to exit the EU, but remain part of the European Economic Area (EEA), it would continue to be bound by EU legislation included in the EEA agreement, including Framework Directives on Water, Air and Waste, the REACH Regulation and Directives on Urban Waste Water Treatment, Nitrates and Groundwater. The UK would also still have to implement all single market legislation into law (including any future laws that are agreed among EU Member States - such as a future Framework Directive on Soil, for example) - but with little or no ability to shape it. The Wild Birds, Habitats and Bathing Water Directives would no longer apply, with the attendant risk that in the absence of external pressure and auditing from EU actors (and in the current economic climate) progress made in improving the UK environment could be seriously undermined.

A total withdrawal threatens a much wider erosion of environmental policy and one which risks significant environmental damage to the UK – unless, as in the case of Switzerland, the UK were to adopt a policy of “voluntary adaptation” (whereby national legislation is aligned with EU legislation to a large degree). Such a process would require the UK to maintain present (or near present) levels of environmental protection yet risk considerable economic uncertainties. Given that many areas of environmental policy are legislatively devolved (to differing extents) to the three devolved administrations, there must be a question mark over whether this could be guaranteed in the longer term.

## **Conclusion**

Many of the UK’s most important environmental policies – those that keep tourist destinations clean and attractive, those that maintain air and water quality, and those that provide business opportunity – come from membership of the EU, and associated EU power to act in these areas. Link believes that only through engagement and cooperation at EU level can we rise to the environmental and economic challenges that we face.

Environmental law and policy should not be misrepresented as a source of constraint on economic activity. Our members’ individual submissions and the IEEP report demonstrate that it leads to new technology and the increased sustainability of production systems and has 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. Our response and the IEEP report also evidence the multiple employment and economic benefits arising from tourism and protected areas.

Many of the issues relevant to this Review 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.

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.

If the UK were to leave the EU - but wished to yield the trade benefits of remaining within the European Economic Area (EEA) - 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. It is unclear how the UK Government could guarantee standards in this regard, given that many of the policy areas concerned are devolved. 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.

### **Appendix**

#### **Coalition members supporting this response:**

This response is supported by the following 20 members of **Wildlife and Countryside Link**:

- Bat Conservation Trust
- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Campaign to Protect Rural England
- ClientEarth
- Campaign for National Parks
- Friends of the Earth
- International Fund for Animal Welfare
- The Mammal Society
- Marine Conservation Society
- National Trust
- Plantlife
- Royal Society for the Prevention of Cruelty to Animals
- Royal Society for the Protection of Birds
- Salmon & Trout Association
- Whale and Dolphin Conservation
- Wildfowl & Wetlands Trust
- The Wildlife Trusts
- Woodland Trust
- WWF – UK

This response is supported by the following 10 members of **Wales Environment Link**:

- Bat Conservation Trust
- Buglife – The Invertebrate Conservation Trust

- Butterfly Conservation Wales
- Campaign for National Parks
- Keep Wales Tidy
- Llais y Goedwig
- Plantlife
- RSPB Cymru
- Wildlife Trusts Wales
- WWF Cymru

This response is also supported by **Northern Ireland Environment Link** which has 62 member organisations.

### **Joint Nautical Archaeology Policy Committee**

The JNAPC has pleasure in providing evidence to this review

The JNAPC was formed in 1988 from individuals and representatives of institutions who wished to raise awareness of the United Kingdom's underwater cultural heritage and to persuade government that underwater sites of historic importance should receive no less protection than those on land.

The Institute for Archaeologists and Fjordr are both members of JNAPC with whom we work closely on policy and we welcome the opportunity to endorse their responses to this Consultation.

Please therefore accept their responses as the JNAPC's response to this call for evidence.

### **Lambert, Jean MEP and Taylor, Keith MEP**

#### **Introduction**

The world is up against numerous environmental challenges, including climate change, growing resource constraints, and biodiversity loss. As many of these challenges span national borders the UK must work with other countries to solve them, to avoid duplication, increase coordination and to pool limited resources.

The fact that the European Union (EU) is responsible for around 80% of all environmental legislation in the UK is a clear demonstration of the importance of EU competence in this area of UK policy. The legislation covered in this submission is just a snapshot of some of the environmental protection that the EU has afforded us all; but it clearly demonstrates that the EU is the correct body to legislate on climate change and the environment, and that the UK is better off within than without.

As Friends of the Earth highlight in their report - 'Implications for UK Environment Policy of a vote to exit the EU', the EU has had an overwhelmingly positive effect in the field of environmental policy, perhaps more than in any other area. EU membership has pushed the UK Government to implement extensive environmental policies with strict targets that are legally binding, and to provide regular publicly available reports upon its performance in relation to those targets.<sup>173</sup>

Removing EU competence over environmental policy, and consequently removing the external pressure brought about by EU legislation in this area, would risk the UK backtracking on the huge progress that has been made in environmental protection. One only has to look at our cleaner beaches and rivers and breathe our less polluted air to know that strong, clear and enforceable environmental legislation are essential to the health and wellbeing of everyone living in the UK.

The EU also offers us access to resources on a larger scale than if we were to tackle these issues alone. We not only have access to expertise from across the continent, but the EU provides funding towards innovative and forward-thinking environmental projects across the UK which, along with effective policy, is essential for progress on environmental protection and the tackling of climate change.<sup>174</sup>

Harmonisation of environmental legislation across the EU adds further benefits to UK citizens and businesses through the provision of common standards, regulatory certainty and the creation of a level-playing field.

In practical terms, it also makes perfect sense for environmental and climate policy to be governed at the EU level given the transboundary nature of the challenges faced in this area. When it comes to tackling the global problem of climate change – the most significant challenge faced by the world today – the UK simply cannot go it alone. Indeed the UK can be praised for driving an improvement across the whole of the EU in targets and legislation in some areas. Furthermore, when it comes to protecting our rare migratory birds and our fragile marine ecosystems, legislating purely on a national scale will not account for the risks posed by our neighbours with whom we share these valuable resources.

Rather than looking inwardly, the UK should be focusing on keeping a strong position at the European table, where it is able to influence other Member States and encourage more effective action Europe-wide. If the UK is serious about tackling climate change and protecting our environment for generations to come, we should be leading the way in Europe, and encouraging our neighbours to keep up to speed.

In short, we believe that the EU is the appropriate body for the creation and monitoring of policy on the environment and climate change. The EU is clearly committed to act to protect our environment and tackle climate change, as is demonstrated by the EU Commission's nine priority objectives in the Commission proposals for a 7th Environmental Action Plan.<sup>175</sup> We strongly welcome the objectives proposed by the Commission in this

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<sup>173</sup> [www.foe.co.uk/resource/briefings/eu\\_referendum\\_environment.pdf](http://www.foe.co.uk/resource/briefings/eu_referendum_environment.pdf)

<sup>174</sup> [www.ec.europa.eu/environment/life/funding/lifeplus.htm](http://www.ec.europa.eu/environment/life/funding/lifeplus.htm)

<sup>175</sup> [www.ec.europa.eu/environment/newprg/pdf/7EAP\\_Proposal/en.pdf](http://www.ec.europa.eu/environment/newprg/pdf/7EAP_Proposal/en.pdf)

document, and the actions detailed in order to secure their delivery. We would strongly urge against any removal of EU competence in this area, considering such a move to be illogical, inefficient, and potentially disastrous for our efforts in safeguarding our environment, climate, and the well-being of our citizens.

### **Key horizontal (cross-cutting) issues**

#### **Tensions between the pursuit of economic growth and safeguarding or improving the environmental**

Economic recovery is fully compatible with tackling climate change and protecting the environment. However, the wrong economic investment will undermine climate policy and environmental protection. Unrestrained or undirected economic growth carries extra risk of increased climate change impacts and environmental damage.

For this reason the focus needs to be on the *quality* of economic development, with an emphasis on a more prudent use of resources and reduction of greenhouse gas (GHG) emissions. We would strongly question the treating of all Gross Domestic Product (GDP) growth as equally beneficial, regardless of the negative environmental, climate and social impacts of that growth. It is a poor indicator of human progress and a range of much better indicators are available and should be given much greater priority.

Even within a 'growth' focus, the *EU 2020 Strategy*<sup>176</sup> has identified 'smart', 'sustainable' and 'inclusive' growth as the key areas. In terms of the 'sustainable' dimension, building a more competitive low-carbon economy that makes efficient, sustainable use of resources and protecting the environment, reducing emissions and preventing biodiversity loss are crucial elements for the future direction of EU policy, and have been agreed by all Member States.

Following the 2008 banking crises and the subsequent economic impacts in Europe and internationally, it has become clear that western economies need restructuring, rebalancing and more effective regulation.

The UK's economic problems are not simply the result of previous Government spending policy. They are also directly associated with the decision to bail out the British banks and the economic situation internationally, which includes Europe, but is certainly not limited to it. Some Euro-sceptics may claim that the UK's economic problems primarily derive from EU membership or the economic problems of other EU Member States and how these are being handled. In reality, the UK's economic problems are certainly not 'caused by a Eurozone crisis', but neither has staying outside the single currency insulated the UK from economic problems in the EU (any more than not taking the dollar has insulated Britain from negative impacts of the 2008 US sub-prime crash).

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<sup>176</sup> Summary of the EU 2020 Strategy at [www.ec.europa.eu/europe2020/europe-2020-in-a-nutshell/index\\_en.htm](http://www.ec.europa.eu/europe2020/europe-2020-in-a-nutshell/index_en.htm)

These economic problems must not mean that tackling climate change and protecting the environment become less pressing priorities. Valuable economic activity cannot thrive without a sustainable and stable environment, but can be undermined by unpredictable climate, pollution and other environmental costs.

The only sustainable way to address current economic crises is to address these problems at the same time as addressing the climate crisis. This means investing in far-reaching and ambitious green stimulus packages. This should be undertaken at UK and devolved authority levels, but should also be undertaken at EU level.

The EU level is particularly useful and appropriate where EU targets can connect with strategic use of EU funding and there are cross-border issues. For example, EU-wide support is appropriate for key green industries where those industries operate across national boundaries or where there is investment in new green technologies which will reduce the climate and environmental impacts of facilities across the EU.

Such interventions make sense at EU level, but should not be restricted to that level. Indeed the UK Government needs to change its policy in this area and look at funding its own green stimulus package aimed at rebuilding and restructuring the UK economy and creating jobs whilst addressing climate and environmental protection objectives.

Our Group in the European Parliament, Greens/EFA, has proposed an EU-level Green New Deal stimulus policy package. This would reduce EU GHG emissions by 30% by 2020 and address the economic crises affecting Member States. In particular it shows that investment which enables the EU to meet its 2020 renewable energy and energy efficiency targets (20% reduction by 2020 in both cases) could generate 3 million new jobs. A more ambitious EU Green New Deal proposed by the Greens could generate 6 million new jobs.<sup>177</sup>

A proportion of these jobs would accrue to the UK, benefiting the economy. However, the scale of the benefit will partly depend upon how far Britain is perceived to be at the forefront of green technology and industries. An important recent study by the Centre for Alternative Technology estimates that increased UK ambition on climate change could generate 1.5 million new jobs in Britain. There is clearly a major economic dividend to be had from taking a lead on climate change.<sup>178</sup>

The Green New Deal also proposes ways to finance this investment, which includes establishing a European Green Investment Bank, greater issuing of green bonds, an EU-wide financial transaction tax (with a tax base equivalent to US \$3,500 trillion), mechanisms to leverage in private finance and overcome short-termism in private investment, and a carbon tax to complement the EU Emissions Trading Scheme (ETS).<sup>179</sup>

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<sup>177</sup> Funding The Green New Deal, Greens-EFA and Green European Foundation, May 2011 p 122, [www.greens-efa.eu/funding-the-green-new-deal-5528.html](http://www.greens-efa.eu/funding-the-green-new-deal-5528.html).

<sup>178</sup> Centre for Alternative Technology, Zero Carbon Britain: Rethinking the Future, July 2013, p127-8. [www.zerocarbonbritain.com](http://www.zerocarbonbritain.com)

<sup>179</sup> Funding The Green New Deal, op cit.

Generating millions of new jobs across the EU has the positive effect of reducing the social security costs to Member States and increasing the number of citizens paying income tax and being more economically active. As well as strengthening public finances and economies in Member States, an EU-wide green stimulus package will build new sustainable industries, reduce emissions and increase environmental protection. In this way the EU can play a central role addressing both economic and climate crises – to the benefit of the UK and other Member States.

There is a broader question regarding the economic benefits from improved EU environmental standards. Much EU legislation stipulates minimum product standards, in terms of energy performance and environmental impact. This helps provide a more level playing field across the internal market for businesses seeking to compete across the EU. It protects businesses from producers who want to cut corners and make profits at the expense of environmental impact, and encourages eco-innovation, especially as standards rise. With a marketplace of 500 million people and green public procurement potential across 28 Member States, this offers major opportunities for British business and industry. For this potential to be realised the UK Government needs to help ensure British business and industry is prepared for these opportunities.

### **The right approach**

We believe that the EU should have competence in the area of environmental legislation. Environmental policy raises wide-ranging transboundary challenges – EU Member States share seas and breathe the same air; our rare birds cross borders and the sewage spilt on beaches in Germany doesn't disappear when currents carry it into Poland; and climate change simply cannot be tackled by any one country by itself. Therefore, in order to protect our environment and address forthcoming environmental challenges, such as climate change, the UK must cooperate with our European neighbours.

The EU acts as a driving force to improve individual Member States' commitments to climate change and environmental policies and targets. The strong environmental policies pursued via the EU by states such as Germany, the Netherlands, Denmark, Sweden and Finland have driven up standards across Europe as well as acting to prevent the weakening of environmental policies. The EU also provides a forum within which Member States can influence and inform each other through, for example, joint monitoring and implementation of international commitments such as the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.<sup>180</sup>

But the threat to the environment is global and should also be tackled on an international scale, and the EU plays an important role in setting this agenda. The EU is considered a leader in tackling climate change and its commitment to environmental protection encourages other countries to adopt similar measures.

Looking to the national situation, EU membership has had a profound impact on UK environmental policy, and there are strong indications that this has hugely improved the UK's performance on environmental protection.

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<sup>180</sup> [www.ec.europa.eu/clima/policies/brief/eu/index\\_en.htm](http://www.ec.europa.eu/clima/policies/brief/eu/index_en.htm)



Thirty to forty years ago, the UK was known as the 'Dirty Man of Europe'. Environmental policy was created purely on the basis of 'sound-science', meaning action was taken only once irreversible damage had been proved and policy-makers reacted to problems as they emerged in a fragmented and ad hoc way.<sup>181</sup> But the EU has pushed a profound shift towards adoption of the 'precautionary principle', which now underpins much of the EU's and consequently the UK's current environmental legislation. The precautionary principle, as enshrined in Article 174 of the EU Treaty - a decision influenced by the UK Government - is now recognised as a guiding principle of the EU's environmental policy.<sup>182</sup> The precautionary principle enables early response and ensures a higher level of environmental protection through preventative decision-taking in the case of risk.

Environmental policy-making in the UK was also previously characterized by voluntarism, and the whole sphere was tainted by close relationships between government and industry, meaning that policies remained weak, targets low, and implementation rarely monitored.<sup>183</sup>

While the EU has pushed the UK towards stronger and more comprehensive environmental policy, the EU is still far from perfect when it comes to transparency and undue corporate influence over environmental policy. One example is in the current revision of the EU rules governing Corporate Social Responsibility (CSR). This legislative revision provided a huge opportunity to better regulate the environmental performance of businesses, and make them more accountable to society, including by requiring companies to publish data on their social and environmental impacts across the supply chain. However, the European Commission's new proposal on CSR reporting has been weakened by industry pressure; rather than presenting a robust framework, the new reporting rules on social and environmental impacts would affect only 0.3% of all European companies. Furthermore, the proposal is for voluntary reporting with non-binding requirements that can be selectively interpreted and would not be enforceable.<sup>184</sup>

Despite these policy gaps, EU membership has still resulted in huge progress in UK environmental performance. Take for example the serious environmental and health issue of air pollution. The Air Quality Directive has been incredibly successful in forcing EU Member States to act in order to bring down pollution levels of sulphur dioxide and, in some places, nitrogen dioxide. For those of us who continue to breathe bad air we now have the means to put pressure on the UK Government to clean up air pollution hotspots.<sup>185</sup> Without EU competence in this policy area, it is unlikely there would be the sufficient external pressure and legal opportunities to ensure the necessary effort from policymakers to secure citizens' health, as is evidenced by the current reluctance of national Government and Local Authorities to address air quality on grounds of cost.<sup>186</sup> Furthermore, EU competence in this area has allowed UK citizens to place direct pressure on their own Local Authorities by raising a formal complaint to the European Commission if they fear breaches of EU laws in

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<sup>181</sup> [www.cserge.uea.ac.uk/sites/default/files/gec\\_1994\\_11.pdf](http://www.cserge.uea.ac.uk/sites/default/files/gec_1994_11.pdf)

<sup>182</sup> [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF)

<sup>183</sup> [www.parliament.uk/briefing-papers/POST-PN-212](http://www.parliament.uk/briefing-papers/POST-PN-212)

<sup>184</sup> [www.corporateeurope.org/sites/default/files/publications/refusing\\_to\\_be\\_accountable.pdf](http://www.corporateeurope.org/sites/default/files/publications/refusing_to_be_accountable.pdf)

<sup>185</sup> [www.clientearth.org/201303042129/news/press-releases/uk-government-faces-supreme-court-over-illegal-air-pollution-2129](http://www.clientearth.org/201303042129/news/press-releases/uk-government-faces-supreme-court-over-illegal-air-pollution-2129)

<sup>186</sup> [www.publications.parliament.uk/pa/cm201012/cmselect/cmenvaud/1820/182002.htm](http://www.publications.parliament.uk/pa/cm201012/cmselect/cmenvaud/1820/182002.htm)



their own localities, as was the case for residents who submitted a complaint to the Commission detailing breaches of EU air quality laws in London and Winchester.<sup>187</sup>

As well as ensuring protection of our air the EU has also brought in forward thinking policy which protects our precious seas and beaches. The EU Bathing Water Directive, which obliged member states to change the way they treated sewage, has paved the way for a big improvement in the state of our beaches. These clean beaches are more likely to attract tourists, provide a haven for birds and boost local economies.

On top of legislation protecting our physical environment the EU has also produced legislation that, though not as strong as some of us might have liked, gives us a continent-wide approach to tackling the most pressing issue of modern times; climate change. With at least 11% of global greenhouse gases produced in the EU it is vital that we work together to lower our emissions to have a fighting chance of avoid catastrophic climate change.

Critics of EU environmental policy will talk of the administration burden for businesses and question the efficiency of some measures. They will argue that complying with these regulations is costly and leaves European business uncompetitive, particularly in the face of increased competition from countries such as China and India, which do not have such strict environmental rules. Yet in order to trade within the EU, the UK will still have to comply with its commercial, environmental and social regulation, and pay for the privilege. Contrary to the popular rhetoric of Euro-sceptics, much red tape is in fact home-grown and businesses benefit from the regulatory certainty provided by the EU. Whereas renegotiating competence over environmental policy from EU to UK level risks huge costs from the public purse and significant Parliamentary time, as well as undermining commercial stability and public confidence in the commitment of Government.

More importantly, removing EU competence in this policy area would risk environmental disaster. Over the years EU environmental legislation has often been opposed by the British Government, and we are currently seeing Conservative MEPs continue to try and undermine climate change proposals. But the EU has forced us to clean up our act.

Rather than undermine the EU's competence to act in this area, we urge the UK to fully engage to ensure environmental and climate change legislation is robust and ambitious. The UK has an interest in making sure that these other policies are coherent with its own goals for environmental policy, rather than undermining them, as is sometimes the case. It would also be true to say that, at some points, the UK has been the driving force with regard to improving environmental understanding, not least in relation to climate change and its links to agriculture or defence policy – as under the last British Presidency.

## **Environment and climate change policy**

### **Climate change**

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<sup>187</sup> [www.keithtaylormep.org.uk/2012/11/30/green-euro-mp-visits-winchester-to-support-local-air-pollution-campaign/](http://www.keithtaylormep.org.uk/2012/11/30/green-euro-mp-visits-winchester-to-support-local-air-pollution-campaign/) and [cleanairinlondon.org/legal/clean-air-in-london-lodges-complaint-over-breaches-of-air-pollution-laws-in-london/](http://cleanairinlondon.org/legal/clean-air-in-london-lodges-complaint-over-breaches-of-air-pollution-laws-in-london/)

The Call for Evidence rightly acknowledges climate change to be "the most significant environmental issue now facing the EU" (p14, para 34). It is important to also acknowledge that climate change is the most significant environmental issue facing the UK and, indeed, the world.

Given the paramount importance of concerted far-reaching action on climate change mitigation, the key question is how far climate policymaking at EU-level has the potential to enable greater ambition and action on the issue. Given the global nature of the problem, it is not just a matter of how far EU-level policy relates to action taken within EU Member States.

EU climate policy also has the potential to help set the global agenda for action. Large global players like the US, the BRIC countries (Brazil, Russia, India, China) and the G77 will shape a future global climate agreement and related policy instruments. A unified EU policy, in terms of level of ambition, policy instruments and negotiation strategy, has the potential to shape the global framework in a way not possible for 28 Member State countries acting unilaterally.

Indeed, the degree of EU political leadership and unity on climate, if accompanied by a demonstrable record of successful emissions reduction, may be decisive in delivering a much-needed and long-overdue binding global climate change agreement.

### **Costs of climate change**

The Stern Review on the Economics of Climate Change estimated that the global cost of climate change could amount to "the equivalent of around a 20% reduction in [global] consumption per head, now and into the future".<sup>188</sup>

The Review's headline conclusion was that this significant human and economic cost could be avoided by funding climate mitigation to stabilise CO<sub>2</sub>e at 500-550ppm, which it calculated to cost "around 1% of [global] GDP by 2050 - a level that is significant but manageable".<sup>189</sup>

Less widely referenced is the fact that 20 months after publishing the Review, and after the publication of the Intergovernmental Panel on Climate Change (IPCC)'s Fourth Assessment Report in 2007, Lord Stern revised this assessment and the costs, concluding that there was a need to get below 500ppm and that do so "would cost around 2% of GDP".<sup>190</sup>

Stern's figures relate to global GDP costs and it has been rightly argued that the developed countries have a duty to contribute a greater share to this global cost. The Call for Evidence references the EU's contribution to global emissions as 'around 10%', which it compares to China's figure of 23%, using 2010 emissions data. We strongly question the use of such data to determine the level of 'responsibility' of the EU or UK, for climate change. To do so, it would be necessary to look at historic emissions as far back as the industrial revolution

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<sup>188</sup> Stern Review on the Economics of Climate Change, 2006, Executive Summary, page x.

<sup>189</sup> Stern, op cit, page xii.

<sup>190</sup> 'Cost of tackling global climate change has doubled, warns Stern', Guardian 26.06.2008.

and to also take into account the consumption of imported goods by the EU (or UK) which are manufactured in countries such as China but destined for a western market. To do so would demonstrate a much greater 'carbon debt' than 10% for EU Member States.

Indeed, the Stern report acknowledges the importance of historic emissions: "since 1850, North America and Europe have produced around 70% of all the CO<sub>2</sub> emissions due to energy production, while developing countries have accounted for less than one quarter."<sup>191</sup>

This analysis demonstrates three things: (1) the scale and cost of the challenge, (2) the much greater and exorbitant scale and cost (human and economic) of failing to act, and (3) the extent of the true responsibility of Europe (and the US) for the problem.

If it is accepted that failure on climate change is not an option, the key question for the UK Government and its policymakers is: how best can a global solution be reached? Given current geopolitics and the extremely limited timeframe, the answer has to be, we would argue, the UK working constructively for a coherent, ambitious and forward-looking EU climate policy and emissions reduction plan, with a view to how this can contribute positively to global outcomes, including an effective legally binding global climate agreement. This means the UK should retain a major negotiating role within 'Team EU' as part of the UNFCCC negotiations.

### **EU policy**

Our Greens-EFA Group in the European Parliament has argued that EU climate policy needs to be more ambitious. The EU emissions reduction target of 20% by 2020 is not sufficiently high to meet the challenge posed by climate change. The EU needs to adopt higher targets, and the Greens have argued for a policy program which would reduce emissions by 30% by 2020 and for further more ambitious targets for 2030 and beyond.<sup>192</sup>

However, EU climate policy has been successful in terms of achieving agreed GHG emission targets, with the EU as a whole on course to achieve its headline emission reduction target (8% by 2008-12 on 1990 levels) as part of the first Kyoto commitment period. Importantly, this includes Member States who joined the EU more recently.

The EU is also on track to meet its 2020 headline emissions reduction target of 20%, as part of the 2020 Strategy and Energy and Climate Package. In 2011 the EU's total GHG emissions were 17% lower than 1990 levels.<sup>193</sup> This has been achieved through a burden sharing approach where individual targets are set for each Member State as part of the policy package, with the aim of these collectively delivering the net EU emission reduction target. A similar approach has been adopted for the 2020 targets, with the richest Member States being required reduce emission by the greatest percentages.<sup>194</sup>

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<sup>191</sup> Stern, op cit, page xi.

<sup>192</sup> Funding The Green New Deal, op cit.

<sup>193</sup> EU Greenhouse gas emissions and targets, Commission website, [www.ec.europa.eu/clima/policies/gas/index\\_en.htm](http://www.ec.europa.eu/clima/policies/gas/index_en.htm). Details on burden sharing to meet EU Kyoto targets at [http://ec.europa.eu/clima/policies/gas/kyoto/index\\_en.htm](http://ec.europa.eu/clima/policies/gas/kyoto/index_en.htm).

<sup>194</sup> Effort sharing details for 2020 targets [www.ec.europa.eu/clima/policies/effort/index\\_en.htm](http://www.ec.europa.eu/clima/policies/effort/index_en.htm), graphic [www.ec.europa.eu/clima/policies/effort/images/targets.gif](http://www.ec.europa.eu/clima/policies/effort/images/targets.gif) and figures [www.eur-](http://www.eur-)

The EU is clearly the appropriate level at which to agree binding climate targets and policy to deliver emissions reduction across the EU. This approach has served EU Member States well, and has ensured that all are playing a part in reducing Europe's overall GHG emissions.

But, as Greens in the European Parliament have persistently argued, the scale of ambition for EU climate policy needs to be accelerated, and individual Member States have a responsibility to make that happen.

In this context we note that the UK has urged the EU to adopt a unilateral EU target for 2030 of a 40% reduction on 1990 levels and its position that *"In the context of an ambitious global climate agreement for the period beyond 2020, the EU's target should increase to up to a 50% reduction on 1990 levels."*<sup>195</sup>

As is widely acknowledged, major problems remain with the EU ETS.<sup>196</sup> Greens in the European Parliament have long argued that the scheme needs substantial reform in order to realise its objectives. Necessary reforms include extending the sectors covered, expanding the GHGs included beyond just CO<sub>2</sub>, tackling over-allocation of permits, increasing share of auctioned permits, and mechanisms to ensure integrity of the system and reduce volatility. A minimum price for carbon or a link to a carbon tax are ways to guard against price collapse - a problem which has seriously undermined the viability of ETS.<sup>197</sup> Nevertheless, it remains true that ETS has delivered on agreed EU emission reductions targets set under the scheme. Whether ETS is to deliver future EU GHG emissions targets will depend on solving these fundamental and systemic issues. The UK has an influential, potentially environmentally-positive, role to play in ETS policy.

For the purposes of this review, it is important to stress that the EU has demonstrated its effectiveness at meeting agreed climate targets and it is the right competency level for climate policy and targets to be agreed.

Deciding climate policy at EU level provides the opportunity for the UK to work with other European countries to make the case for ambitious EU-wide climate targets for 2030 and beyond, and, just as importantly, to ensure an effective plan is in place to enable Member States to play their part delivering those targets.

We note that this Review does not include Energy, which will be looked at separately. However, energy policy cannot be looked at in isolation from climate policy, and will affect -

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[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0136:0148:EN:PDF#page=12](http://lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0136:0148:EN:PDF#page=12). Targets relate to non ETS sectors, using a 2005 baseline.

<sup>195</sup> Written Ministerial Statement by Edward Davey: UK Negotiating Position on the EU 2030 Climate and Energy Framework, 4 June 2013

<sup>195</sup> [www.gov.uk/government/speeches/written-ministerial-statement-by-edward-davey-uk-negotiating-position-on-the-eu-2030-climate-and-energy-framework](http://www.gov.uk/government/speeches/written-ministerial-statement-by-edward-davey-uk-negotiating-position-on-the-eu-2030-climate-and-energy-framework).

<sup>196</sup> See Commission summary of ETS and relevant legislation at [www.ec.europa.eu/clima/policies/ets/index\\_en.htm](http://www.ec.europa.eu/clima/policies/ets/index_en.htm).

<sup>197</sup> Greens-EFA, March 2013, Green Guide to the EU ETS - [www.greens-efa.eu/fileadmin/dam/Documents/Publications/ETS\\_Web.pdf](http://www.greens-efa.eu/fileadmin/dam/Documents/Publications/ETS_Web.pdf)

positively or negatively - GHG emission reduction outcomes. Emission reduction targets set as part of climate change policy must therefore also inform decisions in energy policy.

In this context, EU energy policy is extremely important for climate change. In particular current and future EU renewable energy targets and the Energy Efficiency Directive 2012/27/EU<sup>198</sup> are key elements in the delivery of reduced GHG emissions and decarbonisation. As with climate change, EU competence in energy policy is essential for the UK's transition to a low carbon future, a transition which needs to be made in all Member States.

We would like to highlight the incompatibility of the UK Government's encouragement of the controversial technique of shale gas and oil extraction by hydraulic fracturing – 'fracking', with our targets on climate change.<sup>199</sup>

EU competence over environmental policy allows the EU to introduce legislation in order to address the dangers associated with fracking. Indeed, it is possible that a number of EU Directives related to fracking, including the Water Directives, the Waste Directive and the Environmental Impact Assessments Directive will be amended to take consideration of this new unconventional method of energy extraction.<sup>200</sup> Given the UK Government's failure to develop a robust regulatory framework on fracking to address the associated risks, we consider the EU's competence in this regard extremely important for the well-being of our citizens and the environment.

Paragraph 41 of the Call for Evidence document asks "Would the UK's own climate change policy be more or less difficult to pursue without EU competence in this area and how best are we able to influence others in the global debate?"

EU competency is paramount for ensuring all 28 Member States take responsible action to reduce their GHG emissions. The value of a co-ordinated and legally binding approach offered by the EU is fundamental for Europe-wide success on climate change and for Europe to play an effective leadership role in the delivery of global decarbonisation - something climate science has shown to be our greatest collective imperative.

It is possible for the UK to set more ambitious targets or policy than those of the EU generally on, for example, renewable energy, reduction of greenhouse gas emissions or a move towards public transport and away from private cars – so the EU does not present a barrier to ambition in many areas. However, where production standards or market aspects (e.g. on ETS) are concerned, a strong EU policy can cushion the effects of UK unilateral action which might otherwise affect UK competitiveness. EU standards also present a wider market for UK business.

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See [www.ec.europa.eu/energy/efficiency/eed/eed\\_en.htm](http://www.ec.europa.eu/energy/efficiency/eed/eed_en.htm) and [www.ec.europa.eu/energy/renewables/index\\_en.htm](http://www.ec.europa.eu/energy/renewables/index_en.htm).

<sup>199</sup> Tyndall Centre report assessing the environmental and climate change impacts of shale gas extraction: [www.tyndall.ac.uk/sites/default/files/coop\\_shale\\_gas\\_report\\_update\\_v3.10.pdf](http://www.tyndall.ac.uk/sites/default/files/coop_shale_gas_report_update_v3.10.pdf)

<sup>200</sup> MEPs in the European Parliament's Environment Committee recently voted to impose a mandatory Environmental Impact Assessment on all shale gas drilling: [www.keithtaylormep.org.uk/2013/07/11/meps-vote-to-tighten-eu-legislation-on-fracking/](http://www.keithtaylormep.org.uk/2013/07/11/meps-vote-to-tighten-eu-legislation-on-fracking/)

## **Water and Marine**

Clean fresh and coastal water is fundamental to health of the public, animals, plants and habitats, and is therefore a vital element of the EU and the UK's environmental policy.

Thanks to EU competence in this area, the UK now has extensive water legislation relating to the quality of freshwater, drinking water and bathing water; pollution control, urban waste water treatment and marine management, as well as the assessment and management of flood risks.<sup>201</sup> As a result, the quality of freshwater and bathing water in the UK has improved significantly.

In the 1970s and 80s the UK's seas were in a shameful state as sewage was pumped into them as part of the 'dilute and disperse' approach to pollution control. However, since EU legislation in this policy area took effect, the discharge of pollutants to fresh and coastal waters has fallen, leading to improvements in the quality of freshwater and bathing water.

The EU's bathing water Directive 76/160/EEC, now revised by Directive 2006/7/EC, has obliged the UK to change approaches to sewage treatment and releases of nitrates and the quality of beaches and bathing waters have improved. The Directive sets microbial standards for water quality at popular beaches and inland bathing sites to preserve the environment and to protect human health. Since its introduction there has been a dramatic improvement in coastal bathing water quality, primarily through driving water company investment in improved sewage treatment. UK coastal bathing waters complying with the mandatory standard increased from 66.5% in 1988 to 94.4% in 2012. The amount of beaches reaching the higher guideline standard has improved from 29.3% in 1994 to 58.8% in 2012 (the bathing water results for 2012 were some of the lowest for a decade due to heavy summer rainfall and flooding, prior to this in 2011, 76.5% achieved Guideline compliance).<sup>202</sup>

As well as the clear environmental benefits, this improvement in bathing water standards also delivers economic gains to the UK. Studies have shown that beach cleanliness is a key determining factor in people's choice of beach, therefore cleaner beaches are more likely to attract visitors and boost local economies.<sup>203</sup>

Furthermore, because EU legislation requires the UK to monitor and report on water and marine standards, UK citizens now have easy access to substantive information about water quality. This not only raises public awareness of issues surrounding water quality, but allows the public to check the water quality of prospective holiday destinations, and their own local beaches.<sup>204</sup>

While many of the major sources of pollution to our water, such as discharges from sewage treatment works, have improved significantly over the last two decades, the Call for

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<sup>201</sup> [www.ec.europa.eu/environment/water/index\\_en.htm](http://www.ec.europa.eu/environment/water/index_en.htm)

<sup>202</sup> [www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water](http://www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water)

<sup>203</sup> <http://xa.yimg.com/kq/groups/15174242/2027359313/name/Blue+Flag+or+Red+Herring+Do+beach+awards+encourage+the+public+to+visit+beaches.pdf>

<sup>204</sup> [www.eea.europa.eu/highlights/heading-for-your-favourite-beach-is-the-bathing-water-clean](http://www.eea.europa.eu/highlights/heading-for-your-favourite-beach-is-the-bathing-water-clean)



Evidence document recognises that work remains to be done to tackle pollution by nutrients, biocides, industrial and household chemicals and pharmaceuticals, as well as the concentration of nitrates in rivers and ground water (p.17 para 43).

Again, the EU is driving improvements in this area through the European Water Framework Directive (WFD), adopted in 2000, which has allowed more thorough and sophisticated assessment methodology of the whole water environment, which in turn helps direct action to where it's most needed.<sup>205</sup>

Another example of the important steps being taken at EU level towards protecting and enhancing our marine biodiversity is evident in the emerging reform of the EU's Common Fisheries Policy (CFP). Just a few months ago, an historic deal was struck between EU Member States and the European Parliament which will radically reform the notoriously dysfunctional CFP. The Greens/EFA group proposed many progressive reforms to the CFP and, while we feel the deal could have gone further, we broadly welcome the radical reforms which will see a ban on the wasteful practice of discarding perfectly edible fish, and a legally binding commitment to fishing at sustainable levels.<sup>206</sup>

The sustainable management of fish stocks is essential to securing healthy marine biodiversity, and the lack of national boundaries for marine life means that a coordinated, regional response is crucial; irresponsible fisheries practices in one Member State, for example, could have a significant impact on the health of the marine ecosystems surrounding the coastline of the UK. Thus it is in the UK's interest to work with our European neighbours to ensure strong and enforceable EU-wide policy in this crucial area, as was recognised by the UK Government at the time of the policy discussions.

As demonstrated in the above examples, the EU has clearly had a positive impact on the UK's performance on marine management and quality of our inland and coastal waters. But the EU is not just a positive influence on the UK in this regard, it is also the appropriate body to hold policy competence in this area.

The management of marine environments is key example of where cooperation and collective action are required to effectively tackle threats. The EU governs the largest maritime zone in the world, and marine resources make a significant contribution to Member States' economic prosperity and social well-being. The European marine environment must therefore be protected to ensure that it is healthy, productive and safeguarded sustainably for the use of future generations.

The transboundary nature of marine life and eco-systems make it impossible to manage this policy area in a unilateral manner. Furthermore, while marine pollution originates largely from land and freshwater in each Member State, the impact on the marine environment does not respect boundaries. It is therefore in our national interest to ensure a collaborative and coherent approach to tackling marine and freshwater pollution.

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<sup>205</sup> [www.environment-agency.gov.uk/research/planning/34383.aspx](http://www.environment-agency.gov.uk/research/planning/34383.aspx)

<sup>206</sup> [www.greens-efa.eu/cfp-reform-10098.html](http://www.greens-efa.eu/cfp-reform-10098.html)

Climate change may also add to risks such as those from invasive alien species or loss of biodiversity as water temperatures change, along with their chemical components, thus requiring a joined up approach with other EU climate and environment policies.

While existing regional seas conventions<sup>207</sup> have a role in promoting coherent approaches, the Marine Strategy Framework Directive (MSFD) 2008/56/EC was necessarily developed at the EU level to prevent a sectoral and fragmented approach.

The MSFD is complementary to, and provides the overarching framework for, other key legislation at the European and UK level, including the EC Habitats Directive, the EC Birds Directive, the EU Water Framework Directive, the Common Fisheries Policy and the UK Marine and Coastal Access Act. The MSFD is also beneficial to the UK in that it will also help fulfil international commitments undertaken at the World Summit on Sustainable Development and under the Convention on Biological Diversity and the OSPAR Convention, to which the UK is party.<sup>208</sup>

It is within this context that the Integrated European Maritime Policy – a recent Commission proposal which aims to establish a consistent framework for maritime spatial planning and integrated coastal management – is being developed. This legislation relates to when and where human activities take place at sea, and allows for the reduction of conflicts between different sectors in the area. The legislation will be beneficial in promoting smart, sustainable and inclusive growth, and creating employment opportunities in the Maritime sector.<sup>209</sup> However it is vital that this policy is developed from an eco-system based approach, as opposed to a purely economic one, and this is something that our Greens/EFA group is working hard to achieve. The environmental impacts of Blue Growth focused activities are highly uncertain but potentially harmful given our limited knowledge about the intricate complexity of our marine ecosystems. Proper protection and repair of a healthy marine environment must therefore be a prerequisite to any development or resource use in the marine sector, and related decision-making must be guided by the precautionary principle.

For the sake of the health of UK citizens, the natural environment and British business interests, we feel it is crucial that the EU retains competence over water quality and maritime conservation. Safeguarding water and marine policy under EU competence will allow the UK to be part of a larger market place with the ability to shape its rules and norms Europe-wide, to have clear fishing quotas that are enforceable and, crucially, to push further and faster with policy on water and marine management.

## **Air Quality**

Air quality has become an increasingly important issue, as understanding has developed in recent years regarding the extent to which it causes premature deaths and chronic

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<sup>207</sup> For the UK, the OSPAR Convention on the north-east Atlantic Marine Region

<sup>208</sup> [www.jncc.defra.gov.uk/page-5193](http://www.jncc.defra.gov.uk/page-5193)

<sup>209</sup> <https://webgate.ec.europa.eu/maritimeforum/system/files/Blue%20Growth%20Final%20Report%2013082012.pdf>



respiratory and cardiovascular illness. In the UK, air pollution causes 29,000 premature deaths each year, more than alcoholism or obesity. Only smoking causes more premature UK deaths.<sup>210</sup>

Research has also found that “air pollution may have made some contribution to the earlier deaths of up to 200,000 people in 2008”.<sup>211</sup>

In London, one of our constituencies, air pollution causes over 4000 premature deaths each year - as many as died in London's Great Smog of 1952.

These significant health impacts are also generating costs to health services and therefore public finances.

The OECD predicts that air pollution will become the top environmental cause of mortality globally by 2050 unless further action is taken.<sup>212</sup> Recognising the international nature of the problem, the World Health Organisation has set recommended exposure limits for each major air pollutant.<sup>213</sup>

Air pollution is a transboundary, cross-border issue requiring international and EU level standards and legislation. Pollution generated in one location can cause health impacts in another geographic area, and in the EU context pollution can cross Member State boundaries. Given the potential for pollution in one Member State to impact in another the importance of EU competence in this area is clear.

EU policy, as defined in the Air Quality Framework Directive 96/62/EC and associated daughter Directives and Air Quality Directive 2008/50/EC, stipulates maximum limit values for specific air pollutants and requires Member States to take action to meet these limit values. Each pollutant has specific limit and target values.<sup>214</sup> 2013 is the EU Commission's Year of Air, and, following public consultation, the Commission is expected to publish new policy proposals in September 2013.

The Commission has conceded that there are problems with the current situation, but, crucially, not because of EU air quality policy but because there has been a failure by some Member States to implement it. This is made clear in the Commission's proposals for a 7<sup>th</sup> Environmental Action Plan: “*The failure to fully implement existing policy is preventing the EU from achieving adequate air and water quality standards.*”<sup>215</sup>

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<sup>210</sup> COMEAP, Committee on the Medical Effects of Air Pollutants, 2010, The Mortality Effects of Long-Term Exposure to Particulate Air Pollution in the United Kingdom. Research quoted refers to fine particulate matter (PM 2.5).

[www.comeap.org.uk/images/stories/Documents/Reports/comeap%20the%20mortality%20effects%20of%20long-term%20exposure%20to%20particulate%20air%20pollution%20in%20the%20uk%202010.pdf](http://www.comeap.org.uk/images/stories/Documents/Reports/comeap%20the%20mortality%20effects%20of%20long-term%20exposure%20to%20particulate%20air%20pollution%20in%20the%20uk%202010.pdf)

<sup>211</sup> Ibid, p5.

<sup>212</sup> OECD Environmental Outlook to 2050 - Key Facts and Figures, 2012, p4.

<sup>213</sup> See [www.who.int/mediacentre/factsheets/fs313/en/index.html](http://www.who.int/mediacentre/factsheets/fs313/en/index.html).

<sup>214</sup> For summary of EU legislation see [www.ec.europa.eu/environment/air/quality/legislation/existing\\_leg.htm](http://www.ec.europa.eu/environment/air/quality/legislation/existing_leg.htm). For specific limit and target values see [www.ec.europa.eu/environment/air/quality/standards.htm](http://www.ec.europa.eu/environment/air/quality/standards.htm).

<sup>215</sup> Commission proposals for a 7th Environmental Action Plan, 29.11.2012, parag 45, p21.

[www.ec.europa.eu/environment/newprg/pdf/7EAP\\_Proposal/en.pdf](http://www.ec.europa.eu/environment/newprg/pdf/7EAP_Proposal/en.pdf)

Air quality legislation at EU level has made some very important progress in tackling pollution, which brings benefits for the UK and across Member States. In 2012, for example, Greens in the European Parliament worked towards and welcomed the agreement of new EU legislation placing greater limits on sulphur emissions from ships, specifying maximum sulphur content for marine fuels.<sup>216</sup>

However, we remain deeply concerned that the Coalition Government, like its predecessor, is failing to give the issue of air quality the political priority it needs. We consider this failure to protect the lives and health of UK citizens from preventable hazard a serious dereliction of duty.

Legal challenges have been mounted against the UK Government for failure to take action to meet air quality limit values, as required by EU Directives.<sup>217</sup> The Commission is in the process of taking infringement proceedings against the UK, which may lead to a £3 million fine per pollutant.

At the same time, the UK Government has said it will use the 2013 EU air quality policy review to press for “*Amendments to the Air Quality Directive which reduce the infraction risk faced by most Member States, especially in relation to nitrogen dioxide provisions.*”<sup>218</sup> This is a wholly inappropriate response to the policy review, and reinforces our view that the UK Government does not place priority on improving air quality for UK citizens, despite the evidence of the damaging effect upon human health and life.

We have no wish to see the UK incur multi-million pound fines, but can see that recourse to such sanctions may be necessary to ensure Member States take steps to protect their citizens by tackling chronic air pollution.

The health interests of our constituents, and UK citizens in general, are best met by the EU having competence in the area of air quality, which should include a robust and timely sanctions regime to help ensure that all Member States tackle air pollution effectively and lives are saved.

## **Genetically Modified Organisms**

Public opposition to Genetically Modified Organisms (GMOs) is significant and established; according to official EU polls, 61% of Europeans are against the development of GM food in a trend of rejection that has continued to grow.<sup>219</sup> Just last month, a YouGov survey found that only 21% of the UK public want GM food, and approximately 70% would prefer to buy traditional foods rather than those that are genetically modified.<sup>220</sup>

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<sup>216</sup> Greens-EFA press release, 11.09.2012, Air pollution/Sulphur emissions, [www.greens-efa.eu/air-pollutionsulphur-emissions-7976.html](http://www.greens-efa.eu/air-pollutionsulphur-emissions-7976.html).

<sup>217</sup> [www.clientearth.org/201307172236/news/press-releases/supreme-court-calls-on-europe-to-fast-track-uk-air-pollution-case-2236](http://www.clientearth.org/201307172236/news/press-releases/supreme-court-calls-on-europe-to-fast-track-uk-air-pollution-case-2236).

<sup>218</sup> DEFRA, Red Tape Challenge – Environment theme proposals, March 2012, p7.

<sup>219</sup> [www.ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_341\\_en.pdf](http://www.ec.europa.eu/public_opinion/archives/ebs/ebs_341_en.pdf). The 2007 Eurobarometer cited 58% of Europeans as opposed to the development of GM food: [www.ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_295\\_en.pdf](http://www.ec.europa.eu/public_opinion/archives/ebs/ebs_295_en.pdf)

<sup>220</sup> [www.gmeducation.org/government-and-corporations/p213501-uk-citizens-continue-to-reject-gmo-food-and-even-farmers-don-t-want-to-eat-it.html](http://www.gmeducation.org/government-and-corporations/p213501-uk-citizens-continue-to-reject-gmo-food-and-even-farmers-don-t-want-to-eat-it.html)

The two main pieces of EU legislation dealing with GMOs are Directive 2001/18/EC, which deals with the deliberate release of GMOs into the environment for experimental purposes (such as field trials) or commercial marketing, and Regulation 1829/2003, which deals specifically with applications to market GM food and feed products, including the release of GM crops for commercial cultivation. While decisions on trial releases of GMOs under the Directive are taken at Member State level, decisions on commercial releases of GMOs under the Regulation are taken at EU level.

Member States may invoke safeguard clauses to restrict the use of EU-authorised GMOs in their territory if new evidence emerges of a risk to human health or the environment.

Six countries across Europe (France, Germany, Austria, Greece, Hungary and Luxembourg) have banned the main EU-authorised crop – Monsanto's GM maize MON 810 due to health and environmental concerns.<sup>221</sup> In February 2010, Bulgaria also initiated a total ban on GMOs, and in April 2013 Poland followed suit.<sup>222</sup>

The Amflora potato has also been banned by Austria, Luxembourg, Hungary, Bulgaria and Poland because of the presence of an antibiotic resistant marker gene. Under EU law, plants with antibiotic resistant genes are supposed to be phased out because they jeopardise human health.<sup>223</sup>

Unfortunately, the UK Government has consistently lobbied in favour of lifting GM bans, despite the safety concerns raised by other Member States. The UK Government tried to end the EU moratorium on growing GM and it was the only EU state to oppose a plan to label food containing minute traces of GM material.

The Greens/EFA group is strongly opposed to GM crops, which give large profits to a few multinational corporations, to the detriment of small organic farmers, and also pose a significant and unqualified threat to wildlife, biodiversity and human health. We believe that EU citizens have a right to choose what they eat and to know if the animal products they eat have been fed on GM foodstuffs. The main reasons the Greens/EFA group is opposed to GMOs are:

- The environmental and health impacts of GMOs are unpredictable.
- GMOs are being used by agrochemical companies to patent plants under the pretext they are novel organisms in the same way industrial goods are patented. Patents on life are not acceptable.
- Expanding GMO use would deprive farmers of control over seeds, with the rights for GMOs controlled by a handful of multinational agrochemical companies. This would give these companies significant influence over our food supply system.

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<sup>221</sup> [www.ec.europa.eu/food/food/biotechnology/gmo\\_ban\\_cultivation\\_en.htm](http://www.ec.europa.eu/food/food/biotechnology/gmo_ban_cultivation_en.htm)

<sup>222</sup> [www.novinite.com/view\\_news.php?id=114011](http://www.novinite.com/view_news.php?id=114011) and [www.infowars.com/poland-becomes-the-8th-eu-nation-to-ban-monsanto-maize/](http://www.infowars.com/poland-becomes-the-8th-eu-nation-to-ban-monsanto-maize/)

<sup>223</sup> The European Medical Association and the World Health Organisation have highlighted the critical importance of these antibiotics for human health:

[www.ema.europa.eu/docs/en\\_GB/document\\_library/Other/2010/01/WC500054091.pdf](http://www.ema.europa.eu/docs/en_GB/document_library/Other/2010/01/WC500054091.pdf)

- GMOs are a cornerstone of an industrial agriculture system, which is incompatible with sustainable agriculture, aimed at ensuring long-term food security for the planet's population.
- EU citizens are massively opposed to GMOs in the fields and on their plates. There is no reason for companies to try to impose GMOs against people's will.
- GMOs are not efficient for farmers as they either have pesticides embedded or lead to an increased use of herbicides.

The Greens/EFA group wants a ban on the release of GMOs into the environment. We have been campaigning on the issue for 15 years and we are the only parliamentary group that has been consistent in its opposition to the deliberate release of GMOs.<sup>224</sup>

The authorisation of GM crops for commercial cultivation is correctly dealt with at the European level. GMOs do not respect boundaries; they are novel organisms which can become unstoppable in nature. They can be responsible for irreversible genetic contamination and contaminate all of our agriculture and food systems.

However, and in addition to the concerns over the direct environmental and health impacts of GMOs, we also have major concerns over the European authorisation process. GMOs are supposed to be authorised only after a thorough scientific risk assessment of the risks to health and the environment. Yet the European Food Safety Authority (EFSA), which is responsible for GMO assessments, is tainted by conflicts of interest. This raises major questions about the methodology EFSA is using to assess GMOs and its conclusions on the safety of GMOs.

There needs to be a complete and independent review of the risk assessment guidelines and of all GMO approvals. Authorisations already given for GMOs should be suspended. Future assessments should also include the socio-economic consequences of the introduction of GMOs into agricultural systems and the benefits for society as a whole.

In order to safeguard the environment and the health of citizens in the UK, and across Europe, it is in our national interest to campaign hard at the EU negotiating table to strengthen EU legislation in this area and push for a moratorium on growing GM across the EU.

## **Waste**

EU legislation on waste is an important component of environmental policy for the UK. The UK has developed a waste strategy as a result of EU-level agreement.

Minimising and preventing waste (and thereby also conserving energy), maximising re-use and recycling, and countering pollution by setting standards for responsible waste disposal are all fundamental green principles at the heart of EU waste policy and legislation.

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<sup>224</sup> [www.gmo.greens-efa.eu/fileadmin/dam/Documents/Publications/GMOs/Leaflet-GMO-Free-EN\\_HD\\_sans%20bords%20de%20coupe.pdf](http://www.gmo.greens-efa.eu/fileadmin/dam/Documents/Publications/GMOs/Leaflet-GMO-Free-EN_HD_sans%20bords%20de%20coupe.pdf)

There are also important economic benefits from an effective waste and recycling policy regime.

Recyclable or reusable materials should also be seen as resources which, if made use of sustainably, have the potential to add economic value, often locally. Real economic value can be derived from refurbishment, remanufacturing and reuse initiatives – providing affordable products without recourse to virgin materials, creating jobs and building skills, and diverting material from landfill.

Recycling collection and sorting operations, closed-loop manufacturing systems and anaerobic digestion plants are further examples where emerging subsectors create new 'green' jobs.

These developments have partly been made possible by significant EU legislation relating to waste.<sup>225</sup> Key elements of EU waste legislation are the Waste Framework Directive, the Landfill Directive and the Packaging and Packaging Waste Directive.

It is extremely doubtful that the UK's level of progress on recycling would have been possible without the impetus of EU legislation.

The Landfill Directive 1999/31/EC is an important piece of EU legislation which prohibits and limits the disposal of certain types of waste, including hazardous waste, into landfill. This prevents environment damage, in particular in relation to surface water, groundwater, soil, air and also damage to human health. EU legislation also includes targets for diverting waste from landfill, as part of an overarching approach to waste which emphasises waste prevention, and the application of a waste hierarchy placing priority on re-use and recycling. The UK's Landfill Tax policy has been viewed by many abroad as a leading example of environmental taxation.

EU legislation on waste also requires Member States to recycle 50% of municipal solid waste by 2020.<sup>226</sup> This is an important target and one which is already being met by four Member States: Austria, Germany, Belgium and the Netherlands. Switzerland is also meeting this target.

The UK is currently recycling 39% of municipal solid waste and whilst it has some way to go, there are signs that the 50% target is likely to be met by 2020. However, the European Environment Agency has raised concerns that if cuts to UK local authority budgets lead to reduced provision of kerbside collections this could undermine future recycling improvements and therefore achieving the 50% target.<sup>227</sup> In addition, we are concerned that the Government has abolished statutory recycling targets for local authorities. This will put further stress on recycling services when councils will be forced to allocate shrinking budgets to prioritise the delivery of statutory requirements.

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<sup>225</sup> Summary of EU waste legislation – [www.ec.europa.eu/environment/waste/legislation/index.htm](http://www.ec.europa.eu/environment/waste/legislation/index.htm).

<sup>226</sup> Waste Framework Directive 2008/98/EC – [www.ec.europa.eu/environment/waste/framework/index.htm](http://www.ec.europa.eu/environment/waste/framework/index.htm).

<sup>227</sup> European Environment Agency, February 2013, Municipal Waste Management in the UK, p19.

In 2010, the UK changed the way it composed waste data for biological municipal waste (BMW), following a public consultation and recommendations from the Commission. The data will now include commercial waste. This highlights the importance of applying standardised methods in reporting, and also indicates the importance of an EU role in defining standards and aiming to ensure comparable reporting.

The setting of recycling and other waste targets, such as for diversion from landfill and recycling of BMW, at EU level is of great importance. It allows progress between countries to be compared, best practice to be replicated and incentivises higher levels of commitment from governments.

Failure to recycle, minimise waste and process waste responsibly can have negative visible, chemical, ecological and health impacts locally and in neighbouring locations. To that extent all local communities benefit from better performance in this area, but it also has wider implications.

For 2010, UK practices of dealing with municipal solid waste made a net contribution of 4.3 million tonnes of CO<sub>2</sub> equivalent GHG emissions. Although this is reducing year-on-year it is higher than many other Member States, where there is a trend for a net *negative* contribution to GHG emissions.<sup>228</sup> (The UK case is partly explained by the historic landfilling of biological waste which continues to generate GHG emissions.)

The contribution of waste to GHG emissions and the potential for cross-border pollution means that it makes environmental sense for waste policy to be an EU competence.

The setting of targets for all Member States at EU level, the reporting on progress towards them, the sharing of best practice and policy expertise, and the incentivising of Member States to improve performance are all reasons why EU competence is so important in relation to waste.

Another area of important EU legislation relates to waste electrical and electronic equipment (WEEE), as set out in the WEEE Directive, which was recast in 2012.<sup>229</sup> It has led to greater recycling of waste electrical and electronic equipment, thereby keeping some of this potentially toxic material out of landfill and enabling components to be reused in the electrical and electronics industries. Whilst Greens in the European Parliament have argued for ways to improve the WEEE Directive<sup>230</sup>, it is an important policy for reclaiming reusable, sometimes scarce, materials and reducing the environmental damage which occurs when WEEE is landfilled or inexpertly handled. It would be hard for the UK to operate a unilateral system of WEEE recycling, and is ideally suited for action at EU level.

As the above examples show, we are certain that EU competence on waste will enhance and enable further improvements in the UK's performance in this area. This improves

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<sup>228</sup> European Environment Agency, February 2013, *Municipal Waste Management in the UK*, p15.

<sup>229</sup> WEEE Directive 2012/19/EU: [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:197:0038:0071:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:197:0038:0071:EN:PDF).

<sup>230</sup> Greens-EFA press release 19.01.2012, [www.greens-efa.eu/waste-electric-and-electronic-goods-weee-5161.html](http://www.greens-efa.eu/waste-electric-and-electronic-goods-weee-5161.html).



environmental protection, safeguards health, helps reduce GHG emissions, and provides economic benefit.

## **Nature protection / Biodiversity**

Climate change is having an increasing impact on nature in the UK. Rising average temperatures are known to be driving range expansion in some species, but evidence for harmful impacts is also mounting. According to the 2013 'State of Nature' report by the UK's wildlife organisations, 60% of the 3,148 UK species they assessed have declined over the last 50 years and 31% have declined strongly.<sup>231</sup>

The decline of biological diversity, together with climate change, are the biggest environmental challenges of the 21st century – globally, and in Europe. Natural ecosystems provide a range of services in the form of flood defences, carbon sequestration, pollination, food, water and materials. Moreover, maintaining natural spaces brings wider mental and physical health benefits to our citizens. For example, those who live within 500m of accessible green space are 24% more likely to meet recommended levels of physical activity, potentially reducing morbidity and mortality rates.<sup>232</sup>

We are all dependent upon a healthy planet, and the world's natural diversity is crucial to this, yet we continue to destroy the very systems that provide us with clean water, fertile soil and fresh air.

The EU plays a crucial role in developing policy and legislation to protect nature and wildlife, and halt biodiversity loss. In relation to wildlife and nature conservation, two key Directives have been adopted by the EU, namely:

- Directive 2009/147/EC on the Conservation of Wild Birds (Birds Directive)<sup>233</sup>
- Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive).<sup>234</sup>

These Directives provide for the protection of animal and plant species of European importance and the habitats which support them, particularly through the establishment of a network of protected sites, called Natura 2000.<sup>235</sup>

The EU also has specific targets for biodiversity conservation with legislative protection for key habitats and species. The EU and global biodiversity targets are partly delivered through a range of legislative measures, which place obligations on Member States to protect biodiversity and the natural environment.

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<sup>231</sup> [www.rspb.org.uk/Images/stateofnature\\_tcm9-345839.pdf](http://www.rspb.org.uk/Images/stateofnature_tcm9-345839.pdf)

<sup>232</sup> [www.archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf](http://www.archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf)

<sup>233</sup> [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:020:0007:0025:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:020:0007:0025:EN:PDF)

<sup>234</sup> [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:en:NOT](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:en:NOT)

<sup>235</sup> [www.ec.europa.eu/environment/nature/natura2000/index\\_en.htm](http://www.ec.europa.eu/environment/nature/natura2000/index_en.htm)

The EU's Water Framework Directive and Marine Strategy Framework Directive are also key pieces of legislation when it comes to the protection of nature and biodiversity. These are dealt with in the Water and Marine section of this submission.

The EU's environmental legislation is complemented by a variety of other non-binding policy instruments such as strategies, programmes and action plans to address the wider use of terrestrial and marine resources.<sup>236</sup> By these means, the EU also aims to fulfill its international commitment under the Convention on Biological Diversity.<sup>237</sup>

As with many other issues linked to the environment and climate change, biodiversity and nature protection are transboundary issues which require a coordinated response. This makes the EU the relevant body to set the overarching legislation in this policy area. The UK's ability to protect nature and biodiversity necessarily relies on collaborative action with its neighbouring countries. Indeed, if the UK is serious about tackling biodiversity loss and the current threats to our wildlife and environment, it should be working from within the EU to improve the legislation that already exists and driving greater standards across the continent.

The Birds Directive is just one key example of where collaborative action is needed; migratory birds do not respect boundaries. Therefore, in order to protect them from poor water and environmental standards in other countries, it is crucial that there is cross-border cooperation in securing safe and protected habitats for these birds. If the UK expects high standards to care for our rare bird species in this country, by the same vein it should also expect harmonised standards across Europe.

Unfortunately the UK does not have a strong track record of complying with these crucial EU Directives. Indeed, just a few months ago the Government approved the expansion of Lydd airport at what is described by the Royal Society for the Protection of Birds (RSPB) as "one of the most important wildlife sites in the world". The fact that this site is protected under the EU's Habitats and Birds Directives has allowed the RSPB the opportunity to legally challenge the Government's decision, which is currently under consideration.<sup>238</sup>

Recent Europe-wide surveys highlight how seriously UK citizens consider the issues of biodiversity loss at domestic, EU and global level. Over 90% of respondents in the UK see biodiversity loss as a serious problem, and 84.5% think that the decline and possible extinction of animal species, flora and fauna will have an impact on the lives of them or their children.<sup>239</sup>

In further studies in the UK by DEFRA, 92% of respondents said it was important for them to have public gardens, parks, commons or other green spaces nearby.<sup>240</sup>

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<sup>236</sup> [www.jncc.defra.gov.uk/page-5324](http://www.jncc.defra.gov.uk/page-5324)

<sup>237</sup> [www.cbd.int/](http://www.cbd.int/)

<sup>238</sup> [www.rspb.org.uk/news/346770-lydd-airport-extension-decision-prompts-legal-challenge](http://www.rspb.org.uk/news/346770-lydd-airport-extension-decision-prompts-legal-challenge)

<sup>239</sup> [http://ec.europa.eu/public\\_opinion/flash/fl\\_290\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_290_en.pdf)

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<http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/environment/public-attitude/>



The high membership of nature organisations is a further indication of the importance UK citizens attach to the protection of UK's natural spaces. For example, the National Trust has 3.7 million members and the RSPB has over 1 million members.<sup>241</sup> This in turn generates significant revenue through tourists attracted to the many beautiful and as yet unspoilt areas to be found within the UK. Natura 2000 and the Habitats Directive consequently play a key role in maintaining natural spaces that are valued by UK citizens who wish to see them remain protected.

The same nature organisations also cite these EU Directives as crucial to the development of their work programmes; they use the Directives to guide the work they do on research and monitoring, and use their expertise to provide relevant and reliable data, and policy positions to European and national decision makers in the context of the implementation of the Directives. They also act as “watchdogs” to promote the full and correct implementation of the Directives at EU and national level, and communicate their benefits to the public and other stakeholders.<sup>242</sup>

EU competence over these policy areas therefore provides the UK's civil society representatives with access to valuable resources at the European level, and sets long-term concrete objectives which help to set the agenda for many organisations working on this issue, who in turn help to hold the UK government to account over their compliance. Even at the local level, these Directives have provided important support for individuals or local organisations concerned about inappropriate development, as can be seen by a number of petitions presented to the European Parliament's Petitions Committee.

These Directives have facilitated much co-operative conservation action across the EU. Many initiatives have increased understanding of conservation needs, including the development of international action plans for the most threatened species.<sup>243</sup> Clear and measurable targets for halting biodiversity loss by 2020 have been set out on both an international (Convention on biodiversity) and European level (EU biodiversity strategy).<sup>244</sup>

However, despite global and European targets to stop biodiversity loss by 2010, biodiversity loss has not even slowed down. Weak implementation of European environmental legislation, increased pressure on land use, insufficient management of protected areas, and a lack of finances all contribute to this. The Directives based on the Aarhus Convention have also been important in terms of providing a clear base for local people and authorities, as well as the national level in terms of Environmental Impact Assessments and Access to Environmental Information.

The Greens/EFA group supports the strategies in place at the EU level to halt biodiversity loss and protect nature and wildlife. We support their targets and related actions, but we also urge the UK, as part of the EU, to increase finance and redirect incentives so they

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<sup>241</sup> [www.nationaltrust.org.uk/about-us/](http://www.nationaltrust.org.uk/about-us/) and [www.rspb.org.uk/about/](http://www.rspb.org.uk/about/)

<sup>242</sup> [www.birdlife.org/eu/EU\\_policy/Birds\\_Habitats\\_Directives/](http://www.birdlife.org/eu/EU_policy/Birds_Habitats_Directives/)

<sup>243</sup> [www.ec.europa.eu/environment/nature/conservation/wildbirds/action\\_plans/index\\_en.htm](http://www.ec.europa.eu/environment/nature/conservation/wildbirds/action_plans/index_en.htm)

<sup>244</sup> [www.cbd.int/](http://www.cbd.int/) and [www.ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm](http://www.ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm)

support biodiversity, and create increased public awareness, paired with public participation, or the targets will be undermined.

## **Conclusion**

In our submission we have focused on some of the key areas of policy which are determined at EU level and which we believe need to remain the competence of the EU. These include climate change, water and marine, air quality, GMOs, waste and nature protection/biodiversity.

This is not an exhaustive list and there are very many other areas where environmental policy is set at EU level and where this is the appropriate level for competence to remain. It is worth making special additional mention of the value of the REACH Regulation (EC 1907/2006) on chemicals and their safe use and the Environmental Noise Directive (2002/49/EC) and related legislation, which includes noise from airports.<sup>245</sup>

Climate change and environmental protection are fundamentally transboundary challenges - more than any other area of policy. They require concerted, co-ordinated responses which Member States are less able to deliver in isolation and much more able to deliver collectively. Having agreed standards and targets across the EU is necessary for significant progress on climate and environmental objectives.

The EU is also an internal market serving over 500 million consumers with a combined GDP of €12.972 trillion. Viewed as a single economic unit, it is the biggest economy on earth.<sup>246</sup> EU policy sets standards for EU industry to reduce its climate and environmental impacts and will continue to – standards which will continue to be strengthened. It is likely that access to EU markets will remain conditional on meeting such standards.<sup>247</sup> This sends strong signals to industry to invest in eco-innovation. Better environmental performance will strengthen EU industry, making it more efficient and less wasteful, especially over the long-term. The UK economy and industry has already benefited from such environmental performance standards and will continue to do so. These standards also benefit UK consumers, not least by improving the energy performance of products.

As MEPs we would also like to highlight the importance of the European Parliament in this area. Like other MEPs (and MPs) we receive regular communication from our constituents on a wide range of issues. Since the Lisbon Treaty, the European Parliament has had an increased role in deciding EU legislation and constituents have taken a greater interest in EU legislative developments and engaged with their MEPs as a result. This is as true of our constituencies as elsewhere.

This development is good for democracy and citizen participation. Whilst the legitimacy of Member State governments comes from their democratic mandate, EU decision-making

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<sup>245</sup> Summary of REACH legislation at [http://ec.europa.eu/environment/chemicals/reach/reach\\_intro.htm](http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm) and EU noise legislation at [www.ec.europa.eu/environment/noise/home.htm](http://www.ec.europa.eu/environment/noise/home.htm).

<sup>246</sup> Eurostat GDP data for all 28 EU Member States, 2012 figures.

[www.epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00001&language=en](http://www.epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00001&language=en)

<sup>247</sup> For example, the setting of increasingly stringent vehicle emissions standards over time.

now goes beyond intergovernmentalism, and the direct involvement of the European Parliament allows for greater democratic oversight and input into decisions. The European Parliament is able to debate transboundary issues and legislation without having to represent national interests and, as a democratically constituted body, is well-placed to scrutinise and co-legislate on climate change and the environment - issues which affect the European Union as a whole.

EU competence offers the best opportunity for concerted action to succeed, for responsibilities to be proportionate and shared, for expertise to be pooled, and for enhanced democratic oversight. It also offers the best opportunity for playing a lead role in setting the international agenda.

By being forward-looking and ambitious the EU can lead the way on climate change and the environment, delivering long-term benefit, both environmental and economic, for the UK, for all Member States and internationally.

## **Law Society of England and Wales**

*The Law Society of England and Wales is the independent professional body, established for solicitors in 1825, that works globally to support and represent its 166,000 members, promoting the highest professional standards and the rule of law.*

### **Introduction**

- I. UK membership of the EU has brought significant benefits to solicitors, law firms and their clients, most particularly through the ability to trade, provide services and establish across the EU and to seek effective redress to cross-border legal issues.
- II. The legal services sector plays a key role in the UK economy, the UK's competitive advantage and in improving the efficiency of doing business. Legal services directly contributed £26.8bn to the UK economy in 2011. This included almost £4bn of exports – a substantial volume of which was generated through trade with EU Member States.
- III. The UK legal services sector is globally focussed with offices and lawyers based throughout Europe and the world. Law firms exist in order to service the needs of their customers; these are commonly British businesses trading throughout the Internal Market and increasingly non-British clients doing business in the Internal Market.
- IV. The legal profession works day-to-day with clients throughout the EU dealing with a broad range of legal issues across a diverse range of fields ranging from commercial transactions, intellectual property and competition law to employment law, civil justice and, of course, environmental law.

- V. It is for these reasons that the Law Society and the legal profession have an interest in the stability of the UK's position within the EU and the future role of the UK at the heart of EU rule-making.
- VI. The Law Society nevertheless accepts that there is a debate as to the appropriate level of EU competence in various policy areas and will input into the other reviews of the balance of competences of most relevance to the legal profession.

### ***Advantages and disadvantages***

#### **Question 1 - What evidence is there that EU competence in the area of environment and/or climate change has:**

- i. benefited the UK / your sector?**
- ii. disadvantaged the UK / your sector?**

1. UK lawyers have not been disadvantaged as a result of EU competence in the area of environment and climate change. On the contrary they have benefitted from access to legal markets across the Union. They advise companies on the environmental dimension of transactions: for example, due diligence in property and corporate transactions. They advise clients on compliance with EU regulatory requirements: for example, strategic environmental assessment. They are involved in cross border disputes and in prosecuting/defending environmental offenders. They represent and lobby on behalf of clients. UK lawyers may lose work and revenue if competency in these areas should be delegated to Member States in the future.

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

#### **2. 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?**

2. The Law Society does not consider that the national interest would be better served by the transfer of responsibility in the areas of the environment and climate change from the EU to the national level. Nor does it consider it advisable to transfer international obligations to the EU: they must be worldwide to be of value.
3. The UK has greater influence at the global environmental negotiating table if it works by taking the lead and engaging proactively at an EU level.
4. The suggestion that decisions be taken at a national level fails to recognise that many EU laws derive from or are heavily influenced by global international commitments to which the UK is a signatory in any event.
5. One of the underlying rationales for EU action on the environment and climate is that environmental pollution does not respect national boundaries. A country with a good record on environmental protection can nonetheless suffer from pollution emanating from a less good neighbour - for example Eire has reported evidence of nuclear pollution from the UK's power stations. Problems with cross-border effect are better dealt with by concerted cross-border action.

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

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

6. The other underlying rationale for EU action in this sphere is that transnational regulation of environmental standards is necessary to ensure a level playing field between operators in different Member States. Otherwise a factory in the UK could be at a competitive disadvantage to a company elsewhere in the EU with laxer standards which do not require expenditure on environmental protection measures. To that extent EU environmental standards are integral to the effective functioning of the Internal Market.

### **4. 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?**

7. In the longer term it is in the UK's interest that environmental problems and climate change are addressed successfully. In the shorter term there will be additional costs for operators and customers.
8. The Law Society does not have a position as to whether the present balance is appropriate.

## ***Current legislation***

### **5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

- i. focused on outcomes (results)?
- ii. based on an assessment of risk and scientific evidence?

9. Climate change is the obvious area in which risk assessment and scientific evidence have been applied to determine EU policy. That policy has been outcome focussed in that it has set targets for the reduction in greenhouse gas emissions which are worked through into the Emissions Trading Scheme (ETS). The Directives governing waste disposal are similarly target based. The SEA<sup>248</sup> and EIA<sup>249</sup> Directives are risk assessing exercises based on scientific evidence so that policies can be formulated and decisions taken in an outcome focused manner, namely the minimisation of environmental harm. REACH<sup>250</sup> and the CLP Regulation<sup>251</sup> are based on assessment of risk and scientific evidence.

## ***Doing things differently***

### **6. 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>248</sup> Strategic Environmental Assessment Directive - [Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment OJ L 197/30](#)

<sup>249</sup> Environmental Impact Assessment - [Directive 85/337/EEC on the Assessment of Effects of Certain Public and Private Projects on the Environment Directive \[1985\] OJ L175/40](#) and subsequent amendments

<sup>250</sup> Registration, Evaluation, Authorisation and Restriction of Chemical Substances - [Regulation 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals \[2006\] OJL 396/1](#)

<sup>251</sup> Classification, Labelling and Packaging Regulation - [Regulation 1272/2008 on classification, labelling and packaging of substances and mixtures \[2008\] OJ L 353/1](#)

10. The current regulatory framework is adequate (see further in answer to Q7 below). Before any further legislation is contemplated, consideration should be given to whether the particular issue could be better addressed at the national level and whether alternatives to legislation exist.

**7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change?**

**ii. Less action on the environment/climate change?**

11. The Law Society considers that no major new environmental legislation is required at present. The current framework is broadly adequate and there are no immediate gaps needing to be addressed. The Law Society does believe that there are several Directives which are in need of review and revision to clarify and bring them up to date, for example environmental impact assessment and birds and habitats Directives.<sup>252</sup> On climate change the EU tends to lead the international trend and further action may become necessary as the evidence and science continue to evolve.

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

12. The problem of gold plating continues to be an issue in relation to the implementation of EU environmental legislation. The problem stems in part from transposing EU legislation into our domestic law and in part from the UK's long tradition of legislative action on environmental protection which encourages a tendency to supplement the minimum requirements of EU legislation. However, where the text of EU legislation has been imported *en bloc* into domestic legislation (the so-called copy principle) it has not always made it more comprehensible or enforceable.

**9. a. 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?**

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

13. In relation to international agreements, the EU is in a stronger position as a bloc than the individual Member States on their own. Negotiations also make faster progress when the Member States are speaking with one voice. Further international action to tackle climate change is likely to be necessary and the EU is likely to continue to take a lead.

14. In relation to implementation, there have been enormous benefits from implementing the Kyoto protocol as the EU, not least because it allows the Member States to share the reductions over a wider area, balancing them out according to the strengths of individual Member States.

***Future challenges and opportunities***

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

**b. 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?**

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

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<sup>252</sup> [Directive 79/409/EEC on the Conservation of Wild Birds \[1979\] OJ L103/1](#); [Directive 92/43/EEC on the Conservation of Natural Habitats and of wild flora and fauna Directive \[1992\] OJ L206/7](#)

15. Most experts agree that further action will be needed to address the potential problems arising from climate change. Action on climate change is predicated at the multinational rather than the national level. An area relating to environmental protection where action may in future be taken at the EU level is the export of problems to developing countries outside the EU. This is likely to have significant costs for the UK.

***Anything else?***

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

16. As a general rule, actions in respect of the environment and climate change are only effective if conducted on as wide a basis as possible; they are essentially global problems. Many environmental and climate change issues are therefore better dealt with at a European rather than a national level and this means the programmes themselves can be more ambitious and effective.
17. However, as noted above, the Society considers that the major legislative action taken to date in the environmental field is probably sufficient to satisfy current requirements, albeit that some specific aspects could benefit from some revision. Climate change may be an area where further action is required in due course.
18. It should be noted that some environmental issues are in fact regional, eg pollution in the North Sea or the Mediterranean. Different problems arise in these areas and due consideration should be given to how best to address these.
19. Furthermore, a number of related measures, for example planning legislation, are better decided at a local level.

**LEAF (Linking Environment And Farming)**

**Q1** Different approaches, joint partnerships benefit the UK and the agricultural industry

**Q2** The need to simplify and apply general approaches is a real challenge for the agricultural sector. Furthermore, since farming is not working in a controlled environment, the impact of climate change is a huge challenge worth regulation is fixed and farmers need to be reactive, flexible and adaptive.

**Q3** Many of the decisions that are currently made at an EU relating to farming are based on regulation, legislation and the CAP. One of the challenges is the need for legislation to be audited and evidenced and sometimes such restrictive frameworks do not allow for the needs and range of farm type, systems, geography, topography, etc. With the change and evidence in technology and innovation. We should be able to deliver approaches that are more live and open and not based on paperwork and inspection. This is however a large challenge.

**Q4** With such a range of interests and diversity across Europe, which is both a strength and a weakness, the challenge is to make decisions as an EU level practical and delivering real change based on scientifically robust evidence

**Q5** Environmental standards are necessary for the proper functioning of the internal market since we have such high standards that are good for European citizens but also have the potential to be highly tradable on a global market of skills that we have developed are genuine and deliver. The challenges that it is important that we do not disadvantage farmers in the future as global markets are strengthened.

**Q6** Much of the legislation relating to water and soil management as well as the protection of the environment and high-value biodiversity has the opportunity to provide not only a focus of priorities, but also address some of our unique selling points within Europe, namely tourism, the range of habitats and diversity across Europe as well as the traditions built around farming and our valuable environment.

**Q7** To some degree such as where specific practices are banned or particular approaches adopted. This includes the banning of certain pesticides, pig housing, etc. However, the real challenge of climate change and the focus on environmental improvement is hard to measure, especially where biodiversity outcomes such as bird numbers are expected and it is hard to fully identify the cause and will reflect of a particular practice versus the impact of other practices in other areas and places. Outcomes need to be realistic, deliverable and a genuine commitment across Europe, but identified and delivered in such a way so as to not disadvantage farmers on a global scale

**Q8** This is the large challenge, whereby the scientific evidence is not conclusive and the precautionary principle is adopted without fully recognising the risks and unforeseen circumstances through a change in practice. Recent ruling on neonicotinoids is a good example, where the information is not conclusive and the impact of the change could have a different impact and is not expected or predicted. In the future there will be an increasing challenge with the Parliamentary vote being strongly lobbied by a range of individuals and groups, with a variety of priorities, many of which are single issue and do not necessarily look at the full impact of the risks and/or scientific evidence stop this is further exacerbated by simplification of newspaper articles.

**Q9** Good communication and shared knowledge is absolutely critical. There are some wonderful work and expertise that is being carried out across Europe that other European partners could learn from more effectively. Much of the work is very academic and there is an opportunity to translate, share, bring new ideas to be adopted effectively on farm level and consequently avoid legislation due to poor or ineffective practices.

**Q10** It would depend on which area, there is already a lot of work going on in agriculture. If it was to share more effective understanding and use of information than that would be good, particularly with funding and research and dissemination support. The real challenge is the fluctuations in whether on the impact that has on individual farm businesses.



**Q11** Again it would depend on which area there is an opportunity for the EU to build stronger allegiances and partnerships in addressing environmental performance and working towards a common goal of more sustainable agriculture within an ever changing climate and strong environmental performance

**Q12** The UK is working very effectively with the culture change that is currently going on within Defra and other departments, and the wide acceptance of voluntary initiatives. However, one of the challenges is sustaining core funding particular for the NGO sector who are one of the key sectors that deliver much of the innovation and practical work relating to the environment and climate change. Developing fair and equitable partnerships is going to become increasingly important and where government works closely with industry, commercial companies and retailers. It is important that they are able to balance the views of the charitable and NGO sector in a balanced way.

**Q13** It is absolutely critical that's the EU works together effectively in building strong bridges internationally and with third countries. we are now in a global market and trading as the EU is potentially very effective

**Q14** very important the UK and many of our commercial companies and businesses are in a strong position to provide realistic and effective approaches

**Q15** Understanding more effectively the impact of changes in climate on crop and livestock disease and pest incidences, as well as the impact of diseases on biodiversity. aiming to increase diversity in human diet

**Q16** there needs to be more effective joint decisions and governance on some of the areas of biodiversity and the environment - we do have structures and systems but these are not adhered to as effectively as they should

**Q17** shared costs and solutions result in more effective ways, ideas, innovations and ownership - a full SWOT analysis would need to be carried out to find the true benefits and costs

**Q18** na

### **Local Authority Recycling Advisory Committee (LARAC)**

Q1. 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) dis-advantaged the UK/your sector?

For many years successive governments have relied on the "market economy" model and their support for commercial answers to economic growth. Unfortunately "commercial" means operating at the greatest profit. In this context without EU legislation in environmental issues, the UK would have had a greater reliance on landfill, and contributed more to global warming than it currently has and had a recycling infrastructure still geared

to only paper, metal and glass. This “commercial” attitude can still be seen in the need for UK waste management companies to send much recyclate abroad for the greatest profit, rather than invest in a UK infrastructure to provide quality secondary material suitable for UK markets.

One of the main reasons where the UK has been disadvantaged is in the Commission Decision 2011/753/EU where four different methods for the calculation of recycling performance was permitted. This decision has ensured that no level playing field between member states exists and no true level of recycling performance can be established. It is to be hoped that in future recasts of environmental and waste legislation, the Commission will provide one method of calculation only.

Q2. Considering specific examples, how might the national interest be better served if decisions:

Currently made at EU level were instead made at national, regional or international level?  
and ii) currently made at another level were instead made at EU level?

With regard to the waste and recycling industry national interest would better be served if legislation was to come out of Europe, rather than the system of subsidiarity that currently exists. A prime example for change is the UK packaging legislation, which only relates to large organisations and to the recycling of “back of house” packaging. This has led to all SME’s (the largest business sector) being not required to recycle their waste, other than a “pre-treatment” requirement for one material. In addition local authorities have been disadvantaged by having to collect for free packaging from households and arrange for its recycling, which should clearly be a cost for the producer. UK legislation on this is a clear indication that the supposed needs of business have been taken more heed of than the original intention of the Directive and put UK local authorities at a financial disadvantage to their European counterparts.

The open market policy for compliance schemes has also led to a system of compliance, which is unwieldy and confusing to re-processors and producers alike.

Although now changing the UK permitting regulations have far exceeded those required by EU legislation, to the disadvantage of the waste industry in general. Such over regulation has meant that new technologies and treatments have been stifled by the cost of compliance to the regulations.

Q3. To what extent do you consider EU environmental standards necessary for the proper functioning of the internal market?

EU environmental standards are very necessary for the proper functioning of the internal market. Without them the UK will not achieve the environmental standards it has stated it will achieve.

Q4. 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?

Currently it provides the only balance within the UK, given the differences in environmental legislation now emerging from the devolved regions in terms of recycling performance and waste diversion from landfill.

Q5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be: i) focused on outcomes and ii) based on assessment of risk and scientific evidence?

As stated in the body of the report “ the environment is given an important place in the EU Treaties” and this importance has been carried on in EU Directives relating to the environment, waste and climate change. This importance has led to a focus on reducing global warming within member states through this legislation and the assistance provided by the Environment DG of the Commission to poor performing countries.

The publishing of “end of waste criteria” by the Commission on various materials have all taken account of the scientific evidence provided by member states and of the risks posed by too specific regulation in regard to waste management companies and relevant internal and external markets.

Q6. 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?)

As previously stated there is no longer one single set of national circumstances, with the devolved regions determining their own environmental legislation on many activities. This being the case it is imperative that the EU’s current competence for environmental issues is maintained within UK legislation and enhanced where necessary. The most sure way of developing proposals is to ensure that the UK is fully represented in relevant discussions with the EU prior to the drafting of final directives and that the persons responsible for the UK’s permanent representations in Brussels have a full understanding of UK circumstances on all environmental issues.

Q7. How far do you think the UK might benefit from the EU taking: i) more action on the environmental change and ii) less action on environmental change?

Currently the EU is keen to see action on climate change as a means of increasing employment and providing economic growth. This has been echoed by the actions taken by the Government over “green” issues. If these actions are considered correct, then the UK must ultimately benefit from more action on environmental change by the EU, rather than less.

Q8. Are there any alternative approaches the UK could take to the way it implements EU Directives on the environment and climate change?

Within future UK legislation arising from EU Directives there must be greater acknowledgement of the “producer pays” principle and all future legislation must include for the majority of costs incurred to be recovered from the producer.

Q9a. 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 world countries?

Such a suggestion goes against subsidiarity. It is correct for the EU to determine the direction of EU legislation and activities, but not to determine how member states conduct business with countries within and without the EU.

Q9b. How important is it for the UK to be part of “Team EU” at the UNFCCC?

Very important – the current involvement in “Team EU” should not be lost.

Q10a. What future challenges or opportunities might we face on environmental protection and climate change?

Within the EU-27 the UK is ranked 8<sup>th</sup> in respect of its recycling and environmental progress against relevant EU Directives. To rise higher up the table will require greater investment in current and future waste technologies to further reduce our reliance on landfill.

The Commission is currently seeking views on changes to the Waste Framework Directive, the Landfill Directive and the Packaging and Packaging Waste Directive, changes within any of these Directives, to facilitate climate change, will likely result in greater recycling percentages and further limits on materials going to landfill. This again will require further investment by both government and industry.

Q10b. 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?

Currently it is suggested that we have the right balance in place and no change is required.

Q10c. What would be the costs and benefits to the UK of addressing these future challenges at an EU level?

It is not so much a question of addressing future challenges at EU level, but rather one of addressing future challenges at UK level. Future UK environmental legislation must make greater use of “the polluter pays” principle to recover the majority of costs involved. Such a move will ensure better recycling rates both locally and nationally.

Q11. Any other comments?

None.

## **Local Government Association**

### **SUMMARY**

1. The Local Government Association (LGA) is the voice of English local government. Our mission is to help support, promote and improve local authorities in England.
2. Given the broad range of EU competences affecting local government, the LGA is submitting a single response to the Government's Balance of EU Competences Review rather than respond to each specific consultation. Our response covers the role of local authorities, principles of subsidiarity, good governance and better regulation in EU legislation and its implementation, which are relevant to all policy fields.

### **INTRODUCTION**

3. We understand that the Review aims to develop an audit of what the EU does and how it affects the UK on 32 specific policy topics. Members of the LGA European and International Board discussed the Review with a Foreign Office official in July 2013. Our members expressed reservations about the organisation of the review, which they considered to be protracted and over-complex. Overall, they felt that the local dimension was missing from the Review, and that the "call for evidence" may not distinguish between objective, fact-based evidence on the one hand, and anecdotal, politically-motivated commentary on the other.

4. The LGA is responding to this review for three reasons:

- i. the Review covers many areas where local authorities have a duty to provide services, enforce regulations, and/or inform the general public. We estimate that around half of all new UK laws affecting the sector have their origins in EU law. Once transposed, they may have financial, administrative and regulatory implications;
- ii. the 2011 Localism Act EU Financial Sanctions provision requires a significant shift in the way that the Government considers how new EU legislation could affect local councils in terms of new obligations and burdens; and
- iii. more needs to be done to ensure the process of negotiating, transposing and implementing EU laws is effective. We recommend practical steps are taken to achieve this within the UK and in Brussels.

### **THE ROLE OF THE LGA**

5. The LGA is a cross-party organisation and does not take a view on the future UK role and relationship with the EU. Our role is to assess the impact and practicability of specific EU legislative proposals and policy initiatives on a case-by-case basis. The earlier local authorities can influence the process, and the more involved they are with the Government in doing that, the more effective new laws are likely to be. Our aim is to ensure that EU

legislation is proportionate and fit for purpose, in that it delivers its intended benefits without imposing undue financial, administrative and regulatory burdens on our member authorities. We are concerned that in recent years, local authorities have had to deliver many new EU obligations at a time of severe budgetary constraint.

6. We want to ensure that our member authorities benefit from EU funding and other opportunities that can be accessed through our EU membership, and that exchange of experience and good practice is promoted. Working through institutions such as the EU Committee of the Regions (CoR) and the Council of European Municipalities and Regions (the pan-European LGA) can be an effective way of ensuring that the interests of English local government are pursued.

## **IMPACT OF EU RULES ON LOCAL AUTHORITIES IN ENGLAND**

### ***Wide-ranging impact of EU obligations on local authorities***

7. Local authorities have a broad range of functions. Many of these are affected by EU laws, with which they comply through UK Statutory Instruments which transpose EU Directives, or through EU Regulations which have 'direct effect'. These can have a significant, administrative, financial and regulatory impact on the way in which local authorities are run, and the services that they provide or procure, costing time and money to implement.

8. We estimate that around half of all new UK laws affecting the sector have their origins in EU law. Broadly, the areas of EU legislation and policy that we prioritise include promoting jobs and growth via EU funds; regulation of public services and procurement; state aid rules; environment, waste and energy; employment law; equalities and social policy; good governance and local democracy.

9. Once transposed, EU law impacts local authorities through:

- a. energy efficiency and consumption rules affecting municipal buildings, housing stock and public transport;
- b. landfill, waste framework, waste electrical and electronic equipment, and air quality rules framing all local environmental and waste management services;
- c. the renewable energy directive setting ambitious targets for energy generation and in the transport sector;
- d. internal market laws on public procurement framing the way in which local authorities buy goods, works and services; and laws on licensing affecting their regulatory activities;
- e. state aid rules affecting how new businesses, public transport, and airports can be supported with public finance;

- f. new EU rules affecting the activities of local authority registrars – EU birth, death, and marriage certificates;
- g. working time and health and safety rules affecting shift patterns in Fire and Rescue Authorities and residential care homes; other EU employment laws stipulate parental leave entitlements and rules on the employment of temporary workers;
- h. wide ranging consumer policy laws are regulated by local authority trading standards officers;
- i. regulation of businesses, often delivered through local trading standards, environmental health and licensing services;
- j. rules on the free movement of people and labour can affect local communities and local economies in many ways, with the consequence that local services may need to be adapted;
- k. EU cohesion policy defines how much funding is available to create growth and jobs in local communities; and
- l. rules to make it easier for the service and retail sector to operate across the EU impact on council licensing functions.

10. The impact of these laws may be positive or negative, and the burdens imposed may be negligible or substantial, proportionate or disproportionate to the objectives being pursued. The magnitude of the burden may be affected by the way in which the EU law is transposed into UK law ('goldplating'). In some cases, the EU provides funding to assist local authorities to meet their obligations.

### ***Transposition issues***

11. The Localism Act EU Financial Sanctions provisions enable a Minister to seek to pass on to a local authority a fine from the EU for tacitly failing to comply with an EU obligation, if the Government can prove that the local authority contributed to UK non-compliance. This significantly changes the relationship between central and local government on EU legislative matters.

12. The Government assumes that all local authorities know if a UK Statutory Instrument implements an EU Directive, and should therefore be aware if they are potentially liable to an EU financial sanction. The reality though is not that clear cut. This is because the Government has not always made explicit in domestic legislation that it is wholly, or in part, transposing an EU law. This practice, if continued for future EU legislation, will have a significant impact in enforcing the Localism Act EU financial sanctions provisions.

### ***Case study: Air Quality***

*The Government transposed its responsibilities under the EU Ambient Air Quality Directive through the UK Air Quality Standards Regulations. It is entirely separate to, and has no read across with, UK legislation setting out local authorities' air quality management role through the Environment Act and Air Quality Regulations, neither of which makes clear that they result from an EU law, or that failure to comply could potentially result in an EU fine being passed on by the Government*

13. It can take years for EU laws to be agreed, transposed and implemented. Often these decisions are made without a thorough assessment by the Government on how these rules will be implemented. At times the concerns of local government are inadequately addressed, which may result in unforeseen financial and administrative burdens on local authorities.

#### **Case study: EU public procurement Directive**

*When it came to agreeing the 2004 EU public procurement Directive, the Government predicted that the new rules would not add new costs or administrative burdens to the public sector or business, and that 'any costs in the procurement process should be reduced by these simplified and improved rules'. In practice, there have been a number of different cost and administrative burdens on local authorities. These include needing to seek legal advice on certain types of contractual relations, and having to spend time dealing with the threat of legal challenges. Typically procurement officers spend more time on legal issues, whilst failed bidders seek disclosure of all information to the contract award, and seek to challenge it. A 2010 LGA survey revealed that 66% of local authority procurement managers felt the Directive brought increased procurement process costs and administrative burdens, creating a more complex procurement process.*

14. Recent changes to be agreed by the end of 2013 will help local authorities allowing faster award procedures, greater local authority collaboration, and an ability to stipulate environmental and social conditions. They are required to fully adopt e-procurement within 30 months following the introduction of the Directive.

15. Unclear and poorly drafted reinterpretation of directives into domestic regulations can lead to uncertainty and significant additional cost.

#### **Case study: Waste Framework Directive**

*One example is the experience of DEFRA and the Welsh Government who, following a costly and time-consuming legal challenge, recognised that the domestic regulations as drafted did not adequately reflect the requirements of the Waste Framework Directive and should be amended. DEFRA and the Welsh Government have now replicated the requirements of the Directive into domestic regulations. The officer resource and wider litigation costs incurred by both the Department and the Welsh Government could have been avoided by taking this clearer approach at the outset of proceedings.*

#### **Reducing the burden of EU law on local authorities**



16. Despite English local authorities being subject to an array of EU obligations, little is done by the Government to adequately involve them in assessing the impact of these laws before they are agreed or transposed, which creates unnecessary burdens.

#### **Case study: Energy Performance of Buildings Directive**

*Reducing energy consumption is a significant EU, national and local authority priority. However, the original Energy Performance of Buildings Directive and its implementation have added administrative and financial burdens to local authorities. The Directive sets minimum energy standards for new and existing buildings undergoing major renovation, but implementation in England focused on process, rather than outcomes. The Directive recommended that all public buildings be assessed and display an energy certificate (DEC) no more than ten years old, highlighting energy consumption. DCLG however set out that DECs be renewed annually. This cost fell to local authorities, increasing implementation costs for English local authorities compared to EU counterparts.*

17. EU legislation sometimes impinges on the ability to make local decisions about how services are fundamentally designed and delivered. For example, the EU Services Directive contains many positive initiatives but it also place limits on how licensing services can operate and the fees that can be charged. On-going discussions relating to EU food legislation suggest councils may be required to charge for some services. This would restrict the ability for councils to design services based on local needs and priorities.

#### **Success stories**

18. There are instances where the Government has engaged effectively with local authorities on EU legislation, but these are the exception rather than the rule. Key to this has been early engagement before a UK policy line is developed, enabling local authorities to help give an evidence base to UK policy positions.

#### **Case study: Energy Efficiency Directive**

*The draft Directive proposed to apply a binding annual 3% renovation target to local government buildings. While the policy intentions of the EU were supported by local government, it would have been financially impossible for councils to achieve this without diverting significant resources from key services, at a time of unprecedented budgetary constraint. Working with the Government and other local governments across the EU to identify the potential impact of the EU target, we were able to successfully remove local government from the scope of the Directive. Moreover, from a UK perspective these targets were unnecessary since a number of national initiatives (Carbon Reduction Commitment, Green Deal, and other local measures) already steer English local authorities to achieve energy efficiency improvements in their building stock.*

#### **Case study: Directive promoting renewable energy sources**

*The Renewable Energy Directive set the UK a target to increase alternative energy usage to 15% by 2020. Through the CoR, the LGA successfully campaigned for the Directive to recognise local authorities' role in decentralised, alternative energy generation, and the positive impact it could have on local green job creation, secure energy sources, and more local control on future supplies. It enabled local areas to press ahead with renewable energy, without adding complexity to local planning regulations. Only by working closely with the Government from the outset was local government able to influence the outcome in Brussels and Westminster.*

## **CONCLUSIONS AND RECOMMENDATIONS**

19. Our experiences have led us to the conclusion that the decision making process in agreeing EU laws and transposing them into UK law, and their implementation, could be more effective.

20. Given the breadth of EU obligations affecting local authorities and the introduction of the Localism Act, the LGA has repeatedly called for a more robust, closer and structured involvement from the outset with Government Departments on EU issues involving the sector. For us, it is imperative that Ministers have an appreciation of the impact of specific targets and deadlines in proposed EU laws, and of local authorities' ability to deliver them.

21. While the Localism Act led to a Government commitment towards a more systematic approach to gather intelligence and evidence on the local implications of EU laws, it remains to be seen how effective and systematic this will be.

22. The LGA has initiated a series of activities to promote better partnership working. Principles of sharing relevant information, working together in compiling a shared evidence base to further our mutual priorities and to ensure maximum influence on shared priorities are key outcomes that we would like to achieve. We anticipate a number of EU reviews on existing Directives, including working time, and seek assurance from the Government that it will examine the implications on local public services (Fire and Rescue Authorities and residential care homes), so that future pressures are mitigated.

23. The LGA frequently lobbies the Government (in Whitehall and Brussels), the European Commission and Parliament to promote the principles underlying these recommendations through the EU smart regulation strategy, and by applying these principles to specific directives. The LGA has good working relationships in Brussels with UK civil servants (UKREP) for intelligence-gathering and influence.

24. ***Rewiring Public Services***, a new LGA campaign proposes ten significant changes between local and central Government in order to transform public services. The initiative contains two important elements which are relevant to this consultation and which are reflected in our recommendations. The first is to address the 'English question' relating to devolution. Our model reduces bureaucracy and red tape by streamlining services and devolving to the local level, resulting in a slim core for central government of England. The

second is to ensure that the principle purpose of regulation is to enable the delivery of economic growth aligned to local vision. Our recommendations are presented in the light of these benchmarks.

### **Recommendations relevant to the Government**

**25. Identifying challenges early.** As the sole UK negotiator for EU laws affecting English local authorities, the Government has an important role in securing the best possible outcome for UK taxpayers. This should require a thorough examination by the Government in partnership with the LGA and its member authorities to analyse challenges and opportunities in delivering and/or implementing measures at local authority level and ensuring it is costed. It must engage with the LGA at two crucial stages: firstly: whilst negotiating the UK's line on a draft EU law which could affect local services; and secondly: when UK Parliament transposes an EU directive into UK law (see public procurement example).

**26. Systematic, high level engagement is needed.** Scotland, Wales and Northern Ireland have a constitutional right to be consulted and influence UK national policy, including on EU legislation, and to participate in Council meetings in Brussels. There is no equivalent influence or representation for England. This absence was most notable when decisions were made to re-allocate part of England's EU funding allocation to the Devolved Administrations. It is our view, as set out in *Rewiring Public Services*, that in most cases this would best be done by consulting local government through the LGA.

**27. Avoiding goldplating.** There is a risk that the original purpose of legislation may be lost by over-zealous legal interpretation or reinforcement, losing sight of the original intention to enable or safeguard appropriate rights and responsibilities. The LGA therefore urges the UK Government to apply new EU rules in the lightest possible way and avoid 'goldplating' (see energy performance of buildings example). In recent years, English local authorities have had to implement new EU obligations at a time when they have had to absorb cumulative reductions in their budgets. The Government has outlined its commitment to protect businesses from goldplating EU legislation by using direct 'copy out'<sup>253</sup>. The same commitment should apply to local authorities, in particular given their new exposure to potential EU fines at a time when their capacity to deliver has been reduced.

**28. Effective transposition.** In line with the above, the Government should identify more explicitly the link between EU obligations and UK Statutory Instruments (see air quality example), so that there is clarity where and how domestic law responds to EU obligations and statutory requirements. This could be done by stating on the face of a UK Statutory Instrument which EU law it fully, or in part, transposes, and any EU targets and deadlines it

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<sup>253</sup> [www.gov.uk/government/news/government-ends-goldplating-of-european-regulations](http://www.gov.uk/government/news/government-ends-goldplating-of-european-regulations)

incorporates and which may in consequence expose the local authority to a potential EU fine.

**29. Effective communication.** The Government could use the [www.gov.uk](http://www.gov.uk) website more effectively to house in one place all information relevant to a Directive and its implementation. An annual list of EU legislation affecting local government could be published to ensure that all parties understand the origin of new obligations. This should be in addition to systematic, timely and co-ordinated communication, which is critical if local authorities are to apply rules in a timely manner and thus avoid the UK being in breach of EU law.

### **Recommendations for EU decision-makers**

**30. Only legislate when necessary.** We acknowledge that ‘good governance’ is not ‘no governance’. In some policy areas it is logical that EU countries collaborate to set a level playing field. However, the EU should legislate only when absolutely necessary and with a minimum of bureaucratic rules and a maximum of consultation, forewarning and financial assistance, leaving it to local authorities and the UK Government to work out the detail. This addresses the issue of ‘subsidiarity’.

**31. Light-touch EU legislation.** We recommend ‘light touch’ EU legislation where appropriate, in which the legislative purpose is clearly articulated, and that it should be for the Government, in consultation with local authorities and the LGA, to work out the detail of how we achieve EU objectives. This addresses the issue of ‘proportionality’.

**32. Alternatives to legislation.** The EU should consider alternatives to legislation, and introduce time limits and review periods (‘sunset clauses’), to accelerate the repeal and simplification of existing rules (the concept of ‘one-in, one-out’).

**33. Strengthen democratic legitimacy.** EU decision-makers must better involve local authorities - through the LGA, European associations and local government representatives in the CoR - to strengthen the democratic legitimacy of EU decisions and ensure that all new EU laws are necessary, proportionate and workable.

**34. Effective EU wide enforcement of rules.** Where EU laws are in place, there must be more effective enforcement of rules across Member States. We note that the UK assiduously implements its EU obligations, while others take a less robust approach to compliance.

### **London Borough of Havering**

**Q1** Improvements in water quality in rivers, seas, drinking water.

Emissions reductions and associated pollution & CO2 reductions from power stations across the UK.

**Q2** The EU has held up the European Soil Directive which would have massive implications for the UK and also massive opportunities in the investigation and remediation of contaminated land.

**Q3** The current UK Government is not interested in Environmental Legislation and cannot be trusted to retain existing policies as they think it is a drain on business. However they need to look at what business opportunities could be gained from enhancing existing policies within the UK and use the expertise the country has in leading/ influencing the world in Environmental Best Practice, technology, training & infrastructure projects.

**Q4** NONE

**Q5** The Environmental Standards for an internal market are very important, as without the standards local service providers would simply abuse the lack of environmental regulations and do what they liked in the provision of goods & services to the detriment of the environment.

**Q6** It protects habitats, species, populations & the environment from the effects of Environmental Pollution & Climate Change as far as possible. UK Plc can still make excellent profits and Governments can still collect tax from corporations & business without harming what is precious to many. Do we want a return to the industrial revolution in terms of environmental pollution from business? Most people in the UK would not want to see this.

**Q7** CLimate Change Policies seem to be have limits that have to be achieved by a certain date. However what will happen if the deadline or limit is not achieved?  
Air Quality limit values have deadlines to be met but the UK Government along with other EU nations seem to ignore them or dilute/ interpret them as they see fit. The EU should clamp down on non complying nations and also make legislation crystal clear as to what is meant by the regulations/ directives.

**Q8** EU water policy is an example of where good environmental policy has improved the water quality of rivers and seas off the coast of UK. This has led to improvements in Habitats & Species across the UK.  
Standardising water quality across the EU has also led to improvements in health in many countries.

**Q9** EU water policy is an example of where good environmental policy has improved the water quality of rivers and seas off the coast of UK. This has led to improvements in Habitats & Species across the UK.  
Standardising water quality across the EU has also led to improvements in health in many countries.

**Q10** It would force the UK to become more green & sustainable in all aspects of business and daily life. Using less resources, recycling & reusing what we have for better purposes. Enshrining in law that the environment can be protected and that climate change can be

slowed or reversed with the right type of policies. Protecting the country & EU from the effects of environmental pollution and using the lessons learned to train & support (business opportunities) emerging economies in places like China, Africa & South America.

**Q11** If less action is taken on the environment & climate change by the EU, the current UK Government will simply ignore climate change & environmental matters. The Government would reduce budgets for DEFRA, DECC, Local Authorities and make further people redundant in its attempt to reduce red tape & the cumbersome environmental regulation as seen by Mr.Pickles and his ilk!

The environment would suffer immeasurably, land would be developed at all costs releasing further GHG into the atmosphere, creating devastating environmental damage to the country & population that lives upon it.

**Q12** In countries like Germany/ Spain regional governments carry out a lot of the EU directives, but in the UK its done mainly by the UK Government. Perhaps regional assemblies in England could carry out the task of EU Governance better than the UK National Government Departments.

NI, Scotland & Wales could carry out their decision making processes independently of the UK Government on certain issues relating to EU Environmental & Climate Change Policy.

**Q13** Advantage would be that more weight would be given to environmental & climate change matters by the EU than UK Government.

Disadvantage- taking away the independence of a Sovereign Nation to make its own decisions on Environmental & Climate Change Matters.

**Q14** It is very important that the UK is involved as part of Team EU, as we have to be involved & seen to be influencing policy & decision making in such forums.

UK business also needs to be represented as part of the solution to tackling environmental & climate change, and promoted as world leaders in the field, particularly in environmental technologies, remediation, environmental consultancy.

**Q15** UK Regulators of Environmental Policy/ Regulations (DEFRA/ DECC/ EA/ LA/ NE)- Face a challenge from Government and elected members & the Public to be tough on Environmental Crime, Pollution & Climate Change however with diminishing resources and personnel its getting harder to regulate. The Government seems hell-bent on reducing red-tape & environmental legislation to a single A4 sheet of text which is so vague and non-committal in terms of protecting the Environment from the effects Pollution & Climate Change regulation will be almost impossible to enforce.

Light touch regulation does not work in a recession as pollution incidents, fly-tipping & enviro-crime all increase. The proposed removal of the Clean Air Act 1993 will place additional strain on Councils to prove nuisance in cases of black smoke and will result in more surveillance & legal costs.

If climate change legislation measures are reduced & watered down, climate change will start occurring in local communities more in the form of extreme weather events, flooding, eutrophication of water courses, crop failure. This will then start having a direct effect on

peoples living costs & where they choose to live. People migration from different continents to Europe adding extra burden on the EU Community and its resources will be the biggest Climate Change event to effect people this century. Desertification of land in Africa & Southern Europe as soils deteriorate & deforestation takes place.

**Q16C** Continued EU membership by the UK, some localised devolved powers on EU Environmental Protection & Climate Change Policy. More input from Academics, Industry & Regulators on Policy not just Government.

The Environment & Climate Change offer significant business opportunity to UK Plc and Government Ministers should support new technologies, UK can manufacture quality specialist products and offer World Class Engineering to the World.

**Q17** The costs to the UK should be proportionate to its population and the effects it has on the Environment & Climate Change, be it at home in the UK or abroad in other countries.

**Q18** The UK Government must consider what UK industry has to offer in terms of Environmental & Climate Change technologies or business services when looking at EU legislation, the opportunities in the Developing world are massive for Britain and we must be at the cutting edge of any innovations if we are to lead Environmental & Climate Change Policy Globally.

Proven engineered solutions delivering reductions in environmental impacts & climate change should be seen as a positive for the UK not a negative

## **Lubetech**

**Q1** The growth of environmental awareness benefits not just the environment, but business. When the cost of Non-compliance is evaluated, it should be clear to all that proactivity is a requirement. Currently that level of pro-activity needs an EU focuses when UK government has no promotional plans to increase or promote that level of awareness within the UK business community. Transport ADR regulations are a single example where no reference is made under UK legislation, while forming a fundamental of compliance for the whole of Europe.

Q2 /

**Q3** UK legislation allows specific focus on issues that pertain to the UK and provide a framework for compliance that is directly relevant to the UK business community. Increasingly, such legislation will become a requirement for the man in the street (storage of fuel oils for residential use being an example; or the imminent introduction of Diesel Exhaust Fluid for consumer users of diesel-powered vehicles)

**Q4** A single Euro-standard would simplify and clarify the requirements for business to meet the same Euro-standards as our EU partners, ensuring no disparity in requirement and an equal footing and status for UK-specific legislation.

**Q5** The primary role for environmental legislation is to protect the environment. No business operates outside of an `environment` and therefore ensuring all business within the EU framework are meeting those standards assures no disparity in costs or time-constraints that could act to the detriment of the commercial proposition. Across the EU free trade can be defined as being trade on an equal footing and there can be no justification for additional burdens being placed on one EU company, while others ride roughshod over the requirements and so gain commercial or cost advantage from placing a potential impact on country, region or individual.

**Q6** As an organisation involved in Environmental protection on an international scale, Lubetech has moved its position in the last two or three years from environmental protection as `good for the Planet`, to one where such protection is `good for Business`. At no time has Lubetech ever considered that the current legislative framework is insufficient. Only that the promotion of the need to comply with, and in many cases the simple existence of, legislation. There is also considerable commercial advantage for `UK Plc` to be at the forefront of this industry, one of the fastest growing in the world. This cannot be achieved without first getting our house in order, while ensuring EU trading partners do, too.

**Q7** Badly. Legislation should focus in the primacy of prevention is better than cure. Remediation then becomes a secondary consideration. In the UK, there is no awareness campaign to promote ADR regulations, for example. In the marine industry under MARPOL regulations prime consideration is still given to `emergency spill response` and not prevention. There is no co-ordinated strategy to bring these disparate requirements into line with the EU legislative framework which targets prevention. Prevention requires knowledge; knowledge requires education and awareness. I see no evidence of a focus on outcome based on increased awareness.

**Q8** Firmly believe that assessment is soundly quantified and justified on the basis of risk and scientific evidence. The single exception is `carbon offset` and the suitability of this yardstick as a framework for legislation. Carbon emissions do not cause climate change they result from it. Basing environmental regulation around this erroneous assertion risks the credibility of all.

**Q9** Instead of `one size fits all`, EU legislation should reflect local derivation and standards. Increasing attempts to centralise the regulatory process has only created a disparity between local provisions as it attempts to define to the `nth` degree without regard to national and regional provisions. Instead the EU role should be one of an oversight body, ensuring that all EU member states standards reach on overall level of equivalence, but without restriction on local variation. Our opinion is that EU legislation irrelevance is founded on its self-defined requirement to eliminate local variation rather than embrace it.

**Q10** The UK could acknowledge the primacy of EU legislation and ensure that EU money is made available to promote it. Local or National variation would then require a far lower level of spending for education and awareness, reducing the impact on UK costs for information provision and regulatory assurance, while still deriving the overall cost benefit to the UK



from the reduction in environmental contamination and improved levels of compliance which far exceed any likely costs involved in education. With the EU taking the `umbrella` role, the UK gets a firmer grip on the handle.

**Q11** There is simply no benefit to the UK from less action being taken: Either in the UK or the EU.

**Q12** Placing EU in a position of primacy is not a sign of weakness, but a sign of strength: The UK could then put pressure on the EU to raise standards or ensure equivalent levels of competitiveness through enforcement of equal compliance with our European partners. The EU then forms the basis for national directives. At the present moment most business in the UK regards EU Directives as standards that are selectively applied - or more accurately selectively complied with, and therefore the regulations are onerous, unfair and prejudicial to their business, when EU competitors are not put to the same strict standards and therefore don't face the same cost and time constraints. This could be turned into a positive asset for `UK Plc` by ensuring that UK business is made aware of the commercial advantages that derive from such compliance, in accordance with EU Directives.

**Q13** The EU clearly carries weight that a single member state cannot. However this is a delicate issue as we, an Environmental World Leader, have discovered in trading across all five continents that outside of the EU, UK legislation often carries greater `weight` as part of the sales platform deriving from environmental compliance and benefit. In consequence we actually believe that it would provide greater benefit to the UK to have EU compliance mandated, then the business case for a UK product or service is actually strengthened.

**Q14** The UK should be the leading voice at Team EU. If the UK is to achieve the `Global Centre for Excellence` to enhance its business proposition on a worldwide scale than it needs to be leading light in Team EU, making its proposition the de facto EU and UN one. Lubetech's experience is consistently that we are able to give instruction to other EU member states and take the lead. If we can do it as a commercial provider, there really is no reason that `Team EU` and `Team GB` could not be synonymous.

**Q15** Low levels of awareness in business generally. Lubetech research indicates that 76% of business in the UK is currently unaware of its regulatory requirement for spill control - our specific area of environmental expertise. In consequence fewer still have any idea of the costs involved in failing to comply. Appealing to business on a pure environmental level in the current economic climate is likely to fail, yet business can make a greater difference, far faster than individuals. As an aside, our research also indicates that in the SME sector 4 in 10 businesses that suffer a major environmental incident (i.e. a spill that reaches the environment and requires scrutiny and remediation by the appropriate authority as opposed to one that is of large volume) will fold within 18 months of the incident. The challenge is to inform those businesses, prevent the spills and in so doing protect the environment. The opportunity (and this applies to many other environmental sectors) is that doing so protects not just the environment, but also the business and employment.

**Q16** EU sets the framework and has a primary influence outside the EU in raising standards, while funding awareness across member states. UK Government adds national requirements and implementation of specific issue awareness - AdBlue and Diesel Emission Fluids being a prime example. `Issue-by-issue` allows topicality to increase groundswell and raise awareness. Industry and bodies provide local and sectional awareness and the `business case` for compliance. Sold as a positive asset, rather than a negative with costs.

**Q17** Job creation Job preservation UK business advantage within and without the EU The only cost I can detect is that of putting bureaucratic noses out of joint at EU level: Frankly, given their abject failure to write legislation that conveys competitive advantage as well as a sound `business case` for environmental compliance together with their simplistic notion of `diktat, rather than discussion`, these are noses that should be put out of joint, and the UK could encourage its EU partners to follow our lead at a political level. This may server wider political interests across the EU...

**Q18** There is no status quo in environmental protection. If you are not improving, the environment is suffering. While we preserve individual notions that we are simply guardians of our environment for future generations, we have now reached the threshold where the absence of that protection and improvements in it, are having an effect right here, right now. The EU is an inappropriate monolith to make the level of mind-set change necessary, and certainly not within the timescale required. To give commercial advantage and worldwide leadership to the UK requires UK government to define its own role - and impose it on the EU. This will preserve business, protect jobs, and reduce spillage and contamination, promote new business in the environmental sector and create new opportunities for entrepreneurship, new jobs, new career paths while providing a platform for global reach. Oh, and protect the environment at the same time! The only question is whether we want to do this to promote UK jobs and business, or whether we want to integrate this into the strategic growth of the EU, lose the monopoly, hand the opportunity to trading partners who are closer to the Bureaucrats and cede the advantage to those who are not English, Welsh or Northern Irish. Heck, even the Scots would wish to be involved!

**Lyons, Peter**

**Q1** I see no evidence of EU influence benefiting the UK in any sector.

**Q2** The Bureaucracy of the EU disadvantages everyone in the UK. It's attempt to standardise everything is A) totally unnecessary and B) destroys the local differences that make our country so diverse.

**Q3** The UK, Ireland and other member states all survived before the onset of the mountain of EU legislation. I am sure each member state would still be capable of organising themselves. The money saved by abolishing the EU democratic castle would give everyone a boost.

**Q4** There is nothing to be gained by legislating from the EU.

**Q5** The EU standards lead to a lot of unnecessary expense. The amount of waste paper generated by having instruction leaflets in umpteen different languages is a crime.

**Q6** EU Legislation does not protect the environment or the UK economic interest. It holds things back and stops quick change to obviously wrong legislation. I cite the fish discard issue. This should have been stopped years ago. Now there is a chance that it might not happen at all. This is so so wrong.

**Q7** EU legislation is only there to promote the EU bureaucrats. It does not focus on outcomes. I cite the battery hen legislation and the non compliance of some of the northern European member states.

**Q8** The assessments of risk and scientific matters are dependent on what evidence is used. I cite again the fishing regulations. There does not appear to be any use of the results of the catches being reported by the fishing boats. The amount of Cod being caught by boats working in the Irish Sea is colossal. This is not recognised by The so called scientists. We did very well before the days of risk assessments.

**Q9** Reduce the legislation and increase the inspection regime with large fines for those persons not complying with current rules. We do not need any more restrictions on normal life.

**Q10** The UK cannot benefit from any EU legislation. Euro legislation restricts the ability to have a normal life.

**Q11** The UK is a nation that has developed over the centuries. It is quite capable of looking after its own environment. The main factors influencing climate change at the moment are taking place outwit the EC. China, India and other developing states.

**Q12** Ignore them.

**Q13** There are no advantages in letting the EU control any issues that affect the UK. The disadvantages are that the results of any negotiation undertaken by EU bureaucrats will only advantage other member states rather than the UK.

**Q14** There are no advantages in the UK being part of Team EU. Look at the mess the EU has made of their finances. If the UK had been in the Euro zone we would be in a much worse position than we currently are.

**Q15** The influence on our lives by the large companies is detrimental to improvements in environmental protection. Companies are only interested in profit. Most of them do not care on whose toes they step on to get this profit. How these large companies are brought to book is a challenge to future legislators. These companies can even work the tax system across different countries so that they don't pay tax. How wrong is that?

**Q16** Legislation is holding back improvements to local areas. It is impossible for people to do things in local areas without worrying about the large hand of the EU trying to stop them doing as they see fit. There are far too many controls. The issue of kilos and pounds and ounces that was eventually ditched is a case in point. Why should people in one part of the country or the EU as a whole have to change how they have been doing things for years?

**Q17** If the UK did not have to pay for the EU Eurocrats and the huge overheads it generates we would all be better off. How many billions does it take each year to keep Brussels going.

**Q18** The EU set up has gone beyond the original idea of free trade between its memberships. That idea was good. The way that the EU bureaucracy has taken control of our lives is unacceptable. It is now a self regenerating beast that needs reined in. I believe that the UK would be better opting out of the controls that the Eurocrats are attempting to impose on us

### **McCann, Dominic**

**Q1** It is usually more effective to work in the context of the EU than to go it alone.

**Q2** There are very few disadvantages for the UK in working with EU partner countries. In general terms only when the UK would wish to go further in protection of the environment than proposed at an EU level should there be a need to deviate from this position.

**Q3** Questions about emissions from cars, vans and Lorries are best made at an EU level.

The EU also needs stronger targets on overall CO2 emissions; the UK needs to be part of those negotiations.

**Q4** Noise legislation is generally made at a national level. This can be deemed to be generally satisfactory; however, some coordination of legislation and standards would nevertheless be beneficial for business as a whole.

**Q5** A reasonably level playing field has considerable benefits for the functioning of the internal market.

**Q6** The balance is about right.

**Q7** EU legislation has a tendency to be blocked by some national governments (including the UK). There is a need for tighter standards relating to emissions from a number of sectors. On consumer goods and cars/vans setting standards at an EU level is entirely appropriate. With buildings and the power sector there will always be a need for flexibility at a national level; as is currently the norm.

**Q8** EU legislation tends to be based on risk and scientific evidence. However, legislation takes time and is often bogged down in wider world trade deals etc. A case in point is the EU Emissions Trading Scheme and aviation in particular. The UK should work hard within the EU and internationally to ensure real cuts in CO2 emissions are achieved, with particular focus on the UK and EU delivering real cuts in emissions.

**Q9** No answer

**Q10** The EU needs to further develop the ETS and ensure that permits result in real CO2 reductions. New legislation on emissions from vehicles and consumer goods will help drive up standards across the EU.

**Q11** The UK would benefit from taking the lead on the Green Economy. Developing UK legislation which is at the forefront of EU. However, there is no need to water down the drive to EU wide legislations as this has direct benefits for a well governed single market.

**Q12** No. Although where appropriate the UK may wish to go further in ensuring that decarbonisation of the economy is as rapid as possible. This means that feed-in tariffs for renewables need to be kept favourable for rapid take up of these technologies.

**Q13** No answer

**Q14** No answer

**Q15** The UK needs to have a strong position within the EU to ensure that international talk on emissions reduction and protection of rain forests etc are done on the basis of a strong and generally united EU position.

**Q16** No answer

**Q17** No answer

**Q18** No answer

### **Mineral Products Association (aggregates and industrial minerals)**

The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries. With the recent addition of The British Precast Concrete Federation (BPCF) and the British Association of Reinforcement (BAR), it has a growing membership of 450 companies and is the sectoral voice for mineral products. MPA membership is made up of the vast majority of independent SME companies throughout the UK, as well as the 9 major international and global companies. It covers 100% of GB cement production, 90% of aggregates production and 95% of asphalt and ready-mixed concrete production and 70% of precast concrete production. Each year the industry supplies £9 billion of materials and services to the £120

billion construction and other sectors. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors.

The MPA wishes to submit evidence only in relation to questions 1, 2, 3, 4 and particularly question 6.

## **Advantages and disadvantages**

*1. What evidence is there that EU competence in the area of environment and/or climate change has:*

*i. benefited the UK / your sector?*

The EU EIA Directive, Water Framework Directive, Waste Framework Directive have provided a consistent basis for the development of the regulatory legislation that applies to the mineral industry across the different administrations in the UK.

*ii. disadvantaged the UK / your sector?*

The high level or even absolute protection afforded to discrete elements of the environment by EU Directives (Habitats, Birds, Water etc) is difficult to reconcile with the balance-of-interests approach to decision-making by which land use in the UK is regulated through the planning system.

For the same reason, such protection is not compatible with the delivery of sustainable development which is based on the collective consideration of social, economic and environmental interests in combination. This process cannot be prejudiced by valuing any one interest over others ahead of a planning decision. No high level protection is provided by the EU for mineral resources and by virtue of that, minerals interests will always be secondary to the protection of certain species, habitats, water resources, etc.. This is despite the fact that minerals are universally accepted as being essential to society, options for their exploitation are limited to the places where they occur and they are finite.

## Internal market and economic growth

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

The environmental standards applicable to the minerals industry in the UK have evolved in the light of experience and extensive research over many years. EU environmental standards have done nothing to improve the environmental performance of the industry which is already of the highest level.

*4. 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?*

In addition to the issues set out in response to 1ii above, MPA members are of the view that the legislation, policy, practice and guidance that is being introduced in the UK in response to EU legislation is not always aimed at providing the right balance between these interests.

A fundamental aim of the land use planning system is to contribute to the achievement of sustainable development which in turn has three dimensions: economic, social and environmental. However, despite the fact that the planning system already functions in this way, new regulatory mechanisms are constantly being introduced which erode the primacy of the planning permission, in response to alleged EU requirements.

Principally this relates to new responsibilities given to the Environment Agency for water and mineral waste management. Both of these matters are already taken into consideration and regulated efficiently by the planning system. In the case of mineral waste management this is secondary to comprehensive legislation developed over many years and significantly in response to the 1966 Aberfan disaster. The new regulatory systems add nothing to the effectiveness of regulation and add both unnecessary complexity and cost.

It can be clearly demonstrated that the management and restoration of mineral sites makes a greater contribution to biodiversity gain than any other sector of the development business. These gains have been achieved without the stimulus of EU obligations. Far from

assisting in the restoration of mineral sites, the EU-driven waste regulation powers of the Environment Agency continue to frustrate the delivery of biodiversity gain.

Dividing responsibility for specific elements of sustainable development between different decision making bodies makes it much less likely that the right balance will always be struck between environmental protection and the wider economic interest.

The MPA considers that in the future the UK Government would be well advised to consider much more carefully the capabilities of existing regulatory systems and particularly the land use planning system, when they are considering responses to EU legislation.

### **Doing things differently**

*6. 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?)*

The majority of mineral extraction planning applications are accompanied by an Environmental Impact Assessment. The EIA Directive has functioned well as a basis for the process, through regulations in England and Wales first implemented in 1999 and subsequently updated. The EIA Directive is currently being reviewed and the MPA see this as an opportunity for the UK to introduce greater discretion for member states to focus on those aspects of the environment that are most at threat in their individual areas of jurisdiction.

In relation to alternatives to legislation; as explained in response to 4., the MPA consider that alternatives to entirely new legislation should be more prominent in transposition considerations by UK Governments. UK regulatory systems continue to be plagued by "gold plating" thinking from the past which in some cases is a major disincentive to investment in our industry.



This is a major issue at present in relation to water regulation where comprehensive, tried and tested control through the planning system has been rejected for no sound reason as an option for implementation of the Water Framework Directive.

### **Mineral Products Association (cement and lime product groups)**

This response is written from the perspective of the cement and lime product groups within the MPA membership. Cement and lime manufacturing businesses are regulated and affected by the following environment and climate change legislation/regulations:

Environmental Permitting Regulations/ Industrial Emissions Directive

EU Emissions Trading System

Climate Change Levy (both sectors have a climate change agreement)

Water Abstraction

Discharge Consents

Waste legislation including waste carriers licensing, hazardous waste, duty of care etc

Mining Waste Directive

Landfill Directive

Mobile Plant

### **Advantages and disadvantages**

**1. What evidence is there that EU competence in the area of environment and/or climate change has:**

**i. benefited the UK / your sector?**

EU competence has delivered a partial level of harmonisation throughout similar industrial activities in Europe. The use of Directives leaves considerable latitude on Member States to implement policies within the existing national framework, although Directives leave more room for interpretation and inherently less harmonisation. One example is in the area of

Emissions Trading. Many energy intensive industries across Europe are regulated under the EU Emissions Trading System (EU ETS). This system has harmonised rules to minimise competitive disadvantages within the EU and to ensure, via EU Regulations, that monitoring, reporting and verification is also harmonised. However, as with other policy areas, there are problems with interpretation and implementation which have been expanded upon in the answer to question 1.ii.

## **ii. disadvantaged the UK / your sector?**

There are overriding problems for UK operators with the decision making competence resting within Brussels. Firstly, that Directives allow Member States the freedom to interpret and implement the policy which leaves significant discretion for the UK Government and devolved administrations to interpret in the most stringent way and to make matters more onerous by adding conditions to the UK law which EU competitors may not face. Secondly, the implementation of the EU and UK law is critical and we see numerous examples of the regulatory agencies in the UK, particularly the Environment Agency, taking the most onerous interpretation of the law when we see other Member States taking a less onerous interpretation. Thirdly, there is an issue of timing and phasing. The UK is often quick to implement the EU policy when other Member States wait or phase their implementation for their strategic industries to allow time for adaptation and to recognise the need for long lead times when large capital investments are necessary to modify fixed assets that may have 30-40 year renewal cycles.

The text below provides examples of each of the three disadvantages identified above.

EU Directives allow Member States the freedom to interpret and implement the policy which leaves significant discretion for the UK Government and devolved administrations to interpret in the most stringent way and to make matters more onerous by adding conditions to the UK law which EU competitors may not face

The shared competence in the area of climate change has disadvantaged the cement and lime sectors because of the opportunities for the UK Government to 'Gold Plate' existing EU legislation with additional conditions within UK climate change legislative transposition. This

places additional regulatory and cost burden on MPA product groups such as cement and lime manufacture. **Annex I** shows some additional costs that energy and climate change legislation (both UK and EU) place on the cement sector.

Although Energy Intensive Industries are regulated under the EU Emissions Trading System, the UK cement and lime manufacturing businesses are at a competitive disadvantage within and outside the EU because they are subject to additional UK legislation, for example the direct costs associated with the Climate Change Levy (and Climate Change Agreements) and CRC Energy Efficiency Scheme and indirect costs of electricity market changes and renewable subsidies.

In 2013, the cost of the Carbon Price Support, passed on by power generators to consumers, has placed further significant cost burden on energy intensive industries. Although the Chancellor announced in the 2011 Autumn Statement that energy intensive industries would be compensated for this additional cost, the state aid application has been blocked from gaining Commission approval. The additional costs have started mounting with no indication of when compensation may be available, or exactly which sectors will be eligible. This uncertainty does not make the UK an attractive place to invest. As a result, not only is operating in the UK becoming increasingly costly, but many cement manufacturers have overseas parents, that are choosing to invest elsewhere rather than in the UK. This could have serious consequences for the UK economy and local/regional economies where manufacturing is threatened.

Until the welcome announcement by the Chancellor in Budget 2013, the UK did not apply the mineralogical processes exemption set out in Article 2.4 of the Taxation of Energy Products Directive as has been taken up in other European countries. Although both the cement and lime sectors have received a partial reduced rate from the climate change levy in return for meeting CCA targets, the exemption would have ensured that these industries were operating on a level playing field with manufacturers in other EU countries such as Germany. MPA were pleased with the Budget 2013 announcement that the UK would apply the exemption and MPA are now working with HMRC to determine the process for businesses such as those in the cement and lime sectors to receive the exemption. This is an example of where the UK has been quick to burden the cement and lime sectors with the cost of climate change legislation but been slow in administering available benefits.

Another example of a missed opportunity by the UK Government as far as cement manufacture is concerned is the Renewable Heat Incentive (RHI). The cement sector has the ability to significantly increase its use of biomass fuels. However, it is struggling to

compete on the market because power generators are incentivised to use biomass through the renewables obligation and smaller businesses are incentivised to install biomass boilers through the RHI. The cement sector falls within a 'policy incentive void' and is given no incentive to maximise the use of biomass. Incentives have the potential to increase the market demand for biomass fuels and as a result their cost increases and the cement sector will become priced out of the market. This trend is already becoming apparent as **Annex II** shows the use of 100% biomass fuels is levelling off while the use of part-biomass fuels (e.g. tyres), which are not incentivised elsewhere, is increasing. This is a missed opportunity for the UK as the cement sector, which requires around 28,000 TJ of fuel energy annually, could contribute significantly to UK renewable heat targets.

The implementation of the EU and UK law is critical and the regulatory agencies in the UK, particularly the Environment Agency, often take the most onerous interpretation of the law when we see other Member States taking a less onerous interpretation.

Although the EU Emissions Trading System (EU ETS) has aims of putting European energy intensive industries on a level playing field in terms of GHG regulation, it falls short of harmonisation in a number of areas. Both the cement and lime sectors are deemed vulnerable to carbon leakage and are therefore entitled to a free allowance allocation. Final allowance allocations, following scrutiny of member state National Implementation Measures (NIM's), should have been notified to operators in early 2012. However, 8 months into Phase III of the scheme operators have still not been told of their allocations. The delays caused by other members states in Europe in getting data collected and submitted in their NIM has meant that the cement and lime manufacturers are operating under uncertain conditions and financial planning and budgeting has been impossible.

The second area where EU ETS has been a particular burden to operators in the UK is in relation to small emission sources. The Phase III rules mean that all small combustion sources have to be accounted for and the emissions reported from them annually. On a cement plant producing around 1mt of carbon dioxide emissions a year, spending time trying to find and report emissions from small gas canisters used in welding, that produce only a few kilograms of emissions annually, is inefficient and distracting. Operators in other member states have told MPA that they are not subject to such strict regulation, but instead their regulator takes a much more pragmatic approach. The UK approach for accounting for every small emission is particularly burdensome as it was not the method used in the benchmarking process to determine free allowance allocation and therefore, for consistency, it should not be used in reporting. The inconsistent approach taken by UK regulators in interpreting the same regulations as their EU counterparts is putting additional burden on UK operators.

There is an issue of timing and phasing. The UK is often quick to implement the EU policy when other Member States wait or phase their implementation for their strategic industries to allow time for adaptation and to recognise the need for long lead times when large capital investments are necessary to modify fixed assets that may have 30-40 year renewal cycles.

A clear example of the UK enacting policy before other Member States is in relation to the Industrial Emissions Directive (IED). The Environment Agency (EA) anticipated IED and introduced permit improvement conditions required to meet expected limits before the full details of the legislation had been developed and the BAT conclusions published. This has resulted in a situation whereby manufacturers have submitted improvement conditions to the EA at the end of 2011 and are still awaiting feedback on these in order to finalise the budget required to implement systems to meet these conditions. Had the UK waited for full sight of the requirements before requesting improvement conditions to meet IED then this delay would not have been experienced and the UK would not be implementing stricter permit conditions on UK manufacturers compared to their EU counterparts.

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

**2. 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?)**

EU decision making on climate change policy is fundamentally flawed. Global warming is a global issue and only with global effort will the anthropogenic influence on global warming be mitigated. The EU and the UK have isolated themselves with national and regional policies on climate change, energy efficiency and renewables. All of these require global action and increased effort is required under the UNFCCC programme to find a robust and globally harmonised solution to GHG emissions.

**ii. currently made at another level were instead made at EU level?**

Reducing the UK ability to further burden UK business by giving the EU greater power in this area could be of great benefit to UK energy intensive industries. However, it is likely that this could come with its own disadvantages as has been seen with the uncertainty in allowance allocations in Phase III EU ETS.

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

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

CEMBUREAU (the European Cement Association) has measured the increase of EU Environmental legislation between 1990 and 2011. The rise in EU environmental law has rocketed from 19 to 643 instruments. Some of this legislation is necessary for the correct functioning of the internal market because they partially level the playing field for some industrial production activities and therefore allow for minimum standards of environmental protection to be maintained during the production of internally produced goods. However, product standardisation and design standards are probably more important to the functioning of the internal market than environmental protection legislation.

#### **4. 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?**

Too often environmental and climate change legislation is set and enacted in isolation of industrial and economic strategy. Environmental legislative impact assessments are narrowly focused and often do not take into account the cumulative burden of the measures on industrial sectors. EU legislation does not often take account of the environmental damage which may result from production shifting away from the EU to non-EU exporters. Furthermore, the measurement of the UK and EU's environmental and climate change impact is narrowly focused on emissions produced on territorial soils. To properly take account of the wider environment and UK economic interest, emissions accounting should take place on a consumption basis so it is not possible to meet climate change or emissions targets by exporting industry outside of the measurement area.

### **Current legislation**

**5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

**i. focused on outcomes (results)?**

The recent proposal to backload allowances in Phase III EU ETS to the end of the phase indicates that the focus seems to be on burdening industry with cost rather than emissions reduction at least cost.

**ii. based on an assessment of risk and scientific evidence?**

Too often even proposals that are based on risk assessment and science are influenced by political interference in the policy making system.

### **Doing things differently**

**6. 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?)**

Schemes that reward rather than burden may produce better results in terms of reducing emissions. Recycling payments for emission allowances in the EU ETS back to business for the sole purpose of investing in emissions reductions would help industries achieve the targets set.

**Annex I** shows the cumulative burden that the cement sector faces from the large number of environment and climate change policies.

**7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change?**

More action doesn't need to mean more legislation it could mean less. The EU could seek to rationalise some legislation and in addition seek to ensure that existing legislation is implemented consistently. A more consistent approach taken across Europe that prevents UK business being at a competitive disadvantage could benefit the UK economy. However, it could disadvantage the UK if the UK takes a stricter approach to implementation compared to that taken elsewhere.

## **ii. Less action on the environment/climate change?**

Less action at EU level could advantage UK operators if UK measures are more efficiently targeted than broad EU measures. The advantage of the EU taking less action and in turn the UK taking more efficient and targeted action is that MPA has good working relationship with many Government departments. This could result in closer cooperation between MPA and Government to achieve high environmental performance, reductions in emissions and with less cost burden on industry, all of which could be of great benefit to the UK economy.

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

The UK needs to take a pragmatic approach to the implementation of EU Directives. Some flexibility is required to ensure operators are not unduly penalised. The feeling by UK operators is that the UK implements every Directive to the letter of the law (and sometimes more stringently). Evidence suggests that other countries seem to take a more 'industry friendly approach' in both the timetable for implementation and the interpretation of conditions.

## **9. a. 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?**

In international climate change policy, the current arrangement, with the EU negotiating en-bloc following an agreed position with member states, is the correct approach.

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



It is very important that the UK is part of 'Team EU' at the UNFCCC. This is the best way to ensure that the UK has a say in these negotiations and that UK business is not disadvantaged and it makes the EU negotiating position stronger because the UK is involved.

### **Future challenges and opportunities**

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

The challenge for the future is to reconcile the gap between the stringent cumulative legislation of production processes to provide balance and recognition for the benefits that the products give to society. In particular attention is required to climate change adaptation as well as climate change mitigation. It will be important that the UK has industries such as cement and lime as they produce essential materials required for building energy efficient homes, schools, hospitals and offices that will be able to withstand future extremes in temperature and weather. They are also key to building low carbon infrastructure such as wind turbines and nuclear power stations. Burdening these industries with too many costs today will not secure their presence to supply the UK market and assist in transition to a low carbon economy.

#### **b. 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?**

The right balance should be constructed so that international and global issues are dealt with at that level and that only regional and issues of harmonisation are dealt with at EU level. Where local action is necessary the UK should develop its own measures. It is recommended that the Government undertake a review of UK legislation to establish whether these aims are best placed at UK, regional or global level.

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

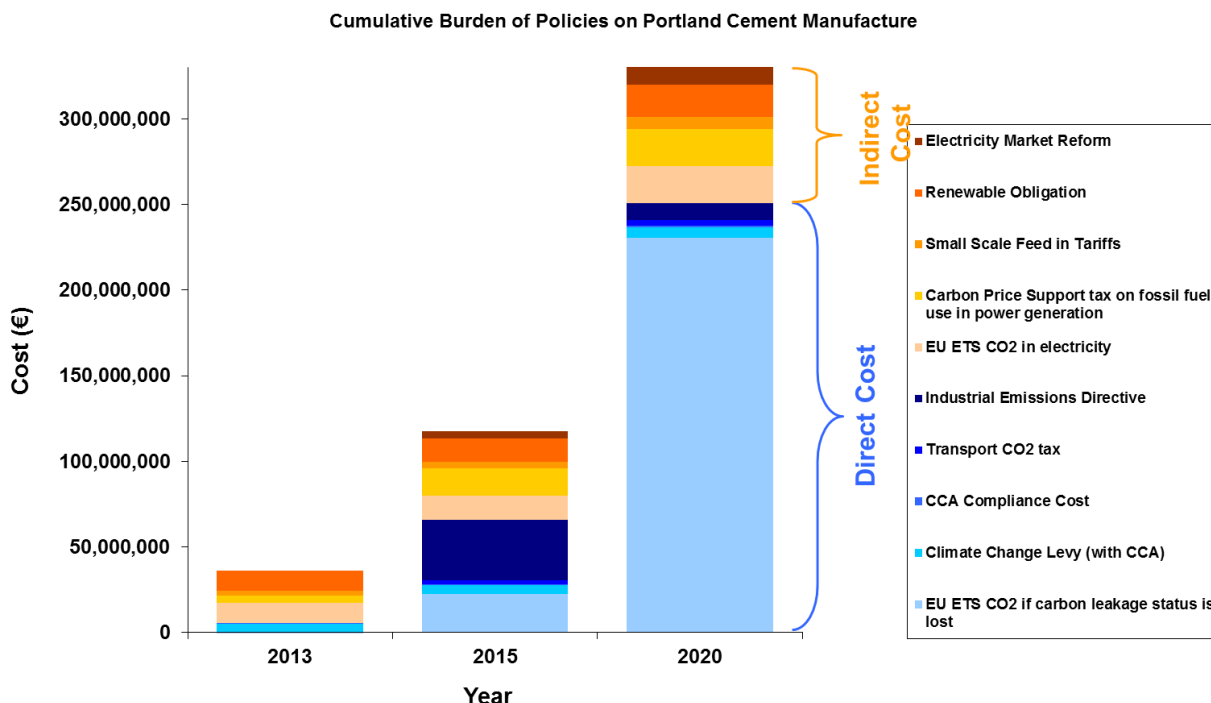
The benefit of the UK addressing any future challenges at an EU level is that it may prevent the UK Government from gold plating existing legislation and further burdening industrial sectors with even more cost and regulation.

However, problems with harmonising at the EU level have already been found to increase uncertainty for UK operators (e.g. the unknown allowance allocation for operators in Phase III EU ETS) because it is difficult to make all EU member states work at the same timescales.

**Anything else?**

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

***Annex I***



## TOTAL COSTS

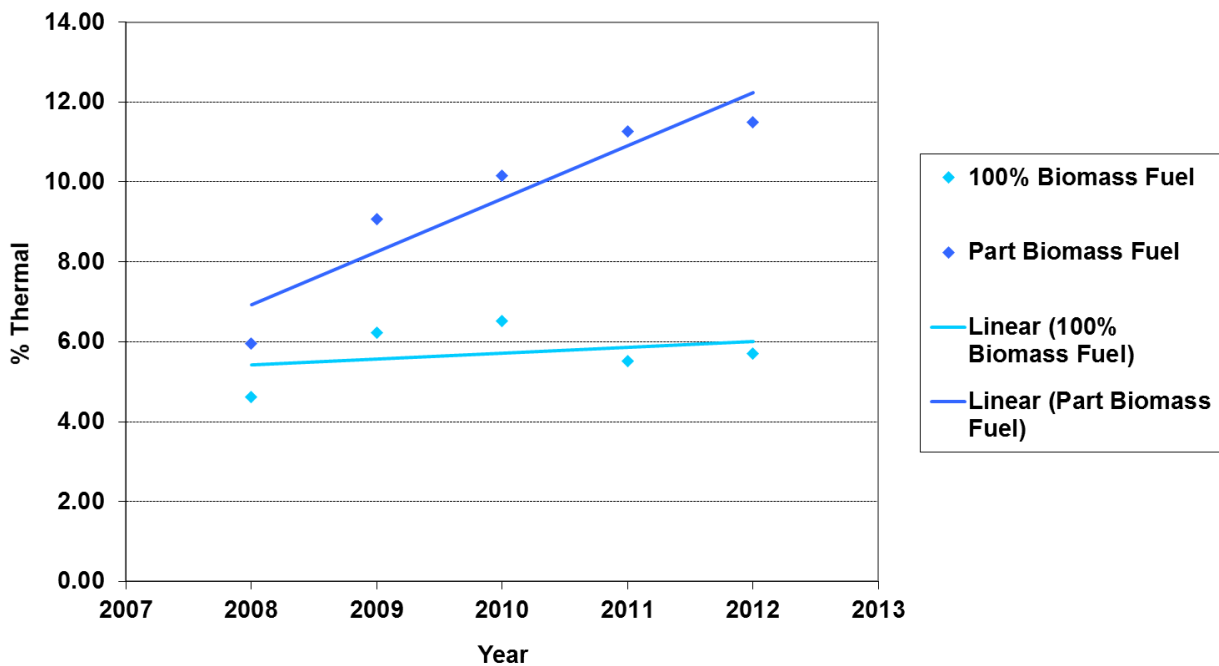
		All cost is in €		
		2013	2015	2020
TOTAL INDIRECT COSTS	€m	30.70	51.94	83.47
TOTAL DIRECT COSTS	€m	4.59	65.60	251.01
<b>TOTAL COSTS</b>	<b>€m</b>	<b>35.28</b>	<b>117.54</b>	<b>334.47</b>

## Summary of the Main Assumptions

	2013	2015	2020
Carbon Price (DECC) (€)	18.5	22.0	33.2
Level of Auctioning if carbon leakage status is lost (%)	0%	15%	100%
Assumed Production of Cement	10,000,000	10,000,000	10,000,000
Electricity Use (kWh)	1,090,436,171	1,090,436,171	1,090,436,171
Annual CCL inflation	2.5	2.5	2.5
Transport CO <sub>2</sub> tax	18.5	22	33.2
Transport Efficiency (improvement on 2011)	0.00%	2.50%	5.00%
Exchange rate (DECC) 1GBP = €	1.16	1.16	1.16

## Annex II

Trend of 100% Biomass Fuel Use and Part Biomass Fuel Use.



## **Modularis, Prunella**

**Q1** Has helped develop Renewable Energy technologies.

**Q2** Particularly our natural heritage would be under even more pressure, European legislation draws a line for minimum environmental standards - agreed on EU level - that national populist politicians cannot change just because they feel like it at a particular moment. Therefore the benefit is to protect people and nature in the UK.

**Q3** This question is biased because it implies that there are "national interests" that are different from the interests of other states and people in Europe. What proof do you have for this? Subsidiarity allows already for implementation being fully shaped at the appropriate levels. But the Objectives should be EU wide - even though we are an island.

**Q4** marine spatial planning

**Q5** to a very high extent

**Q6** to a sufficient extent

**Q7** EU nature legislation: very much so! EU water and marine legislation: very much so - even nearly exclusively, so the balance seems to be nearly too much on the objectives without any concrete measures required

**Q8** Very much so

**Q9** More focus on implementation within the UK (better coordination between the countries, including best expertise) and the EU (more harmonisation in the quality of implementation between member states). Better implementation through better COMMUNICATION.

**Q10** Of course the UK would benefit, particularly climate change is not to be solved by one state alone. People and the environment would benefit from better water quality, safer bathing water, a nature that will still be there for future generations (not only in a utilitarian sense but also for its intrinsic and aesthetic values that we all need to feel well on this planet)

**Q11** It will not benefit. Neither in economic, not in any other way (but of course we have to look beyond one or even half of a legislation period)

**Q12** Oh yes! There is a lot of improvement possible. Primarily you need a sufficient amount of expertise and good communicators who can make the issues understood. Cutting back

on agencies and statutory environmental bodies is the very wrong way. Secondly serious implementation strategies across the whole of the UK are needed (and more thinking about it), dilution of competences to regions cannot be an excuse.

**Q13** The advantage is that the EU has a much bigger weight than the UK negotiating alone. It is not very likely that the UK "national" interests will in any significant way be different from the interest of other countries when it comes to the environment. Therefore a joint approach - the basic idea of the EU - will be much more successful.

**Q14** Very important. I do not think that anyone has the full picture of the risks involved in stepping out of the EU, particularly from an economic & trade perspective. The EU is not just a convention! How can these two things even be asked in one sentence? UNFCCC: no big effects I guess for anyone

**Q15** Tons, it is about preserving an environment for future generations and we are not preserving it well. We are still losing biodiversity, still creating more problems in the marine than we are solving, we are not saving energy in any serious way and we are using up valuable land for development that is not sustainable in the long-term.

**Q16** The UK should help to support further European integration, but of course this will remain a dream!

**Q17** if not addressed on EU level we will pay a high price in any case. Even though we are an island, we are linked with Europe.

**Q18** 1) Some of the questions you ask are biased, somewhat implying what people should answer. Is this objective? 2) Some of the questions are not to be put to the stakeholders but the government should answer them first - or at least have the needed facts and figures to support their way of thinking. UK politics is pushing towards an exit from the EU but are they sure what they are doing? Do they have any clue what will happen when taking such an extreme step? The "feelings" of the broad mass of people in UK that are badly informed and would deserve better cannot be the basis for this type of decisions.

## **Mooney, Stephen**

**Q1** There are many advantages to the EU in the area of the environment and climate change.

- 1) international bargaining power in relation to Multilateral Environmental Agreements including CBD and UNFCCC
- 2) Access to research and scientific funds such as Life+
- 3) The birds and habitats directive are the lifeblood of conservation as are SPAs and ensure biodiversity in the UK is protected, and a network of sites is protected across Europe

- 4) the EIA and SEA directives require the UK government to take a strategic approach to development and guarantee stakeholder participation and the ability to engage in reviews to ensure developments do not impact negatively on the environment and communities, and maximum positive benefits are achieved.
- 5) the Water Frame Work directive has been responsible for ensuring that water and rivers are cleared up and a catchment area approach is taken to the management and supply of water.
- 6) Energy efficiency regulations from the EU have helped ensure that the UK put such legislation in place

**Q3** in the absence of EU legislation, many transboundary issues, such as fisheries, migratory species, invasive species legislation will need regional and international. these decisions should not be solely made at the national level as the issues require a regional or landscape or biome approach

**Q5** they create a level playing field and allow business to know the standards which are required, and allow export to one of the largest consumer markets where there is universal standards

**Q6** the environment and protection of the environment does not hamper UK economic interest, but should be further integrated into economic development. EU legislation can help the internalisation of environmental externalities. the ETS while hampered by the collapse in carbon prices and a failure to fully account for the real cost of carbon, is a positive example of how a regional approach could internalise the environmental costs.

**Q8** more so than the UK evidence which is currently politically skewed, such as the Badger culling evidence. the review and scrutiny of EU legislation and the expertise across Europe is second to none.

### **National Association of Local Councils**

**Q1** There was no evidence at all that EU competence in the area of environment and climate change was of benefit to rural parishes in England in relief efforts during the recent terrible floods at the end of 2012.

**Q2** Neither was there any evidence at all that EU competence in the area of environment and climate change was of disadvantage to rural parishes in England in relief efforts during the recent terrible floods at the end of 2012.

**Q3** If there was EU funding (e.g. LEADER funding) which could be released across English regions to help rural communities recover from floods, the allocation of such funding should be left to the English national spatial level. In the absence of EU legislation, in instances where such terrible rural floods occurred, the concepts of fairness and need would need to be appropriately enshrined in English law before allocating such funding.

**Q4** I cannot think of any examples within the rural flooding domain where it would actually be better for funding allocations to assist rural communities in England from terrible flooding to be made at the less local EU level.

**Q5** They are probably crucial, though I cannot comment on detailed specifics. English environmental standards are very probably not as high as those say in Germany (certainly this is the case for recycling). So - providing the implementation of such standards is not hideously complex, surely it can only be a good thing for higher environmental standards to be applied in England (certainly in terms of attracting foreign investment), providing such standards support growth.

**Q6** There is little evidence that EU legislation does massively impact currently on the English climate and environment. Therefore it follows that it is hard to gauge whether the right balance has been struck between protecting the environment and the wider UK economic interest. Obviously such balance is in principle desirable.

**Q7** Very - Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity - Imposes minimum levels of taxation for energy products and electricity and provides exemptions, including, for example, electricity from some renewable sources.

**Q8** Yes - very much so - Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community - Establishes a scheme for the trading of greenhouse gas emission allowance to enable the EU and the Member States to meet the commitments to reduce greenhouse gas emissions made in the context of the Kyoto Protocol.

**Q9** It appears as though many of the current EU environment / climate change directives are predicated on global (UN) mandates, etc. There does need to be greater flexibility in allowing greater recognition of national circumstances. There probably need to be a series of principles of intent which can - unless legislation is specifically otherwise required - be applied flexibly by all nation states - insofar as they are able to.

**Q10** I think that the EU's Directives, though well intentioned, are far too complex, and are simply an archive of potentially meaningless legislation, which probably do not have much application in this country. Unless specific EU funding (say, to help relieve rural flooding in England), is available, a series of environmental principles should be espoused and encouraged as good practice across member states.

**Q11** The EU needs to take less legislative action on climate change, as in this country, it in any case will not be well responded to. With the availability of meaningful relief funding for rural communities badly hit by floods, for example, and more statements of principle and intent across nation's states, the EU would become actually better respected.

**Q12** No. Either the EU remains an EU member and abides by legislation on climate change, or it pulls out and does not. Better for the UK to lobby from within the EU for a far more light touch EU legislative process on the environment.

**Q13** There are still ongoing advantages of the EU per se having a greater role in negotiating and entering into agreements internationally or with third countries on the environment. Assuming sufficient consultation with member states, this is an EU strength - collective bargaining.

**Q14** Not strategically important at all. The UK should have faith in the EU's ability to negotiate through Team EU at the UNFCCC on its behalf, providing the EU competently communicates with the UK.

**Q15** In England there is doubtless going to be much more flooding in the future, especially in rural areas such as the South West. The best way the EU can assist the UK in facing that challenge is to provide clear guidance and support to organisations such as the Environment Agency (especially in the domain of Flood Barriers). If LEADER funding is also available for flood relief, all well and good.

**Q16** International - UN - selective mandates to help adapt to climate change globally - without prescription - reduction of known cause - reduction of CO into the atmosphere. EU - global actor, but interlocutor between UN and its own member states in interpretation of UN mandates and Resolutions - filter - agency of collective bargaining. UK - member state - serial victim of severe rural flooding - needs to be able to gain specific relevant support from EU to fight rural flooding - funded - but also technical and data-led. Industry - needs to work with the UK Government to provide growth in sectors which help adaptation to climate change / reduce rural flooding impact - communicate dissatisfaction of EU directives to UK Govt.

**Q17** Costs - time - hours spent trying to lobby the EU to simplify climate change directives could have been spent investing in flood barriers / raising the money for them in rural areas. Benefits - funding - if there is available LEADER funding to fight the effects of rural flooding by region in England - the UK Govt. should continue to lobby the EU for such access - so that it can allocate such funding to the worst hit areas in time of rural floods.

**Q18** No.

## **National Farmers Union**

### Balance of Competences overarching response

The National Farmers Union welcomes the opportunity to comment on the Balance of Competencies Review. The NFU represents more than 55,000 farming and growing members and in addition some 40,000 countryside members with an interest in the countryside and rural affairs.



Regulation is a key issue for farm businesses who regularly report (for example see NFU Confidence Survey [www.nfuonline.com/Our-work/Economics-and-International/News/Weather-and-costs-cast-cloud-on-confidence/](http://www.nfuonline.com/Our-work/Economics-and-International/News/Weather-and-costs-cast-cloud-on-confidence/)) that administrative burdens and bureaucracy are stifling their ability to become more productive and competitive. This has been reflected in our responses to a number of reviews including the Farming Regulation Task Force, Red Tape Challenge and the Davidson Review in 2006. The NFU have also engaged with other reviews including the Hampton Review of Effective Inspection and Enforcement; Government departments Better Regulation strategies and Focus on Enforcement.

Much of the regulation that impacts on agricultural businesses stems from policy and legislation set in Brussels so this review is therefore an important opportunity to re-establish clear boundaries between domestic and EU competency.

The NFU objective is to ensure that the right framework is in place to allow our member's businesses to grow and flourish, ensuring that UK farmers can continue to make a meaningful contribution towards addressing the global challenges that society faces.

For this to happen we believe that the conditions under which our members operate must be fair. Whilst we operate on the EU common market, we seek a common, level playing field where UK farmers are able to compete on an equal footing with our European competitors, respond to market signals and increase farm competitiveness in a sustainable way.

While we will submit individual responses to consultations which impact on agriculture we have set out some broad principles which guide our responses:

### Single Market Access

The Government's review should recognise that farmers and growers operate in a single market with the principles of equal access at heart. This is especially important for primary food producers as the European single market in food is the bedrock of the European Union. There is a persuasive logic to establishing common rules that remove barriers to the free movement of goods and services within this single market. However these common rules should apply the principles of better Regulation as established by the Better Regulation Task Force. These are:

- Proportionality – Regulators should intervene only when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised
- Accountability – regulators should be able to justify decisions and be subject to public scrutiny
- Consistency – rules and standards must be joined up and implemented fairly
- Transparency – regulators should be open, keep regulations simple and user – friendly
- Targeting – Regulation should be focused on the problem and minimise side effects

## Simplification

Additional regulation is too often the default setting for public policy and there is a need to advocate government intervention that gives a more appropriate role for regulation alongside and in complement to other state and private sector interventions. Intervention must only occur where there is no plausible alternative, and there must be clear evidence that a problem exists and is the most cost effective means of resolving such issues on a risk bases. We support science based rules that provide minimum levels of entry onto the market and are implemented in a way across the EU to prevent the competitive disadvantage to any operators on the common market.

We would also support periodic reviews of regulations to test whether they are still necessary and effective in light of scientific changes and changes in market behaviour. If not, they should be modified or removed. One way of doing this is through the use of sunset clauses.

## Implementation

While the slow accumulation of regulation generated in Brussels is of concern to the NFU, blame cannot be placed only at the door of 'Brussels bureaucrats' as inept and precautionary implementation and interpretation in the UK has magnified the impact of regulation. Too often it is over precautionary gold-plating of EU legislation, especially Directives (which allow Member States greater flexibility) that has placed barriers on business competitiveness. Regulation should be based on outcomes rather than process.

## Increased Competitiveness

We believe that environmental, animal welfare and social rules, where deemed necessary for the functioning of the common market, should be agreed at a European level with the flexibility to adapt to local conditions. What is critically important is that there are safeguards to ensure that these rules are implemented in an equitable way by all participants on the common market to ensure no distortions in competition can prevail.

In our submissions we have referred to our response to the Farming Regulation Task Force which highlights where regulations are impacting on agricultural businesses at a domestic and European level. We can supply a copy of this submission on request.

## **NFU submission to the Balance of Competencies – Environment & Climate Change**

The National Farmers' Union (NFU) welcomes the opportunity to comment on the Balance of Competencies, Environment and Climate Change consultation. The NFU represents more than 55,000 farming and growing members in England and Wales and has a

significant interest in environment and climate change policy, and more specifically, how it sits alongside and impacts on agricultural production.

We agree with the Defra and DECC Call for Evidence report when it states that much of the UK's environment and climate change policy is now agreed at EU level. The EU institutions have very influential roles in initiating, shaping and reviewing environment and climate change policies.

The NFU objective is to ensure that the right framework is in place to allow our member's businesses to grow and flourish, ensuring that UK farmers can continue to make a meaningful contribution towards addressing the global challenges that society faces.

One of the biggest challenges that we foresee is in getting the EU institutions to recognise the need to balance food production and the environment and to build in an assessment of the impact of environmental policies on agricultural productivity and competitiveness.

We believe that the conditions under which our members operate must be fair. Whilst we operate on the EU common market, we seek a common, level playing field where UK farmers are able to compete on an equal footing with our European competitors, respond to market signals and increase farm competitiveness in a sustainable way.

In general, we believe that much can be done to ensure better policy development at an EU level and in particular:-

- Where rules are deemed necessary for the functioning of the common market, these should be agreed at a European level, with the flexibility to adapt to local conditions.
- Designing holistic policies or frameworks for management, rather than having prescriptive policies (i.e 'nitrates', 'drought', etc.).
- Ensuring safeguards so that any rules are implemented in an equitable way by all participants on the common market to ensure no gold plating or distortions in competition can prevail.
- Working on the basis of sound evidence and a robust science-base, rather than relying on a precautionary or hazard-based approach.
- Building in useful principles or tests such as cost-effectiveness and disproportionate cost.
- Ensuring objective evaluation of the costs and benefits of any new policy.
- Avoiding duplication between different policy areas. For example, methane is tackled by climate change policy so does not require consideration under air quality policy.
- Only considering regulation when all voluntary or industry-led methods have been shown to fail.

## **Advantages and disadvantages**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

Clearly, there is reassurance in a 'levelling of the playing field' and knowing that the same standards or rules should be being applied elsewhere in the EU.

In terms of specific examples, there are *elements* of EU legislation that have had particular benefits for our sector. For example, the Water Framework Directive provides for standards to vary according to circumstances to achieve the desired outcome, for cost effectiveness to be taken into account to allow the least costly solution to be used, and for the worthwhileness of the objective to be evaluated and for less stringent objectives to be set where costs are disproportionate. We believe that the cost-effectiveness and disproportionate cost tests are useful safeguards.

In addition, the Water Framework Directive also encourages public participation, and much time and effort has been expended in the UK seeking to engage stakeholders in the process of planning for improvements in water management. The NFU supports the principle of engaging stakeholders to work co-operatively in the catchments where they live and work rather than taking a top-down regulatory approach.

Overall the 2020 Climate and Energy framework with its three headline targets sent a clear message about EU climate and energy policy and set an international example. In particular, the adoption of the 2009 Renewable Energy Directive (RED), and its legally binding renewable energy targets, has resulted in significant growth in renewables deployment in most Member States.

ii. disadvantaged the UK / your sector?

Our concerns include non-scientific approaches or a poor evidence base for policy proposals and inflexible, out-dated and prescriptive legislation.

Just as an example, the Nitrates Directive is very prescriptive and inflexible, imposing high costs to agriculture, and particularly the livestock sector. Administrative costs alone borne by agriculture (in England) have been estimated to be some £19.1m (+/- 25%) in the first year (2008) of the revised programme and £7.1m per year (+/- 25%) in subsequent

years<sup>254</sup>. However, the long term trends in reducing fertiliser inputs predates NVZ implementation, most NVZ action programme measures only limit nitrate pollution by small percentages and the impact depends wholly on the local situation so a one-size fits all approach cannot deliver benefits equivalently across all areas.

In addition, EU water quality standards can have substantial resource (economic cost and carbon) implications. In the case of EU drinking water standards, many of these are longstanding and they also include some rigorous compliance regimes (e.g. must never be exceeded). However some of these standards present no toxicological or scientific basis (e.g. pesticides), and others are purely aesthetic (e.g. colour). Standards and compliance regimes should be selected to be cost effective in delivering the various objectives which society seeks to achieve. It may be that substantial financial savings and reductions in carbon emissions could be achieved whilst maintaining appropriate levels of protection.

Another example of inflexible legislation is the Habitats Directive. It does not take account for or recognise that climate change will impact on and change habitats. So, Member States are disadvantaged in that they still have to ensure compliance to protect habitats and species within designated areas, even although climate change may be causing these areas to alter or for species to move.

In addition, although the principles of cost-effectiveness and disproportionate costs are clear and well established principles across areas of EU environment legislation, such as the Water Framework Directive, these principles do not appear to be considered by the Habitats Directive, unless there are Imperative Reasons of Overriding Public Interest (IROPI). This notable absence means that habitat protection almost always wins out against any business or economic consideration. We believe that greater consideration of the economic case for development or the cost-effectiveness of measures to protect habitats is needed.

The Industrial Emissions Directive (formerly the Integrated Pollution Prevention and Control Directive) was borne out of the Integrated Pollution Control legislation, aimed at large industrial sectors such as chemicals plants and the energy sector. But, during negotiations on the draft Directive, pig and poultry units were brought in within the scope of the legislation. Fundamentally, we believe that the Directive provisions are more suited to

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<sup>254</sup> ECONOMICS REPORT FOR NIT18 NVZ ACTION PROGRAMME IMPACT ASSESSMENT.  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/82410/20111220nitrates-directive-consult-evid3.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82410/20111220nitrates-directive-consult-evid3.pdf)

industrial process sectors rather than livestock units, run by, more often than not, single farming businesses. The costs of compliance to the pig and poultry sectors include meeting best practice environmental standards, permit applications and on-going annual regulator fees.

The proposed amendment to the 10% target for renewable energy in the transport sector is already causing a hiatus in fuel processing investment. Imposing retrospective quotas rather than voluntary ambitions for advanced non-food biofuel feedstocks may have the perverse effect of reducing EU influence in the global biofuels market.

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

2. 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?)

Some specific examples include:-

- An overarching policy on soils should definitely be addressed at a Member State level, particularly since so many other legal mechanisms exist at an EU level to protect soils such as CAP cross compliance, Water Framework Directive, and agri-environment schemes. Instead, we believe that farmers should be supported through carefully targeted advice and information, voluntary action and a greater emphasis on monitoring and research.
- Greenhouse gas emissions are not just a local or national problem so it has to be tackled as a cross border and wider international issue.
- The UK has its own national legislation to address flooding which helps tackle our own particular issues and goes further than the EU Floods Directive. The EU Directive provides little benefit to the UK, but is costly to implement and duplicates efforts.

ii. currently made at another level were instead made at EU level?

As stated in answer to Question 2i above, reducing greenhouse gas emissions will require a global or international solution.

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

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

As we indicated in response to Question 1, clearly, there is reassurance in a 'levelling of the playing field' and knowing that the same standards or rules should be being applied elsewhere in the EU. However, where rules are deemed necessary for the functioning of the common market, these should be agreed at a European level with the flexibility to adapt to local conditions.

What is critically important is that there are safeguards to ensure that any rules or standards are implemented in an equitable way by all participants on the common market to ensure no gold-plating distortions in competition can prevail. Gold-plating results from a cautious approach to implementation in Member States, resulting in more draconian legislation and the common market can be undermined by Member States introducing different levels of environmental protection to gain a market advantage.

In addition, the use of the 'polluter pays principle' directly impacts on the costs of production. If there was a greater consistency in approach in terms of how Member States applied this principle this would result in a more consistent impact or effect on the costs of production.

4. 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?

Careful consideration needs to be given in our view, to delivering a 'fit for purpose' policies at an EU level which takes a perspective beyond that simply of environmental protection but also recognises other environmental and economic dimensions, and of course, the impact on such policies on agricultural productivity and competitiveness.

### **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

We firmly believe that regulation must be based on outcomes rather than process. Generally, 'older' legislation, such as the Nitrates Directive, is prescriptive, inflexible and often seeks to set the means by which objectives should be pursued. However, 'newer' legislation, such as the 'Framework' Directives, whilst still ambitious, are generally less prescriptive, have a more subtle approach and leave more to subsidiarity.

ii. based on an assessment of risk and scientific evidence?

We do have concerns that there can be an inclination towards a precautionary approach rather than an evidence-based one (and a hazard-based one instead of a risk-based one) at an EU level.

Examples include the EU Plant Protection Products Regulation, which lays down rules for the placing of plant protection products on the market. This regulation introduced hazard cut off criteria which lowers the threshold of tolerance for active toxicity, rather than adopting a risk based approach. The implications for agriculture are that this leads to further restrictions on vital crop protection products, important for securing crop yield and quality.

The precautionary principle basically requires authorities to act to avoid the possibility of environmental damage in situations where the scientific evidence is inconclusive. We have had experience of the precautionary principle being invoked because a farmer has not been able to prove that his water abstractions are not having an impact on a nearby habitat (protected under the Habitats Directive). Without a huge body of evidence, it is almost impossible for an individual farmer to prove a negative - that his abstraction is not having a negative impact. This has resulted in his abstraction licence renewal being delayed or only temporarily renewed, causing great uncertainty and cost to his business.

Similarly, we have found that an action that requires an active intervention that may have a limited, short term detrimental impact, but result in long term benefits to the designation of a site may be prevented using the precautionary principle. This can be particularly challenging in relation to the water environment where for instance fallen trees, bank slips or rubbish may need to be removed to reduce the risk of flooding. However, such active intervention may cause short term damage to the watercourse and as such may be prevented at worst or made overly bureaucratic.

The EU Eel Regulation is another piece of legislation that inclines towards a precautionary approach. A decline in eels over recent years has prompted requirements for, primarily, hydromorphological measures to remove or prevent barriers to migration. Yet the causes of the decline in eel populations since the mid-1980s remains poorly understood.

Our view is that institutions at an EU level should work on the basis of sound evidence and a robust science-base, rather than rely on a precautionary or hazard-based approach.

### **Doing things differently**

6. 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?)

A number of things can be done, including:-

- Where rules are deemed necessary for the functioning of the common market, these should be agreed at a European level, with the flexibility to adapt to local conditions.
- Designing holistic policies or frameworks for management, rather than having prescriptive policies (i.e 'nitrates', 'drought', etc.).



- Ensuring safeguards so that any rules are implemented in an equitable way by all participants on the common market to ensure no gold plating or distortions in competition can prevail.
- Working on the basis of sound evidence and a robust science-base, rather than relying on a precautionary or hazard-based approach.
- Building in useful principles or tests such as cost-effectiveness and disproportionate cost.
- Ensuring objective evaluation of the costs and benefits of any new policy.
- Avoiding duplication between different policy areas. For example, methane is tackled by climate change policy so does not require consideration under air quality policy.
- Only considering regulation when all voluntary or industry-led methods have been shown to fail.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

We agree with the Defra & DECC Call for Evidence paper which states that ‘Much of the UK’s environment and climate change policy is now agreed at EU level’. There is a significant portfolio of environmental and climate change legislation that has been developed at an EU level over the past number of years. Perhaps the discussion should not be about whether more action on environment and climate change is needed at an EU level but whether collectively Member States should spend more time making sure that the governance at an EU level is right and the current policies and legislation are, become or remain ‘fit for purpose’.

ii. Less action on the environment/climate change?

See our answer to Question 7i above.

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

Member States need to recognise that their role in implementation can also significantly influence the businesses’ experience of EU policies. Mechanisms, such as Framework Directives, can give some flexibility and leeway for interpretation by Member States, so governments must recognise that they can also significantly influence how policies can be implemented at a farm business level. So, the responsibility for the cost, experience and impact of EU policies on farm businesses does not fully rest with the EU institutions. All too often it is over precautionary gold-plating of EU legislation, such Directives, that has placed barriers on business competitiveness.

As already stated, the adoption of the 2009 Renewable Energy Directive (RED), and its legally binding renewable energy targets, have resulted in significant growth in renewables deployment in most Member States. Strong signals that post-2020 renewables targets will

be ambitious and challenging are needed now, to ensure success not only in the following decade, but also in the present one. Therefore the European Parliament call for a mandatory 2030 renewable energy target of at least 30% was welcome. However, the UK government's position supports a 2030 GHG emissions target alone. This inconsistency will discourage future UK investment. We would advise that robust, relevant and local evidence must be available to support the implementation of any EU policy. Often, we have gaps in our knowledge or data which can make stakeholder discussions on implementation more difficult. To support this, the UK needs to ensure that it has a good and robust monitoring and research programmes. The provision of relevant, timely and robust data and information in order to allow farmers and growers to make informed decisions at a local level is absolutely key.

In addition, we also believe that the UK should only consider the introduction of regulation (where there is the option to choose policy mechanisms at a Member State level) when all industry-led methods have been shown to fail.

9. a. 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?

Only the EU and a few other countries have committed to a second period under the Kyoto Protocol. Leading by example can be successful when that leadership has a critical mass like the EU, but it is important that this is not at the expense of the European industry and businesses.

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

As we indicated in our response to Question 2, greenhouse gas emissions are not just a local or national problem so it has to be tackled as a cross border and wider international issue. It is difficult to see how the UK alone could provide the international leadership necessary to pursue the goal of keeping global temperature increase below 2°C, especially as current UK policy on renewable energy is inconsistent.

### **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

One of the biggest challenges is getting the EU institutions to recognise the need to balance food production and the environment and to build in an assessment of the impact of environmental policies on agricultural productivity and competitiveness.

An additional and significant challenge will be climate change. The frequency and intensity of extreme weather events and seasonal variation in rainfall patterns are expected to be diverse, with parts of the EU being affected in different ways, and the impact on biodiversity, water quality or other natural resources largely unknown.

b. 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?

The key principle or test that should be applied in order to determine whether action is needed at an EU level is whether rules are deemed necessary for the functioning of the common market. If rules are deemed necessary, these should be agreed at a European level but with the added caveat that flexibility must be allowed for Member States to adapt to local conditions.

As we have indicated previously, regulation should only be considered when all voluntary or industry-led methods have been shown to fail.

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

Although it is hard to estimate the costs of these challenges, the benefits to the UK should be that agriculture is more profitable and progressive.

### **Anything else?**

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

## **NATS (National Air Traffic Services)**

**Q1** Overall emissions from aviation are tackled via the Emissions Trading Scheme (ETS). However Air Traffic Management (ATM) is a key input (c [10%] of aviation emissions) and to tackle this, the EU has set EU-wide targets for flight efficiency. National regulators then set national targets which should be consistent with the EU targets. States are free to set tougher targets, as the UK has. Additionally, EU competence has benefitted the UK ATM sector through the SESAR programme, where a focus on R&D for the Europe wide ATM system has identified opportunities for cross border environmental efficiencies and allowed NATS to open up a dialogue across borders to secure future environmental benefits

**Q2** NATS and the UK have a leading role in aviation environmental issues. NATS is unique among Air Navigation Service Providers (ANSPs) in the level and nature of its environmental performance targets (use of the 3Di model for NATS UK regulated business and specific Air Traffic Management CO<sub>2</sub> reduction targets of 4% by 2014 and 10% by 2020). These targets will help NATS support the UK in meeting its wider State-level obligations. While NATS is committed to achieving these targets, they are more stringent than those placed on other ANSPs through the Single European Sky Performance Scheme. To date the argument that greater environmental improvements (and fuel savings) can (and should) be balanced against lower cost reductions has not proved convincing in all

quarters. NATS is thus attempting to meet more stringent environmental targets than the other ANSPs but this is not taken into account when our costs compared with theirs.

**Q3** In answer to both I and ii; in the NATS context, EU proposed targets are smaller in scope than those committed to by NATS at the national level. We should seek to maintain the scope for local targets to either have different scope or stringencies than the EU target, but importantly, local targets should be in service of the EU targets. States should have the ability to engage actively in the setting of EU targets to avoid situations where the achievement of National targets might be precluded by the setting of inappropriate EU targets. As noted in White Paper “COM(2011) 144 final”; “...the paramount goal of the European transport policy is to help establish a system that underpins European economic progress, enhances competitiveness and offers high quality mobility services while using resources more efficiently. In practice, transport has to use less and cleaner energy, better exploit a modern infrastructure and reduce its negative impact on the environment and key natural assets like water, land and ecosystems.” For aviation, targets focused at State level do not properly consider the end-to-end performance of most flights. EU level action is therefore essential to increase the effectiveness of environmental performance improvements. The UK’s leading position in environmental matters means that NATS has a greater focus on meeting its environmental regulatory obligations, based both on EU wide targets and additional National ones, as compared to other ANSPs whose obligation are to meet the less stringent EU targets alone. The effect of decisions being taken at a national level may therefore be to drive additional costs into our business and thus create the appearance of our being more expensive, unless the additional environmental gains are taken into account. Taking the decision at EU level creates a more level playing field with regard to the costs of compliance however it may not meet national aspirations for leadership in certain areas such as environment.

**Q4** See answer to 1

**Q5** The cross border nature of ATM means that EU environmental standards have a key role to play in driving improved environmental performance at the regional and global level. However it is vital that States are closely involved in the setting of environmental standards to ensure that when deployed they are relevant at the local level

**Q6** Current proposed environmental targets for ATM are limited in scope and less stringent than those adopted by NATS at the National level, so the balance between climate change impacts and the wider UK interest is not affected, indeed the fact that we have established more stringent targets in the UK context is an indication perhaps that EU have not gone far enough in driving ATM environmental performance in legislation. Please also refer back to the response given in relation to question 2.

**Q7** RP2 environmental metrics are currently limited in scope and not adequately defined for stakeholders to take a view on their stringency and the validity of the targets

**Q8** The scientific evidence that forms the basis of the proposed RP2 track extension metrics is unclear

**Q9** NATS would welcome EU environmental targets developed for ATM which are more in line with UK thinking.

**Q10** As per previous answers, the UK could benefit from being more involved in setting more intelligent and relevant environmental targets relating to ATM – this is less of a question about the EU taking more action, more a question of EU taking more intelligent action.

**Q11** See answer to i

**Q12** In the ATM sector, the approach taken by the UK CAA and the consultation process followed by NATS in setting forward business plans is, we believe, sensible and inclusive.

**Q13** The EU team at ICAO is effective in coalescing the collective views of EU states at this important global environmental rulemaking body, the Euro CAEP meetings have provided a useful forum for NATS to gain agreement to ensure ATM environmental issues are supported at the EU level at ICAO, backing up the UK State position.

**Q14** No comment

**Q15** The collective EU desire may not be to go as far as NATS/UK might wish on environmental targets in Air Traffic Management. This would leave NATS aspiring to deliver greater environmental improvements than our peers while having our costs compared as if we were only aiming to meet the EU targets.

**Q16** The EU adds value to the environmental debate at ICAO; this is a positive and valuable outcome. The relationship between EU and UK needs to be strengthened to ensure that future legislation and targets on ATM environmental performance are relevant and intelligent.

**Q17** UK experts should be more closely involved in the EU target setting and legislative process, this could involve an additional cost for the UK (perhaps through sponsoring experts to support this process) but this would be balanced by the UK not feeling obliged to set additional local targets as the EU ones would be sufficient.

**Q18** No comment

## **Natural Heritage Directorate Of Northern Ireland Environment Agency**

### **Introduction**

Natural Heritage Directorate (NHD) of NIEA, unlike our equivalent organisations in England, Wales and Scotland, is part of the NI Department of the Environment. However, due to the separate distinction in the other devolved administrations, we also received a separate call for evidence from Defra.

NHD endorses many of the comments made in Minister Durkan's response to Secretary of State Patterson dated 15 August 2013.

The benefits of EU competency include:

- Consistent standards having a positive impact on trans-boundary pollution, ecosystem management, the protection of habitats and species
- Devolved Administrations working with UK towards a common (UK) goal
- Compliance with environmental legislation leading to more sustainable development

Some issues that require further improvement include:

- Compliance monitoring being too detailed, or disproportionate to environmental risk;
- Infraction fines being disproportionate to environmental risk or damage;
- Infraction process not always based on the best environmental outcomes;
- Compliance requirements being unsuited to local environmental needs or priorities;
- Outdated EU legislation not being in step with the latest scientific and technical advances

## **Natural Heritage Directorate (NIEA), evidence**

### **1 What evidence is there that EU competence in the area of environment and/or climate change has:**

#### **i. benefited the UK / your sector? :**

The Habitats Directive has made a considerable difference to our relationships with other Competent Authorities and drawn attention to biodiversity/nature issues.

Guidance from DG ENV has been very helpful. The new EU Biodiversity Strategy to 2020 has profoundly influenced our direction of travel especially with regard to drawing down resources through the innovative LIFE Integrated Projects and the thinking behind it.

#### **ii. disadvantaged the UK / your sector?:**

Nothing that we can think of.

### **2 Considering specific examples, how might the national interest be better served if decisions:**

### **Part one: currently made at EU level were instead made at national, regional or international level?**

Ultimately decisions of the ECJ have helped our work in conserving habitats and species, e.g. the recent "Sweetman" judgement re Republic of Ireland. The threat of infraction proceedings leading to fines has influenced and prioritised thinking and actions.

EU legislation has required Member States to transpose and implement consistent standards helping to create an level playing field for industry etc. Some discretion is still able to be accommodated within national approaches. However, in the absence of an EU framework it is unlikely that the uniform playing field would be attained. In addition, to the level playing field the promotion of sustainable development and the conservation of key natural heritage for future generations would be unlikely to receive as high a priority. In the absence of enforced EU legislation, it could be argued that less progress would be made towards halting the loss of biodiversity and ecosystem services. The EU research work on ecosystem services, invasive alien species and natural capital which is not yet enshrined in EU legislation is also of great merit in influencing thinking at national level.

If legislation was not made at EU level this could adversely affect the availability of EU funding and NHD appreciate the EU support for funding and particularly trans-boundary funding opportunities as we are the only part of UK with a land border with another Member State (Republic of Ireland) with whom we have undertaken several all-Ireland projects.

### **Part two: currently made at national level were instead made at EU level?**

The views and priorities specific to Northern Ireland while able to be accommodated in national legislation would probably not be able to be effectively accommodated if the legislation was made at EU level. Patterns of land holding in NI are very different from those in Great Britain, particularly compared with England and elsewhere in Europe. There are also international obligations that UK have signed up to, e.g. Nagoya, but they rely on legislation to ensure outcomes achieved and as this requires co-operation across national boundaries is best delivered through EU legislation.

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

If all member states implement the same environmental standards in a consistent way that must help deliver a level playing field. However, to achieve this, consistency in interpretation and enforcement is also necessary. The work being done by the EU on achievement of the six high-level Targets of the EU Biodiversity Strategy as worked out through the Common Implementation Framework has been very valuable. Perhaps most important is providing guidance towards a level playing field on agriculture, which alongside urbanisation are the two main threats to achieving 'no net loss' and restoration of ecosystems and their services.

#### **4 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?**

We do not see that there needs to be conflict between the economy and the environment/climate change. The old concept, of environment being in the blue corner and economy in the red corner and both come out fighting, is old thinking. The EU needs to ensure that its legislation and policies are in step with the latest scientific and technological advances.

We have seen that through working on our (NI) Prioritised Action Framework we can see Integrated Projects under LIFE as providing many opportunities for job creation and the NIEA's new mission statement is:

***"Creating prosperity and well-being through environment and heritage excellence".***

We see that EU legislation attempts to strike the right balance although the negotiation process in arriving at the final content of EU legislation often favours the economic interest of Member States.

However, the wider considerations of ecosystem services and natural capital being brought forward has the potential to better influence future EU decisions and legislation.

#### **5 Considering specific examples, how far do you consider EU legislation relating to the environment and climate change to be:**

##### **i. focused on outcomes (results)?:**

The EU legislation pertaining to the environment (the Birds Directive and Habitats Directives and the Water Framework Directive and the Marine Strategy Framework Directive) are all highly focussed on ecological outcomes. Climate Change adaptation (as opposed to mitigation) needs to be given more priority and more research and work done in this area in order to have more focussed outcome targets.

##### **ii. based on an assessment of risk and scientific evidence?:**

Adequately based on risk as regards the EU as a whole but there are some species in NI that could also be brought into Annex II of the Habitats Directive. But we are attempting to address these through having identified NI priority species. In relation to the reporting to the EU under Article 17 of the Habitats Directive, which uses a standard form for returning evidence, we feel that that evidence is still too reliant on 'expert opinion' and additional resources are needed for permanent and systematic surveillance of the habitats and species. However, we feel the Commission is beginning to address this as an issue, as has Defra. The EU need to ensure that compliance monitoring is not too detailed or disproportionate to environmental risk.



## **6 How could the EU's current competence for the environment be used more effectively?:**

The UK should continue to play an integral role in the development of future policy at EU level as this is best negotiated before decisions come into force. In taking forward UK positions, the DG ENV uses competent contractors quite extensively to initiate draft reports on the various issues pertinent to the EU Biodiversity Strategy to 2020. This work is then brought to the various Expert/Working groups of representatives of the Member States under the Common Implementation Framework. On most of these, the UK is represented by Defra so we would presume this provides opportunities to input all UK national circumstances.

Potential infraction issues are also considered by EU contractors before the Commission would initiate the appropriate proceedings. Infraction fines need to be proportionate to the environmental risk or damage and the infraction process always based on the best environmental outcomes. In addition compliance requirements need to accommodate local environmental needs and priorities.

## **7 How far do you think the UK might benefit from the EU taking:**

### **i. more action on the environment/climate change?:**

The amount of action on environment and climate change depends not only on the legislation requirements but also on the distribution of EU funding to support work on specific themes.. DG ENV have recognised that resources directly relating to the natural environment (LIFE) for the next funding round will be far too small to achieve the targets of the Biodiversity Strategy to 2020. So they have been very imaginative in encouraging Member States to discuss with them Integrated Projects under LIFE to lever resources from the more highly endowed funding schemes – this is welcomed and the UK should seek to maximise this opportunity.

### **ii. less action on the environment/climate change?:**

None.

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

There would be merit in Defra being able to demonstrate greater awareness and consideration of the competencies and special needs of the Devolved Administrations of the UK to guard against the perception of an England-centric view being taken in the implementation of EU Directives and allow a more meaningful accommodation of the needs of the DAs.

Being on the same land mass as Republic of Ireland we find on occasion that a number of our key issues could have more in common with Ireland than with Britain and this needs to be more fully accommodated within any UK policy and implementation.

Some of the Environmental Directives e.g. Water Framework Directive not only set out outcomes but have milestones for approaches to be to achieve them e.g. the preparation of Programmes and Plans to achieve these and River Basin Management Groups have been established to help deliver on these outcomes. This approach appears to have been more successful in achieving results than some of the older Directives such as the Habitats and Birds Directives. Indeed, the Air Quality national legislation has adopted a similar more prescriptive approach with EU specific obligations. Given that the Habitats Directive Article 17 Reports to the EU showed little overall improvement over the last 6 years there may be merit in considering similar, possibly more legislatively, prescriptive and/or providing more funding for voluntary approaches at UK level .

**9 a. 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?**

The EU is engaging with the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) and member states attend the CBD. These have been (e.g. Nagoya Protocol) very successful in dealing with global issues which the EU must be seen to be playing its part.

Due to the trans-boundary nature of environmental issues many of these need to be addressed at an international level to achieve meaningful outcomes.

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

It is important for the UK to make a constructive contribution.

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

As alluded to earlier, the challenge is for the EU to show leadership on reducing the loss of ecosystems, ecosystem services and ameliorating climate change by establishing strong financial attractions to investors and businesses. Another challenge is to look at the multiple pathway of pollutants. Opportunities exist in respect of greater recognition of the value of ecosystem services, and the environment delivering jobs, health and well-being, and on integrated programme funding opportunities.

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

Actions need to be taken at all these levels. Internationally, through eg Nagoya Agreement setting out obligations which signatories signed up to, EU researching and providing guidance and possibly legislation with funding support to help achieve policy/legislative objectives on the UK setting out clear policy and legislating with appropriate industry engaging in the research and policy considerations and seeing for themselves that prosperity can be achieved through environment and heritage excellence. This also needs to be better recognised and mainstreamed across our Government departments with more joint initiatives to deliver on combined economic, health and well-being and environmental benefits.

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

The correct balance needs to be struck between EU and national statutory obligations. If all were placed at EU level then there would be the added potential cost of infraction fines. But with the exception of this, it is considered that the costs would be the same as if we were to seriously address these challenges at a UK level as the obligations would only be put in place where evidence indicated they were the right and proportionate actions so they would need to be implemented. The benefits of having these at EU level is the ability to draw down additional EU funding to help achieve these challenges.

What we could lose by addressing only at UK industry level only is the combined wisdom and technical transfer of best-practice from other MSs.

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

No comment

**Noise Abatement Society**

**Q18** It is not possible for the Noise Abatement Society (NAS) to give definitive comments on whether EU competence related to noise has been a net benefit or not to the UK because the consultation paper confines itself to broad generalisations and does not have the scope to present scenarios on what UK policies or actions would have been pursued in the absence of such EU competence. However, NAS recognises that much product development takes place in response to contexts much wider than the nation state, and that, in principle, international co-operation offers opportunities for addressing the health and other disbenefits of noise at lower cost. Examples of relevant NAS actions include the co-establishment with the European Environment Agency of the annual European Soundscape Award in 2011, [www.eea.europa.eu/themes/noise/the-european-soundscape-](http://www.eea.europa.eu/themes/noise/the-european-soundscape-)

[award](#) ;participation, since 2008, with numerous EU member states in the PIEK scheme to certify quiet equipment for the transport industry, [www.piek-international.com/](http://www.piek-international.com/); and membership, from 2009, in the EU COST Action TD0804 on Soundscapes of European Cities and Landscapes to further establish cross boarder co-operation and knowledge sharing amongst scientists, researchers, policy makers and local citizens for the development of applied soundscape methodologies and measurement protocols, [www.soundscape-cost.org/](http://www.soundscape-cost.org/)

## **North London Waste Authority**

Thank you for providing the North London Waste Authority (NLWA) with the opportunity to respond to the call for evidence on environment and climate change.

### **Background**

In north London around 846,000 tonnes of waste is collected from homes and businesses by the seven north London councils – Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest. Nearly half of that waste is incinerated at an energy from waste incinerator and nearly a quarter is sent to landfill. Of that 846,000 tonnes of waste around 700,000 tonnes comes from households in north London. At the moment over 31% of north London’s household waste is reused, recycled or composted.

Our response to this call for evidence is, therefore, largely focussed on Waste.

### **EU Competence on Waste**

Generally, the Authority is supportive of EU’s Competence on Waste as it has driven the UK to act on waste issues. There is a benefit in having a European Framework in place with all Member States having to achieve the same targets across Europe ensuring commonality. This also means that there is much more certainty of direction to all Member States irrespective of whichever Government is in power i.e. the same agenda on the environment and climate change has to be achieved.

It will always be difficult to demonstrate what the counterfactual scenario would be i.e. if the direction of regulation and policy was not from the EU but by UK Government / devolved administrations. The only basis would be to assume that the UK continued as it was prior to the implementation of the landfill directive and continually relied on landfill with no incentive to improve household recycling rates. We therefore conclude that the UK has benefited from EU directives and there is no need for change in this respect.

Our full response including evidence where applicable is attached to this letter -

We have set out in Table 1 what we see as the advantages and or disadvantages of relevant EU Waste Legislation in the Waste Sector and generally conclude that having a European Framework in place is positive but improvement is required in the interpretation and implementation in the different Member States. A specific and current example of this is glass cullet and the end of waste criteria for this and the uncertainty over how glass recyclers can become accredited for EoW and what the impact of the changes will be on the PRN system.

Another relevant example is the treatment of metals, glass, ash and aggregate recovered from Incinerator Bottom Ash. These count towards recycling in certain Member States but not in the UK. This is another example where there is a lack of consistency. The Authority has written to the EA making the case for glass in IBA to be counted towards recycling. See Box 1

### **BOX 1 – The Case for Glass in IBA counting towards Recycling Targets**

One of the key requirements for recycling of IBA by organisations such as Ballast Phoenix into usable building products (i.e. incinerator bottom ash aggregate or IBAA) is the presence of good quality aggregate. Here, the particle size of aggregates should be up to 40mm, consisting of hard durable inert material such as glass, porcelain, brick or stone. Fine ash including that from coal fired power stations has almost no uses and is usually landfilled.

One of the features of using IBAA for construction is its pozzolanic properties meaning that when laid and compacted, it possesses cementitious properties. Consequently IBAA containing glass aggregate has many uses including pipe bedding, construction filling and capping, flooring sub-base, bitumous mixes, piling mats, and lightweight aggregate for masonry. As such its production and use must comply with UK and European standards, being manufactured to a robust Quality Protocol. It is understood that a Quality Protocol is presently under development and is anticipated to be released in late 2013.

Each year, the NLWA consigns over 500ktpa of municipal solid waste to the Edmonton EfW facility where waste is burn to produce electricity, thereby displacing fossil fuel consumption. In 2010, the Authority conducted a composition study which found that the amount of glass in municipal household waste to be 4.7%. Applying this figure to the Energy Centre, this would equates to some 23.5ktpa of glass which would end up as aggregate within the 85ktpa of incinerator bottom ash which results from the processing of waste.

While the Authority fully supports the maximisation of glass recovery for remelt, it is important to recognise that the presence of glass aggregate in the IBA means that it is able to be recycled and sold for building products, and avoids the landfilling of otherwise (colour and impurity) contaminated glass. On this basis, the Authority believes that glass aggregate within IBA should count towards recycling targets. In addition it has a low embodied energy demand during production and is therefore a sustainable building product, with a market-wide potential to replace up to 1.5Mt of virgin aggregate per year.

Such an application is consistent with the use of glass as an aggregate where it cannot be viably recovered for remelt applications through recycling systems. In addition, there would be no additional cost from allowing glass to be counted towards recycling costs in the manner described in this document. Here the Authority acknowledges the Environment Agency's position that the processing of IBA to IBAA does not itself constitute recovery or recycling and is dependent on this material actually being used for construction.

### **Measurement and Reporting**

The Authority suggests that a system based on the empirical analysis of the input material could be used to calculate the amount of glass that is ultimately used for recycling. Glass in the waste stream is chemically and physically inert throughout the incineration process and so any amount of glass that is in the residual waste feedstock will ultimately end up in the processed incinerator bottom ash.

#### Example

Based upon Authority data, 100 tonnes of household waste contains 4.7% of glass. When burnt, this produces 25 tonnes of incinerator bottom ash containing 4.7 tonnes of glass. When this ash is processed moisture and metals are removed and the mass of processed incinerator bottom ash is reduced to 10 tonnes of which 4.7 tonnes is glass.

Of this quantity, some of the ash cannot be processed into a product so the 10 tonnes of incinerator bottom ash containing 4.7 tonnes of glass could reduce to around 9 tonnes containing 4.2 tonnes of glass with 0.5 tonnes of rejected material being sent to landfill.

Therefore, the total amount of glass that is ultimately recycled would be 4.2 tonnes.

This would require an analysis of the composition of the input material and measurements of the mass of waste sent for incineration and of all solid materials removed from the site for recycling or disposal. Therefore, in the same manner that the Environment Agency regulates Packaging Recovery Note system, this process could also be regulated by the Environment Agency through the Producer Responsibility Regulation Service using data that is already collected by waste authorities and operators of municipal waste incinerators.

It is understood that for such a system to work, constructors would need to seek to be accredited to ensure that IBAA is actually used in constructions for PRNs to be issued.

Here, the Authority acknowledges the Environment Agency's view that it is unlikely that constructors would actually seek such accreditation. As a result, "alternative recycling evidence" would be required to demonstrate the use of IBAA within a construction. Such evidence could be constituted by proof of sale records between reprocessors and construction organisations, along with records of material usage records by constructors.

Finally, it is understood that the Environment Agency is continuing to give consideration to this issue, including the ongoing development of Quality Protocols which will be dependent on trials, and the views of the European Commission.

If you require any further clarification of the points raised in this letter or have additional queries please do not hesitate to contact me.

At a domestic level, there are instances where Government has been slow to review, decide and implement new regulations and fiscal mechanisms such as in regards to the MRF code of practice, renewable obligations support and the renewable heat incentive.

There is continuing uncertainty in key areas such as the implementation of the Waste Framework Directive and Carbon Reduction Commitment. This appears to suggest that where there is legislation created at a domestic level it takes longer to implement as the drivers are not as strong when compared to EU legislation.

As an example the revised Waste Framework Directive established a requirement for separate collection of a number of different recyclable materials. The Government introduced the Waste (England and Waste) Regulations 2012 to transpose the European Waste Framework Directive into UK law. However, a campaign group representing some recycling businesses challenged the regulations and specifically the Government's inclusion of co-mingled collection as a form of separate collection and the extent to which this may meet the Directive's requirement.

This resulted in a Judicial Review, following which the courts agreed a six month stay in the Judicial Review so that Government could carry out a consultation on a revised version of the regulations. The Government's response to the consultation was published in July 2012, and the judicial review case was further adjourned. During this time Government laid the revised regulations. However, the claimants did not accept that the revised regulations adequately transposed the EU Waste Framework Directive 2008/98 and notified the court of their intention to proceed with their case.

It was not until 6 March 2013 that Mr Justice Hickinbottom dismissed the case against the government. The on-going uncertainty arising from the prospective judicial review was particularly unhelpful as the Authority and Constituent Boroughs were seeking to roll out new recycling collection systems and to procure treatment facilities to support the substantial improvement in recycling that is envisaged in the North London Joint Waste Strategy. The NLWA is fortunate to be better placed than some other local authorities to manage this uncertainty as the construction programme for new treatment facilities is later than many other local authorities.

Further challenges may be forthcoming in relation to the requirement for collection systems to be TEEP (Technically Environmentally and Economically Practical) i.e. the best option from these four perspectives. The TEEP requirement stems from the amended Regulation 13 of the 2011 Regulations which now states that with effect from January 2015, those collecting waste paper, metal, plastic or glass, should do so by way of separate collection, where that separate collection,

- (a) is necessary to ensure that waste undergoes recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive, and to facilitate or improve recovery, and
- (b) is technically, environmentally and economically practicable.





We have responded to Questions 1 and 2 with specific EU Waste legislation in mind. Responses to the remaining questions are provided below Table 1.

**Table 1 - Advantages and Disadvantages of relevant EU Legislation**

Legislation	Description	Q1) Advantages to UK / Waste Sector	Q1) Disadvantages to UK / Waste Sector	<p>Q2) Considering specific examples, how might the national interest be better served if decisions:</p> <p>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?)</p> <p>ii. currently made at another level were instead made at EU level?</p>

Legislation	Description	Q1) Advantages to UK / Waste Sector	Q1) Disadvantages to UK / Waste Sector	Q2) 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?
European Parliament and Council Directive 94/62/EC on packaging and packaging waste	Establishes harmonized rules concerning the management of all packaging placed on the market in the Community and all packaging waste	<ol style="list-style-type: none"> <li>1. First time legislation introduced that identified Waste Prevention.</li> <li>2. Producer Responsibility is derived from these regulations. The following case studies have been provided as examples: <ul style="list-style-type: none"> <li>• Carrier Bag Case Studies</li> <li>• Courtauld Commitment Case Studies</li> <li>• Home Improvement Case Studies</li> <li>• Recycling Labels Case Studies</li> </ul> </li> </ol> <p style="text-align: center;">498</p>	<ol style="list-style-type: none"> <li>1. Solid standards but open to interpretation across Member States.</li> <li>2. Does not feed value into local authority collection and sorting services.</li> </ol>	<ol style="list-style-type: none"> <li>1. Packaged products are traded internationally to such an extent that harmonisation of objectives within Europe is essential to avoid trade distortions. Further harmonisation in interpretation and methodologies of implementation may assist too.</li> </ol>

Legislation	Description	Q1) Advantages to UK / Waste Sector	Q1) Disadvantages to UK / Waste Sector	Q2) 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?
		<p>3. Stimulated the Courtauld Commitment (See Box 2)</p> <p>4. The packaging recovery system potentially reduces the burden on local taxpayers associated with waste disposal costs and transfers it to consumers. It also encourages the producers of goods to fully explore market development and design work to reuse recycled materials</p>		

Legislation	Description	Q1) Advantages to UK / Waste Sector	Q1) Disadvantages to UK / Waste Sector	Q2) 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?
Council Directive 1999/31/EC on the landfill of waste	Requires Member States to regulate landfills for hazardous, non-hazardous and inert waste	<ol style="list-style-type: none"> <li>1. Helpful in stimulating landfill diversion.</li> <li>2. Acceptance that municipal waste has been pre-treated by householders' separation of specific wastes for recycling and composting is helpful and should be preserved.</li> </ol>	None	See Box 3
Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles	Establishes harmonized rules concerning the disposal of end-of life vehicles	<ol style="list-style-type: none"> <li>1. Harmonised market</li> </ol>	None	

Legislation	Description	Q1) Advantages to UK / Waste Sector	Q1) Disadvantages to UK / Waste Sector	Q2) 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?
Directive 2000/76/EC of the European Parliament and of the Council on the incineration of waste	Sets emission limit values for waste incineration and co-incineration plants within the EU	<ol style="list-style-type: none"> <li>1. Reduced emissions to the environment.</li> <li>2. Harmonised standards resulting in common treatment platform. Member States have to comply with the same emission limits.</li> </ol>	<ol style="list-style-type: none"> <li>1. There is ongoing debate about the use of the R1 formula across several EU countries with differing heat requirements. Within the UK, the R1 formula is generally not considered to be a driver of performance for Energy-from-Waste facilities and such facilities are not widely viewed as recovery but disposal facilities. Therefore the role of EfW facilities in recovering energy within the UK could be made more prominent if the R1 formula were given greater emphasis. Notwithstanding this, the vast majority of UK facilities would surpass the thresholds laid out in the Waste incineration directive.</li> </ol>	

Legislation	Description	Q1) Advantages to UK / Waste Sector	Q1) Disadvantages to UK / Waste Sector	Q2) 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?
Regulation 1013/2006 of the European Parliament and of the Council on shipments of waste	Establishes procedures and control regimes for the shipment of waste between Member States and into and out of the EU	1. Harmonised rules to minimise potential for trade distortions.	1. A number of practical problems with enforcement. The EU EA needs to play a bigger role in enforcement.  2. Annexe 7 is largely unworkable, as no-one can validate signatures from reprocessors on other continents nor even the factories' existence. Better to check loads for export are of good quality and are subsequently paid for (indicating value to someone).	

Legislation	Description	Q1) Advantages to UK / Waste Sector	Q1) Disadvantages to UK / Waste Sector	Q2) 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?
Directive 2008/98/EC of the European Parliament and of the Council on waste	Establishes the framework for the handling of waste in the EU	<ol style="list-style-type: none"> <li>1. Harmonised rules to minimise potential for trade distortions.</li> <li>2. The revised Waste Framework Directive places a requirement on Member States to produce waste prevention plans. See attached Excel document titled "Waste Diversions through Waste Prevention Activity for 2012-13". Evidence of the diversion as a result of Waste Prevention activities carried out by NLWA.</li> </ol>	None.	

Legislation	Description	Q1) Advantages to UK / Waste Sector	Q1) Disadvantages to UK / Waste Sector	Q2) 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?
Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment	Lays down measures concerning the generation and management of waste from electrical and electronic equipment and resource use	<ol style="list-style-type: none"> <li>1. Harmonised objectives helpful to minimise potential for trade distortions.</li> <li>2. Prevention of illegal exports of waste electrical and electronic equipment to non-EU countries.</li> </ol>	None.	



<b>Legislation</b>	<b>Description</b>	<b>Advantages to UK / Waste Sector</b>	<b>Disadvantages to UK / Waste Sector</b>	<b>Q5) Current Legislation</b>  <b>Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:</b>  <b>i. focused on outcomes (results)?</b>  <b>ii. based on an assessment of risk and scientific evidence?</b>

Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	Q5) 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)?  ii. based on an assessment of risk and scientific evidence?
<b>Environmental Assessment</b>				
Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment	Requires a prior strategic environmental assessment to be carried out for most plans and programmes prepared by public authorities in Member States	1. The seven north London boroughs and the NLWA carried out a SEA for the North London Joint Waste Strategy (the municipal waste management strategy for the area) in line with the requirements of the SEA Directive. From an environmental perspective this requirement has benefits in that it requires a baseline to be established against which the impact of the implementation of the strategy or plan can be monitored on an ongoing basis. As an	1. There is an additional cost and time requirement to carrying out an SEA. For the eight authority strategy in north London (the North London Joint Waste Strategy) it cost an additional £54,700 to carry out the SEA and resulted in an additional 20 months to go through the different stages of the SEA	

Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	Q5) 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)?  ii. based on an assessment of risk and scientific evidence?
		<p>example in north London we produce an Annual Monitoring Report showing the impact of the implementation of the Joint Waste Strategy – which would be unlikely to have been produced in the absence of SEA requirements See: <a href="http://www.nlwa.gov.uk/governance-and-accountability/annual-monitoring-reports">www.nlwa.gov.uk/governance-and-accountability/annual-monitoring-reports</a></p> <p>This has improved accountability e.g. in NLWA's case for both the Authority</p>	<p>process including consultation. Ongoing monitoring additionally involves cost and time. Currently we estimate that it takes one officer 400 hours per year to carry out ongoing monitoring requirements associated with the SEA for the eight north London authorities.</p>	

Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	Q5) 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)?  ii. based on an assessment of risk and scientific evidence?
		<p>and the seven constituent boroughs that produced the joint waste strategy.</p> <p>There are also economies of scale that are gained in this case in that the NLWA measures the impact of the strategy and reports annually on behalf of the eight authorities.</p> <p>The SEA requirements also required NLWA to carry out an additional series</p>		

Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	Q5) 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)?  ii. based on an assessment of risk and scientific evidence?
		<p>of public consultation exercises into the detail of the joint waste strategy which improved transparency.</p> <p>The following section of our website details the process we undertook to carry out a SEA and an Equalities Impact Assessment and a Habitats Regulations Assessment of the joint waste strategy:</p>		

Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	<b>Q5) Current Legislation</b>  <b>Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:</b>  <b>i. focused on outcomes (results)?</b>  <b>ii. based on an assessment of risk and scientific evidence?</b>
		<a href="http://www.nlwa.gov.uk/about/authority-strategies/updates">www.nlwa.gov.uk/about/authority-strategies/updates</a>		

Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	Q5) 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)?  ii. based on an assessment of risk and scientific evidence?
<b>Access to Environmental Information</b>				
Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information	Requires Member States to ensure that public authorities make environmental information they hold available to any applicant on request	1. Ensures that waste management proposals are open and transparent so that all stakeholders can have access to the information which is beneficial from an equality standpoint.	1. Can lead to a piecemeal approach to information release if people request information not already in the public domain. This can in particular lead to a 'partial picture' being provided to enquirers because of the way the system is devised – requests are often made without the necessary context, which can result in incomplete reporting in the media and/or	

Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	<b>Q5) Current Legislation</b>  <b>Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:</b>  <b>i. focused on outcomes (results)?</b>  <b>ii. based on an assessment of risk and scientific evidence?</b>
			<p>residents' understanding of for example new waste facility proposals. An authority receiving a request does not know why the person making the request is asking for information and/or what they want to use it for. Consequently if that person asks for only part of the information about an issue, all that will be sent is the requested information and no more, thus resulting in a partial picture about an issue.</p>	



Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	Q5) 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)?  ii. based on an assessment of risk and scientific evidence?
			<p>The authority cannot send a more complete set of information without knowing the context and the wider details of the purpose of the request and how the information will be used.</p> <p>2. It is difficult to predict the number of requests and consequent resource requirement implications in terms of responding. BOX 4 sets out the increase in requests received by the NLWA</p>	

Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	Q5) 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)?  ii. based on an assessment of risk and scientific evidence?
			<p>over the last 3 years.</p> <p>3. Because it is a reactive system the amount of information released into the public domain and onto a publication scheme for example is entirely dependent upon the number of local residents in an area who are interested and/or see themselves affected by an issue. Consequently the amount and level of detail of information made available can vary</p>	

Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	Q5) 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)?  ii. based on an assessment of risk and scientific evidence?
			<p>considerably. As an example in 2011/12 the NLWA received 61 information requests, Western Riverside Waste Authority in comparison received three Freedom of Information requests in 2011/12, all of which were answered within the requisite timescales. (WRWA Annual Report 2011/12).</p> <p>In addition, being a reactive process, it can mean that</p>	

Legislation	Description	Advantages to UK / Waste Sector	Disadvantages to UK / Waste Sector	<b>Q5) Current Legislation</b>  <b>Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:</b>  <b>i. focused on outcomes (results)?</b>  <b>ii. based on an assessment of risk and scientific evidence?</b>
			information is released to some stakeholders and not others which potentially discriminates against those who have not requested the information.	

<b>Legislation</b>	<b>Description</b>	<b>Advantages to UK / Waste Sector</b>	<b>Disadvantages to UK / Waste Sector</b>	<b>Q5) Current Legislation</b>  <b>Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:</b>  <b>i. focused on outcomes (results)?</b>  <b>ii. based on an assessment of risk and scientific evidence?</b>

## BOX 2 – Courtauld Commitment

The Commitment helps deliver the UK governments' policy goal of a 'zero waste economy' and the objectives of the Climate Change Act to reduce greenhouse gas emissions by 34% by 2020 and 80% by 2050<sup>255</sup>.

The Courtauld Commitment 3 (CC3) was launched in May 2013 and is funded by Westminster, Scottish, Welsh and Northern Ireland governments and delivered by WRAP. CC3 aims to reduce the weight and carbon impact of household food waste, grocery product and packaging waste, both in the home and the UK grocery sector and will run until 2015.

**Targets** (against a 2012 baseline):

- **Household food and drink target:** Reduce household food and drink waste by **5%** by 2015. Taking into account external influences, this target represents a reduction of 9% relative to anticipated changes in food and drink sales due to expected increase in sales.
- **Manufacturing & retail target:** Reduce traditional grocery ingredient, product and packaging waste in the grocery supply chain by **3%** by 2015. Taking into account external influences, this target represents a reduction of 8% relative to anticipated production and sales volumes.
- **Packaging target:** Improve packaging design through the supply chain to maximise recycled content as appropriate, improve recyclability and deliver product protection to reduce food waste, while ensuring there is no increase in the carbon impact of packaging by 2015. Taking into account external influences, this target represents a carbon reduction of 3% relative to anticipated sales volumes. WRAP claims that there are limited opportunities for more substantial reductions without resulting in

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<sup>255</sup> WRAP, The Courtauld Commitment Information Sheet, available at: [www.wrap.org.uk/content/information-sheet-courtauld-commitment](http://www.wrap.org.uk/content/information-sheet-courtauld-commitment)

product damage due to under-packaging. However, there will be greater focus on improving the design and increasing the recycling content packaging products.

### **Impact**

The impact of CC3 is predicted to be a cumulative reduction of:

- 1.1 million tonnes of waste;
- 2.9 million tonnes of CO<sub>2</sub>(e) and
- a cost benefit of £1.6 billion to consumers, food and drink sector and local authorities.

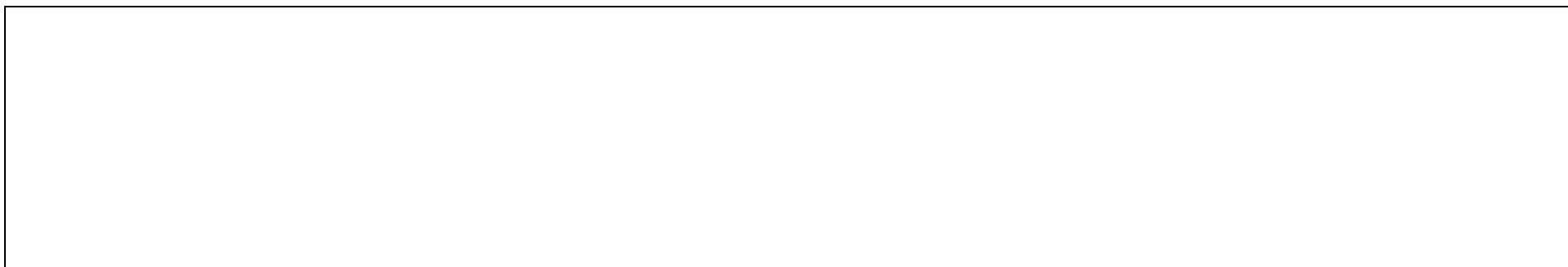
### **Signatories**

So far, 10 retailers (representing 90% of the grocery market) and 35 brands and suppliers signed up to CC3. Aldi Ltd, one of the retailers that received a letter from the Authority Chair in November to emphasise the importance of taking action to reduce packaging waste, has signed up to the agreement. To achieve the targets, apart from tackling their own waste in the supply chain, signatories will need to help consumers reduce waste in the home. This will include delivering targeted food waste reduction initiatives (e.g. Love Food Hate Waste campaign), clearer product labelling and improved packaging design.

### **BOX 3 – Implementation of EU Directives in the UK**

#### Landfill Directive

When this directive was implemented in the UK, the definition of Municipal Waste did not include C&I Waste applying only to waste collected by local authorities. This has led to some differences across Member States. Recently, the definition of Municipal Waste has been redefined such that material previously categorised as C&I waste is now included in Municipal Waste. As a result the absolute tonnages to be diverted have grown substantially.



**BOX 4 - Information Requests received by the NLWA (following introduction of a centralised system for handling requests from 01/01/11)**

	<b>Year running from 1 April to 31 March</b>		
<b>FoIA, EiR and 'Other'</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Number of requests received	21*	61	137
Average response time (including requests where the enquirer was informed that the request was taking longer)	15.7	13.1	21.36



to answer)			
Number of complaints	0	3	3

\*= From 01/01/11

Given the nature of our activities and the fact that environmental information is interpreted quite broadly we now generally answer information requests under the Environmental Information Regulations rather than the Freedom of Information Act. Further detail is available at: [www.ico.gov.uk/for\\_organisations/environmental\\_information.aspx](http://www.ico.gov.uk/for_organisations/environmental_information.aspx)

## Questions 3 to 11

### Internal market and economic growth

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

The Waste / resource sector is a global sector and the EU plays a vital role in this. As stated in the 2011 Government Review of Waste Policy in England<sup>256</sup>, the global trade in waste for re-use, recycling and recovery generates significant benefits for global resource use, reducing carbon emissions globally and helping to meet recycling targets. In general terms the EU exports a considerable amount of recyclable waste material to the Far East, especially paper, plastics and metals, and the use of these waste materials in these countries leads to considerable savings in natural resources and greenhouse gas emissions from waste that might otherwise be landfilled. The UK also has a considerable trade in waste for recovery with other EU Member States. This is part and parcel of a healthy internal EU trade, and reflects the essentially free movement of waste for recovery within the EU. EU environmental standards are, therefore, necessary for the proper functioning of the internal market as without them it is doubtful that the UK would be where it is now in terms of environmental standards.

#### **4. 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?**

In a report on the economic benefits of environmental policy<sup>257</sup> it can be seen that environmental policies deliver Europe's current economic priorities, often more successfully than other forms of economic policy intervention. The report provides evidence of the role of environmental policy both in providing a short term economic stimulus and in building a sustainable, efficient and resilient economy in the long term. It highlights many areas where environmental policy is essential for sustainable economic progress. This is arguably the case when looking specifically at the UK economy.

Evidence from the Stern Review<sup>258</sup> also demonstrates that ignoring climate change will eventually damage economic growth and that our actions over the coming decades could create risks of major disruption to economic and social activity later in this century and in the next on a scale similar to those associated with the great wars and the economic depression of the first half of the 20th century. The review goes on to say that it will be difficult or impossible to reverse these changes. Tackling climate change is the pro-growth strategy for the longer term, and it can be done in a way that does not cap the aspirations for growth of rich or poor countries. The earlier effective action is taken, the less costly it will be.

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<sup>256</sup> DEFRA – Government Review of Waste Policy in England, 2011

<sup>257</sup> The economic benefits of environmental policy, Matt Rayment et al, November 2009

<sup>258</sup> **STERN REVIEW: The Economics of Climate Change**

Climate change is a global phenomenon and EU legislation on the environment and climate change is designed to achieve a resource efficient and low-carbon economy. It can, therefore, be said that EU legislation does seek to provide a balance between protecting the environment and wider UK economic interest.

A number of studies by others have been done in this area and are attached as evidence:

1. The costs of not implementing the environmental acquis, European Commission, September 2011.
2. The economic benefits of environmental policy, Matt Rayment et al, November 2009.
3. Environment and the Single Market, Final Report to the European Commission.

To summarise, we are of the view that it does provide the right balance. We can see that even within the UK and devolved administrations there are differing policies and targets on recycling rates and landfill diversion.

### **Doing things differently**

- 3. 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?)**

As stated above, the authority is supportive of EU competence on waste and believes that the areas to be improved are around the interpretation and implementation of legislation in respective Member states. See Box 2.

- 7. How far do you think the UK might benefit from the EU taking: i. More action on the environment/climate change? ii. Less action on the environment/climate change?**

There seems no reason why the UK would not benefit from the EU taking more action on waste issues subject to consistency across Member States. Our understanding is that Member States negotiate policies in the EU and the UK's representations should look towards promoting sustainable growth and reducing where practicable the burdens on industry.

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

The Authority has no comment.

- 9. a. 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?**

The Authority has no comment.

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

The Authority has no comment.

## **Future challenges and opportunities**

**10. a. What future challenges or opportunities might we face on environmental protection and climate change? b. 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? c. What would be the costs and benefits to the UK of addressing these future challenges at an EU level?**

Looking to the future there appears to be some steer in the direction of travel of the EU on the environment as the European Commission has published a proposal for a new Environment Action Programme (EAP) to guide EU environment policy up to 2020. The Commission believes that the new draft Programme will step up the contribution of EU environment policy in achieving a resource efficient, low-carbon economy, and providing an overarching framework to 2020.

In the Action Programme, the Commission identifies nine priority objectives, including:

- Protecting nature and strengthening ecological resilience;
- Boosting sustainable, resource efficient, low carbon growth; and
- Effectively addressing environment related threats to health.

In a briefing note by Defra the UK Governments position on the EAP is said to be that it welcomes reviews of existing environment legislation if the Commission adheres to its own principles of smart regulation within the proposals. The proposals should look towards promoting sustainable growth and reducing where practicable the burdens on industry. However, the UK will not support the development of new targets and legislation within the 7th EAP without clear and robust justification.

The causes of concern are highlighted in a letter from a Defra Minister to the House of Lords EU select committee. In the letter it is stated that “Areas which cause us most concern include the proposals to revisit the stalled Soil Framework Directive, proposals to phase out landfilling completely and proposals that may call for review of access to justice regulations”.

There is some risk that the proposed EAP may lead to more significant pressures on the Authority as (a) the UK is at the EU average for recycling and continues to landfill a higher percentage of waste than the EU average (49% compared to an average 36%); and (b) North London being the second largest waste disposal authority in the UK. Specific things that the Authority would consider are:

### **Maximising recycling rates**

1. The waste hierarchy adopted in European and national policy frameworks identifies recycling and composting as preferable to either energy from waste (EfW) or landfill. Current Government policy sets a national target of 50% household waste recycling

and composting by 2020, the Mayor's consultation on a London waste strategy identified the possibility of a 60% target for municipal (i.e. including both household and non-household waste collected by local authorities) waste recycling and composting and the administrations in Scotland and Wales have set a 70% recycling ambition.

2. At a local level North London authorities have agreed a Joint Waste Strategy (JWS) that includes a recycling ambition of 50% household waste recycling and composting by 2020 and this is reflected in the reference project contained within the Outline Business Case for the procurement. The adoption of a 50% recycling ambition was an important part of securing PFI credit support from Government to the Authority's procurement and progress towards its achievement remains a key concern for DEFRA and the Authority.
3. The JWS also set intermediate targets on recycling of 35% by 2010 and 45% by 2015 so as to achieve 50% by 2020. Against the 2010 target, the 2009-10 recycling performance in North London was 29%. The 2011/12 recycling rate was 30%
4. All analyses relating to collection systems suggests that a 50% recycling rate for North London is very challenging and can only be secured by maximising the contribution to recycling performance by significant enhancements to collection systems, significantly improving Household Waste and Recycling Centres (HWRCs) and securing a further contribution to recycling performance from residual waste treatment. As set out in section 2.5 in the Authority's Outline Business Case for new Waste Facilities, there are two significant issues that are likely to mean that North London may not be able to achieve the same recycling rates as are achievable nationally:
  - Green waste is a smaller proportion of the household bin in North London than nationally arising from a relatively low number of private gardens which tend to be of a relatively small size. Recent composition work identifies that green waste is 10.22%<sup>259</sup> of household waste in North London compared to 20%<sup>260</sup> nationally;
  - The small proportion of properties with sizeable gardens and a large and growing proportion of flatted properties (including high rise apartments). For example Camden, Hackney and Islington's proportion of flatted properties is 86%, 80% and 76%. The national average proportion of flatted properties is 19%.

### **'Zero waste' to landfill**

5. This policy intention is an emerging theme in a number of policy statements, including in recent Government commentary. The policy can seemingly mean different things in different contexts: in Scotland it has previously been interpreted as a maximum of 5%

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<sup>259</sup> North London Waste Authority, Waste Composition Analysis Project for NLWA, Final Interim Report, ENTEC, August 2010.

<sup>260</sup> Dr Julian Parfitt, WRAP. Analysis for 'Waste not, Want not' 2002, available at <http://www.defra.gov.uk/evidence/statistics/environment/wastats/bulletin09.htm>

of waste to landfill. In Wales it has been interpreted as minimising the amount of waste that goes to landfill with a presumption in favour of recycling and with an expectation that the vast majority of residual waste that cannot be recycled will go to high efficiency Energy from Waste plants. Both Scotland and Wales have previously supported their 'zero waste to landfill' policies with a 70% recycling target/ ambition.

6. Beyond any policy, a key consideration for the Authority is the availability of landfill within a reasonable travelling distance. A precise assessment is difficult given that it is partially dependent on the extent to which the private sector invests in developing new void capacity, but a number of commentators have identified that there is a prospect of available landfill capacity in London and the South East being used up in 5-7 years. At that time, material for landfill will need to be transported greater distances, increasing costs as well as providing a poorer environmental solution.
7. The Authority's procurement is designed to meet landfill allowance targets, including reducing the volume to 35% of 1995 levels by 2020. The reference project within the OBC did however assume that a volume of material continued to be landfilled as follows:

	<b>2020</b>	<b>2045</b>
<b>Waste direct to landfill (tonnes) including;</b>	<b>17,268</b>	<b>22,505</b>
- rejects from windrow composting	546	619
- rejects from MRF	4,430	4,898
- rejects from AD	6,381	7,183
- MBT residue	95,376	104,482
<b>Process residues/rejects (active) (tonnes)</b>	<b>106,733</b>	<b>117,181</b>
<b>Bottom ash to landfill (inert) (tonnes)</b>	<b>6,628</b>	<b>7,260</b>
<b>Fly ash land filled (active) (tonnes)</b>	<b>11,782</b>	<b>12,907</b>
<b>Total landfilled (tonnes)</b>	<b>142,411</b>	<b>159,854</b>

8. One alternative to the landfilling of this material is incineration together with the vitrification of the fly ash produced from the incineration process. The annual gross cost of adopting this approach – illustrative of what a 'zero waste to landfill' policy might mean - is £15.3m in 2020 and £17.1m in 2045.

9. The Authority could be supportive of any national and regional policy moves towards 'zero waste' to landfill providing the timescales allow for the development of new treatment capacity and the policy allows for a small residual amount of material (for example, fly-ash which can only be disposed of expensively), which amounts to approximately 1%, going to landfill.
10. The mechanisms available to the Government to deliver any 'zero waste' to landfill policy include:
- Regulation that bans the landfilling of certain types of waste from a pre-determined date – this could be applied to untreated waste, 'active' waste, or particular types of waste – e.g. kitchen waste;
  - A continuation and extension of the landfill allowances framework;
  - A continuing use of the landfill tax framework;
  - More demanding requirements for the recovery of packaging by producers of goods;
  - A combination of two or more of these approaches.
11. A regulatory approach is a blunt instrument that does not allow for detailed judgements about the extent to which different approaches could sensibly be adopted on diversion. It is also an approach that Government does not appear to be favour. On the 8 September 2010, the Government published a response to a consultation on the possible introduction of bans on the landfilling of certain wastes. The Government has concluded that "it is not minded to introduce further landfill restrictions in England at this stage, but will consider how best to make progress towards the objectives of zero waste to landfill as part of the Review of Waste Policies, due to conclude in Spring 2011".
12. As an approach that is applied only to the public sector, landfill allowances have the potential to disadvantage any public sector support on the diversion of commercial waste from landfill as local authorities must recover the full costs of managing commercial waste including any provision for landfill allowances. It may also leave public authorities with a potential liability that it is not well placed to manage. A landfill allowance approach does not appear to work well unless it is equally applied to private sector waste management operations.
13. The packaging recovery system potentially reduces the burden on local taxpayers associated with waste disposal costs and transfers it to consumers. It also encourages the producers of goods to fully explore market development and design work to re-use recycled materials.
14. Landfill taxes are a proven means of achieving progress towards minimal landfill and a clear Government signal of increasing landfill taxes in real terms beyond 2014-15 of a similar amount to that proposed for the period up to 2014-15 – taking landfill tax to around £120/ tonne by 2020 would be sufficient to deliver the policy intent as it would make many treatment processes more economical than landfill. The difficulty with this approach is that Government have moved away from using the funding generated by higher landfill taxes to support more sustainable waste solutions and the infrastructure that is required. The Authority supports a landfill tax approach to zero waste providing

the funding generated in the medium term is used to support more sustainable waste solutions and the move to a zero waste to landfill does not impose a new burden on local authorities and consequently on local council taxes.

## **Anything else?**

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

On 13<sup>th</sup> January 2011, the Institution of Civil Engineers (ICE) launched its 'The State of the Nation: Waste and Resource Management' report. State of the nation reports have been produced each year by the ICE since 2000. Produced by panels of experts drawn from across the ICE membership the reports have focussed on a range of different issues with the aim of stimulating debate and highlighting the actions that the ICE believes are needed to improve the nation's infrastructure and associated services.

There is merit in looking to the three main recommendations from this report which are:

- Continue to increase the quality as well as the quantity of recycled and recovered materials. - The ICE report urges that future targets and incentives should focus on delivering both quantity and quality to ensure that the UK maximises the environmental and economic benefits of recycling by meeting the increasingly stringent quality standards demanded by end users of materials.
- Government must facilitate private investment in waste and resource management infrastructure. – The ICE report argues that central government and the devolved administrations must focus on creating a policy, regulatory and commercial environment that encourages private investment in infrastructure serving all of the UK's waste streams.
- Ensure the UK has a waste and resource management infrastructure that can adapt to the changing demands that will be placed upon it. In particular the report suggests a changing emphasis away from diverting material from landfill towards energy and materials security and ultimately climate change mitigation in addition to adapting to changes in the quantity and composition of waste.

The report urges the government to overhaul its efforts to divert waste from landfill in order to prevent local authorities building up piles of low-quality reusable material with little commercial value. The report claims that local authorities, under pressure to increase recycling rates in order to avoid exceeding their landfill allowances, are prioritising 'quantity over quality', leading to increasing levels of recycled material such as paper, glass and plastics that are in no state to be reused commercially. The ICE urges the government to revisit the current strategy, which has led to UK waste firms exporting large quantities of low grade material for recycling overseas, and instead develop a "circular economy" for the sector where high grade recovered and recyclable materials are processed for reuse in the UK.

The report also recommends the government draws up a National Policy Statement underlining the national need for waste infrastructure in order to reduce planning delays and boost private investment in non municipal waste management facilities.



"The UK needs to make private investment in resource management infrastructure a much more attractive proposition," said Jonathan Davies client portfolio manager at SKM Enviros, launching the report. "It's been estimated that between £10bn and 20bn needs to be spent in the next decade [on this] and if we're not asking government for the cash then we need to make it easier and more attractive for private finance to invest in this essential aspect of infrastructure."

Among the recommendations, ICE also urges the government to draw together waste management responsibilities from across departments by creating a single Office for Resource Management which would to act as a focal point for decision making and accountability.

It additionally calls for better data collection for waste tonnage and recycling capacity. At the launch Jonathan Davies warned that the lack of data can hinder investment because potential buyers cannot assess the scale of their projects and the potential returns.

Copies of the report The state of the nation: waste and resource management (1.6 MB) can be downloaded from ICE's website at:

[www.ice.org.uk/getattachment/7ef32912-12e4-4e98-9615-976dc8915587/State-of-the-Nation--Waste-and-Resource-Management.aspx](http://www.ice.org.uk/getattachment/7ef32912-12e4-4e98-9615-976dc8915587/State-of-the-Nation--Waste-and-Resource-Management.aspx)

Annex documents:

1. The costs of not implementing the environmental acquis, available at: [www.ec.europa.eu/environment/enveco/economics\\_policy/](http://www.ec.europa.eu/environment/enveco/economics_policy/)
2. The economic benefits of environmental policy, available at: [www.ec.europa.eu/environment/enveco/economics\\_policy/](http://www.ec.europa.eu/environment/enveco/economics_policy/)
3. Environment and the Single Market, Final Report to the European Commission, available at: [www.ec.europa.eu/environment/enveco/economics\\_policy/](http://www.ec.europa.eu/environment/enveco/economics_policy/)
4. Carrier bag case studies, available at: [www.wrap.org.uk/category/subject/carrier-bags](http://www.wrap.org.uk/category/subject/carrier-bags)
5. Courtauld Commitment Case Studies, available at: [www.wrap.org.uk/category/initiatives/courtauld-commitment](http://www.wrap.org.uk/category/initiatives/courtauld-commitment)
6. Home Improvement Case Studies, available at: [www.wrap.org.uk/content/home-improvement-sector-commitment](http://www.wrap.org.uk/content/home-improvement-sector-commitment)
7. Info sheet Easter eggs, available at: [www.wrap.org.uk/retail](http://www.wrap.org.uk/retail)

## **Northern Ireland Environment Link**

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 62 Full Members represent over 90,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

These comments are made on behalf of Members, but some members may be providing independent comments as well. If you would like to discuss these comments further we would be delighted to do so.

Northern Ireland Environment Link (NIEL) welcomes the opportunity to comment on this crucial issue of the balance of competences between the EU and the UK in the area of environment and climate change. By way of introduction we would emphasise that, whatever the advantages and drawbacks of EU membership and competence in other areas of policy, in the environment there are many benefits for the UK.

Should the UK choose to disengage from the EU it is far from clear that any advantage would be gained even if the goal is to avoid the influence of European policy in this area. EU legislation, however, should be focussed on outcomes for the environment – the environment should benefit based on a clear understanding of what the legislation is intended to achieve (rather than the target not being met due to burdensome bureaucracy and lack of clarity).

Specific consultation questions are answered below.

### **Advantages and disadvantages**

*1. What evidence is there that EU competence in the area of environment and/or climate change has:*

*i. benefited the UK / your sector?*

A key advantage of EU competence in the environmental sector, in terms of environmental directives and legislation, is that it provides external accountability in environmental

protection. In the 1970s and 1980s, the UK carried the reputation of being the 'Dirty Man of Europe' – EU membership has *driven* major changes in UK environmental policy, requiring a shift in policy style and goals (see, for example, Jordan 2002<sup>261</sup>, Wurzel 2005<sup>262</sup>).

A recent example of where external accountability has been important is seen in the ban of Neonicotinoid by the EU (where UK government had dismissed the issue). The European Food Safety Authority (EFSA) was able to identify unacceptable levels of risk to honeybees from some uses of these substances, as well as critical data gaps preventing a full risk assessment for other species and uses (report published in January 2013).

A clear benefit of EU competence to the UK has been in the farming sector. Without EU CAP support, farming in the UK (and particularly NI) would not be able to function as it currently does.

While the principle of subsidiarity is fundamental to the functioning of the European Union, application at a regional level can be inconsistent and irregular – the quality and consistency of EU legislation is to be valued. The consistency of EU competence is good for NI especially because of the land border with another Member State. EU legislation can act as a leveller in this context, where differences in law and market values across the border would create problems.

The damage to the underwater natural habitat in Strangford Lough provides an example of EU impact when local competence was not enough to secure cross-departmental action, but where the possibility of EU competence stimulated some necessary action, albeit too late to avoid significant damage to protected species and habitats (a detailed case study on Strangford Lough will be submitted by one of our members).

It is clear that UK wildlife has been protected and enhanced by EU policies (under the Natura 2000 and Habitats Directives that oblige the UK government to provide protected wildlife zones). NI has also seen environmental improvement in a number of important areas under EU policies and Directives which would have been otherwise unachievable. Other examples include:

- Nitrates Directive (91/676/EEC)
- Water Framework Directive (2000/60/EC)
- EIA Directive (85/337/EEC)
- Public Participation Directive (2003/35/EC)
- Birds Directive (2009/147/EC)

The importance of EU regulation is particularly significant for trans-boundary environmental issues (for example, air quality, marine, migratory species). Global nature of some of these issues means that they need to be dealt with at a high a level as is possible – preferably global, but at least EU.

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<sup>261</sup> Jordan, A. 2002. *The Europeanization of British Environmental Policy*. Basingstoke, Palgrave Macmillan.

<sup>262</sup> Wurzel, R. 2005. *Environmental Policy-Making in Britain, Germany and the European Union*. Manchester, Manchester University Press.

*ii. disadvantaged the UK / your sector?*

The 'one size fits all' approach can sometimes bring about unintended negative outcomes for the environment. For example, in the past, CAP has treated all regions in the same way. The NI farmed landscape has suffered from policies designed to tackle issues associated with the spread of large scale intensive practices prevalent elsewhere in Europe because the Northern Irish farming landscape (small and fragmented) is very different from, for example, Germany. Similarly there have been considerable problems arising from CAP field boundary measurements in NI, where farmers have removed habitat to ensure they received their Single Farm Payment – this poor outcome for the environment happened as a result of how boundaries were measured and CAP was administered. Thus, there needs to be appropriate flexibility in recognition of different conditions in different member states, and a mechanism to resolve perverse and unintended consequences such as the one described above.

While EU legislation is of high quality, the slowness with which it is implemented can lead to problems. For example, a bioethanol production requirement was introduced in legislation to drive renewable fuel, but slowness of implementation means that it is now recognised to be the wrong technology and implementation could be counterproductive in terms of overall sustainability and development of appropriate renewable technologies delivering positive environmental outcomes.

Variation in definitions of technical terms at different administrative levels can sometime bring about misunderstandings and lead to variable implementation of EU legislation (for example, the new Waste Framework Directive changing definition of 'waste' slightly).

Northern Ireland can have a tendency to lose out because the UK government does not always bear in mind the unique aspects of Northern Ireland when negotiating at an EU level, and policies promoted by DEFRA may not be relevant or beneficial to the local situation.

**Where should decisions be made?**

*2. 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?*

Some issues should ideally be dealt with at a global level – for example, climate change, shipping, energy. However, if this is not possible (due to lack of international consensus), then they should be taken at as high a level as is possible (EU).

**Internal market and economic growth**

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

An advantage of EU competence is clearly that it provides a 'level playing field', which is critical for industry. Sometimes inflexibility in implementation of EU legislation can disadvantage NI (an unintended consequence of devolution is that DEFRA can focus on England when representing the UK to the EU).

Different interpretations, and lag time in implementation, of EU legislation in different Member States can lead to competitive disadvantage to those who interpret most strictly (for example, disparity in speed of implementation of battery hen cage ban across Europe, or the lack of prompt and uniform implementation of Directive requirements.)

Business expert Roger Carr has said, "UK membership provides unfettered access to a single market of 500 million people, which today is our largest export customer. Departure would necessitate multiple bilateral agreements, frustrate free trade and damage our export performance in the medium term. Growth in new markets, however rapid, could not compensate for the inevitable decline in European activity".

#### *4. 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?*

NIEL strongly feels that framing the environment and the economy as being at odds is fundamentally wrong and is likely to result in both becoming diminished. The environment (including associated legislation) can and should work with the economy, rather than against it. The EU recognises this in, for example, the content of roadmaps for a Low Carbon Economy and Resource Efficiency.

EU legislation and associated targets can drive innovation – and importantly, the EU can provide support in meeting those targets (through, for example, the LIFE programme and Structural Funds). For example, EU renewables targets have led to significant economic activity and potential:

- In a 2008 report, *Northern Ireland Renewable Energy Supply Chain*, the Carbon Trust estimated that as many as 33,000 jobs could be created in the renewables sector.
- The Green New Deal Group demonstrated how 10,000 – 15,000 jobs could be created in retrofitting homes with energy efficiency measures.
- In the city of Freiburg, Germany, around 10,000 jobs have been created in the renewables and environmental services sector. Over 300,000 jobs have been created in the German renewables sector.
- Evidence for growth of the sustainable building industry in UK (even during recession) is given in the following report: [www.worldgbc.org/files/1513/6608/0674/Business Case For Green Building Report WEB 2013-04-11.pdf](http://www.worldgbc.org/files/1513/6608/0674/Business_Case_For_Green_Building_Report_WEB_2013-04-11.pdf)
- The report, *Low Carbon and Environmental Goods and Services: an industry analysis*, from the Department of Business, Enterprise and Regulatory Reform estimated the Northern Ireland market value of Low Carbon Environmental Goods and Services to be £3.3 billion with 1,620 companies employing 30,600 people.

As stated above, EU targets are often the stimulus for such activity (which is unlikely to be undertaken on a purely voluntary basis).

## **Doing things differently**

*6. 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?)*

NIEL suggests that building review clauses (periodic or triggered by some safeguarding mechanism) into new EU legislation may be an important way of introducing flexibility to deal with the likelihood of climate change driving significant landscape and habitat change. EU governance structures related to the EU Biodiversity Strategy already include expert groups that could advise on such reviews.

In this context of changing climate having consequences for landscape, habitat and species, a better measure of success in judging outcome would be favourable conservation of a species or habitat, rather than designation by geographical area.

Some previous pieces of legislation may need revisiting and updating – for example, the Urban Waste Water Directive is very rigid and somewhat out of date. As technology and testing develop the ability to detect ever lower amounts of various substances means that having a 'zero' target is no longer pragmatic.

*7. How far do you think the UK might benefit from the EU taking:*

*i. More action on the environment/climate change?*

Strong regulation from the EU on issues around climate change would result in greater positive action being taken. For example, if there was an EU Climate Change Directive, NI would be required to actively play its part in emissions reduction rather than its current passive role within UK legislation. The UK and NI governments would be less likely to risk NI inactivity leading to infraction of such a Directive.

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

The UK should attempt to gain from the benefits of being an 'early adopter' (through recognition of direction of travel in policy and new legislation) rather than suffer the problems of having committed to outmoded technology and standards.

*9. a. 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?*

The EU has much greater negotiating power than any one country and is able to make its position and aims heard and taken seriously.

*b. How important is it for the UK to be part of “Team EU” at the UNFCCC?*

The EU carries more weight in UNFCCC negotiations than the UK would acting alone -  
See more at:

[www.cer.org.uk/publications/archive/review-article/2013/eu-and-climate-change-policy](http://www.cer.org.uk/publications/archive/review-article/2013/eu-and-climate-change-policy)

### **Future challenges and opportunities**

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

Public and political understanding of the environment and the ecosystems services that it provides – in terms of the flow of benefits from the environment to society. Setting environment against economy and vice-versa must stop – directives and legislation can be used to benefit both.

EU needs to lead the way on Payments for Ecosystems Services (PES). By adopting this approach there is the greatest likelihood that ecosystems will be enabled to deliver a multitude of services and decrease a number of local costs (e.g. flood control, water purification, soil erosion). With an EU lead it will be much easier for all countries to adopt a coordinated approach and deliver ecosystem services across national boundaries.

*b. 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?*

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

The concept and importance of ecosystem services is already embedded in EU environmental policy – there is benefit to the UK of this being addressed at EU because of the wider pool of expertise across Europe and the strategic / coordinated approach that this can bring in terms of meeting the needs of society across member states.

### **Anything else?**

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

In conclusion, NIEL would emphasise that many of the UK’s most important environmental policies – those that keep tourist destinations clean and attractive, those that maintain air and water quality, those that provide business opportunity – come from membership of the EU, and associated EU power to act in these areas. Only through engagement and cooperation at EU level can we rise to the environmental and economic challenges that we face.

Many environmental issues require sustained action over a long period. The stability of EU policy can be particularly valuable in this context. It is relatively resistant to local political

fashion, changes in government at UK and devolved levels, and can offer sufficiently stable conditions to consolidate environmental progress.

## **Northern Ireland Food and Drink Association**

### **Introduction**

The Northern Ireland Food and Drink Association (NIFDA) is a voluntary organisation committed to helping Northern Ireland food and beverage companies compete successfully and to represent and promote their interests. It was established in 1996 to provide services to enhance, promote, inform, educate and develop member business. We represent approximately 80% of the Northern Ireland Food and Drink manufacturing sector by turnover (approximately 60% by employment).

### **Question 1**

NIFDA is of the view that the Balance of Competence is largely, currently correct, specifically in the areas of environment and climate change. The concept of a level playing field is particularly important to us as Northern Ireland is exposed to an Euro Border. There have been no specific disadvantages caused by Europe; however, significant problems have been created by different interpretation of EU Rules by different jurisdictions, specifically NPK sensitivities in Northern Ireland vis-à-vis rest of UK and RoI.

### **Question 2**

The national interest would be better served if we had similar priorities with EU. E.g. the EU is significantly interested and concerned about food production. This is evidenced in CAP, PDI and PDO legislation, Food Safety legislation and the general seriousness with which food and agri-food related issues are dealt with.

By comparison DEFRA had reduced its support for Food from Britain, and by implication food in general. There is still a need for a forum to take forward industry issues in the UK. Recently the Minister's increased focus on food is to be applauded. In our view much more needs to be done to support the UK National Food Interest.



In our view, the weak link in EU environmental regulation is not at the policy development and formulation stage, but at the national and local level, where politicisation and Agency whim in interpretation can discredit the level playing field laid out at the EU level. The solution is not a distancing from the EU system of legislation, but to remove the levels of bureaucracy between business and EU, creating a greater understanding between UK business and other member states.

### **Question 3**

The concept of a level playing field across Europe is vital to allow industry to trade freely and also is a vital part of Article 101 of the Treaty of Rome. Local interpretation particularly by over zealous Civil Servants is causing problems and economic distortions around the environment and the cost of management and implementing environmental legislation.

### **Question 4**

The EU development of policy in our view is the preferred route as the broad platform of many countries agreeing a direction together balance out national interest and ensures that a global view is taken of the direction the environment must move in. It is important that significant economic disadvantages are not created and EU has more scope to achieve this than UK.

### **Question 5**

EU Legislation is focused on outcomes although we are concerned about East/West differentials and North/South differentials from a Northern Ireland perspective e.g. on electricity. Electricity differentials are primarily driven by renewable or environmental costs and we are aware of the 16% differential between Northern Ireland and RoI. Other specific differentials are the spreading of sludge contents from ruined animals were one

set of rules are applied in Northern Ireland and a different set of rules in GB Mainland and a third set of rules in RoI. Yet in theory all three are based on common EU directives.

Another instance in EU directives being interpreted differently relates to a specific issue for the Red Meat Processing Sector. The devolution of powers to the regions, created disparity in the environmental regulation of 'Sludges from Effluent Treatment plants from Red Meat processors'. In England and Wales, and in the Republic of Ireland, abattoirs were allowed to land spread this material for agricultural benefit without any further treatment. In NI, this practice was outlawed, resulting in an additional cost to the industry of c. £70 per tonne. Considering the industry in NI produces around 15,600 tonnes per annum, it puts the NI industry at a cost disadvantage of around £1M per annum.

### **Question 6**

The EU trading scheme and energy carbon policy should provide less room for national tinkering with implementation and should be more clearly outlined in the simplest way possible as to how to implement and exercise.

### **Question 7**

As an industry heavily regulated, notably by IPPC legislation, we have seen huge variance in standards of regulation within and between jurisdictions. We believe a great deal could be learnt by regulators through working across jurisdictions to observe regulation in different member states. This may reduce the sometime myopic approach of UK regulators, with no concept of how business operates elsewhere. While the BREF guidance documents compare best practice across the red meat sector across Europe, individual regulators have no other concept of how good UK businesses often are in comparison to European counterparts. This an area within which the UK could broaden its competence through exchange of knowledge for those undertaking day to day regulation.

### **Question 8**

NIFDA believes that significant improvements could be made through closer understanding of EU Directives. DEFRA should play a more significant role in harmonisation and simplification of UK interpretation of those rules. In addition given the commitment by the Prime Minister to better UK/ROI co-operation thought should be given to how to improve harmonisation.

## Question 9

### Energy & Carbon Directive adoption and interpretation

- 9.1 Advantages & Disadvantages section  
Disadvantaged by the interpretation and implementation of Climate Change reduction directives insofar as we are currently operating in two carbon reduction programmes in UK, with a further two coming into our scope by 2015.
- 9.2 These programmes require different approaches to emissions reductions with energy efficiency a focus for one of the programmes CRC and decarbonisation a driver for EU ETS, CCA's target efficiency but credit is available for renewable fuels which decarbonise but do not necessarily improve operational efficiency. Perversely CRC and in some areas of CCA's such as Photovoltaics (PV) no credit is given for self generated renewable electricity from PV.
- 9.3 The Energy Savings Opportunity Scheme is currently out for consultation, it's primary objective is to legislate for organizations within scope to conduct energy audits proposed to be by independent parties, this activity is a precursor to investment in renewable or efficiency projects. Therefore adding legislation and cost to ensure this has been undertaken adds more administrative and cost burden to business.
- 9.4 Overall the various programmes create investment decision problems for business because as a business we need to achieve the optimum ROI whilst meeting stakeholder requirements on Climate Change and emissions management, the current batch of legislative programmes provides an unclear direction for investment which is driven by best ROI and cost of carbon within the various schemes.

### EU ETS – Carbon Cap & Trade Scheme

EU ETS is a pan European Carbon trading scheme. The Scheme has been a failure for most of its life, now in its third Phase 2013 -2020.

UK interpretation has disadvantaged food production because Carbon Leakage, where companies with certain processes which could be transferred outside Europe continue to

receive FREE carbon credits, indeed if the company improves its efficiency it can sell the free credits and create a profit from the scheme. This is because if the process was displaced from Europe to anywhere else in the world the carbon emissions would still be emitted. Therefore the free credits are an incentive to remain in Europe. Food is not considered to be a process which could be produced and imported to Europe; therefore in Phase 111 of this Scheme we lose half of our existing free credits over the seven year period, with a significant cost impact, depending on the auction price of EU ETS carbon.

The cost of EU ETS carbon has fell dramatically over recent years; Europe has been attempting to prop the price up by interfering with one of the key principles of the scheme. Voting in EC has taken place to withhold millions of carbon credits within the EU to drive the price up; this was voted against, then modified and voted on again in July, with a final decision due in September with implementation by year end. This scenario leaves businesses caught in multiple schemes in a quandary – which scheme does one invest in to meet objectives and minimise cost of carbon!

#### **Question 10a**

The increasing pressure by human demand for water, food and energy resources will mean that environmental protection and climate change will be economically significant in the future. It will therefore be vital that global standards are developed that are fair and reasonable and do not create distortions of trade.

#### **Question 10b**

In our view standards must be set internationally, ideally globally and interpreted uniformly locally. This presents us with the best opportunity for growth.

#### **Question 10c**

NIFDA members own companies on both sides of the international border between Northern Ireland and the Republic of Ireland we are acutely aware of the impact of differential policy decisions of different jurisdictions on daily operations.

The first such arena in which we see these differences is in terms of electric charge paid. Due to UK policies on climate change, and additional levies on the use of energy, our NI business pays 16% more than a similar operation in the Republic of Ireland. This works out in this one instance at >£120,000 per annum.

## **Question 11**

NIFDA is grateful for the opportunity to feed in our views. NIFDA would also like to thank DEFRA for organising a meeting in Northern Ireland with the industry.

## **Northern Ireland Local Government Association**

### **Advantages and disadvantages**

*1. What evidence is there that EU competence in the area of environment and/or climate change has: benefited/disadvantaged the UK / your sector?*

- NILGA has been very proactive in engaging with the EU and supporting our member councils and councillors to engage. We are making best use of the limited resources available to do this. For example, our incoming President, Ald Arnold Hatch, recently acted as Rapporteur for the Committee of the Regions in relation to its 'Marine Knowledge 2020' report.
- We share office facilities with our sister UK LGAs in Brussels and support elected members to attend meetings of relevant bodies such as the Committee of the Regions and CEMR. We support our members on EU funding monitoring and steering committees and we negotiate with government departments for better EU funding settlements for Northern Ireland.
- EU competence for the environment and climate change provides tangible benefits to Northern Ireland and the UK, such as the creation of a 'level playing field' across the EU, allowing for consistent improvements to the environment. This is particularly important for businesses trading internationally.

- An EU driver assists councils to ensure that standards applied locally are consistent with those applied elsewhere, and also enables standards to be set for issues that would not work at national level; for example air quality issues can be cross-border.
- It is evident however that a one-size fits all approach can be disadvantageous. For example, the Nitrates Directive was much more suited to countries that are hotter and drier than the UK
- EU competence for the environment and climate change is of overall benefit to Northern Ireland, as EU competence offers a greater degree of environmental protection than national law. It comes from a higher level and is more influential due to the potential for infraction fines for failure to comply with, or enact, Directives at national level; a failure which would cause national embarrassment.
- Some aspects of environmental protection have improved significantly as a result of EU influence, e.g. air quality and waste management. Where an EU driver does not exist it can result in legislation either not being made or not being brought into force, e.g. the contaminated land provisions for Northern Ireland contained in Part 3 of the Waste and Contaminated Land (NI) Order 1997 have not yet come into operation. The only likely EU driver for these is the Soil Framework Directive – a proposal for this remains stalled at EU level.
- On the other hand the UK's Climate Change Act 2008 contains more challenging carbon reduction targets than required by EU Decision 406/2009/EC. Furthermore the UK Climate Change Risk Assessment Process and Adaptation Plan go beyond any EU requirement.
- Local action and national action has improved the environment. Belfast introduced air quality legislation in the 1960s, pre-dating the EU. The UK Climate Change Act goes beyond EU law and is at the forefront of international legislation. This is evidence that the UK can bring about positive change on its own. e.g. the UK's targets are higher than the EU's 20% reduction in greenhouse gases by 2020. Northern Ireland is about to exceed the renewable energy target, having reduced emissions from 900g per kw/hour to 415g per kw/h in 30 years.
- EU legislation can be overly prescriptive. There is a need for Member State flexibility and regional flexibility to tailor policies to local issues. Inflexibility and/or complexity of legislation can lead to a failure to achieve the intended outcome. In some instances however, the EU legislation is quite straightforward, and complicated by the UK Government, making the process longer and more complicated at a local level of implementation.
- There remains competitive disadvantage across the EU. The EU municipal recycling target is for 50% recycling, with countries such as Austria and Germany at

62-3%, with the UK lagging behind. The costs to local government to reach this and future targets will be enormous.

- In Northern Ireland, where councils are traditionally more financially independent of central government, one major disadvantage of being required to comply with EU policy, through locally applied legislation, is the reluctance of the NI government to adequately financially support the legislation that councils are responsible for implementing. For example, there is a huge disparity between funding for waste management between e.g. Wales and Northern Ireland
- Overall it is felt that EU competence in the area of environment and climate change has been of benefit in bringing forward legislative requirements that could have been blocked by local political intervention or in complementing action already taken by Member States at national level. These requirements enable a long term view to be taken.

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

*2. How would the national interest be better served if decisions currently made at EU level were made at national/regional/international level or vice versa?*

- Climate change action would be best done globally. However, because agreement cannot be reached at global level, EU level agreement is better than national level agreement.
- Competence at an international level is important for trans-boundary issues and migratory species.

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

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

*4. 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?*

- It is acknowledged that EU environmental standards are necessary for the proper functioning of the internal market.
- It is the case in Northern Ireland, that the economic opportunities presented by EU legislation on the environment and climate change have not been maximised to date.

#### **Current legislation**

*5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:*

*i. focused on outcomes (results)?*

*ii. based on an assessment of risk and scientific evidence?*

- Whether EU legislation should be focused on outcomes (eg Water Framework Directive) or prescriptive depends on the subject. A more prescriptive approach minimises interpretation issues and arguably ensures greater compliance. Against this, it does not provide much flexibility (eg application of Industrial Emissions Directive requirements to smaller UK farms and much larger installations in mainland Europe).
- An evidence base for legislation is always necessary, particularly to assess risk and scientific evidence, but also to ensure that variations between member states are taken into consideration.
- Legislation needs to be outcome-focused when appropriate to enable effective implementation at the local level and to be able to adapt to changing circumstances.
- A key issue remains member state interpretation of Directives, which for example, in the case of waste management, has led to disparities between member states in relation to what can be defined as 'recycled', creating a variation in reported progress towards and beyond targets.

### **Doing things differently**

*6. How could the EUs 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?)*

- There is a need for more flexibility to ensure emerging technology can be taken into account.
- There should be more review and feedback opportunities to improve EU legislation, e.g. every 5 years.
- Current EU legislation lacks a mechanism to take into account disproportionate costs, and this is particularly important for member states that are 'playing catch-up' on issues.
- The various reporting cycles in relation to EU Directives can be burdensome and it would be useful to have these standardised.
- A reduction in duplication would be helpful, for example, Energy producing businesses have to comply with the EU Emissions Trading System, Carbon Reduction Commitment, and European Standards Organisations along with other



internal targets. The UK government is working on Better Regulation principles at national level and this approach could be extended to the EU.

7. *How far do you think the UK might benefit from the EU taking more/less action on the environment and climate change?*

- A robust cost-benefit analysis should provide part of the evidence base for any new EU action.

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

- Voluntary action is not a practical alternative to legislation as it is optional and unenforceable, however voluntary action works in some instances to help meet specific EU targets, e.g. voluntary work done by Ulster Wildlife Trust to help meet the requirements of the Habitats Regulation; the Courtauld Commitment (a voluntary agreement aimed at improving resource efficiency and reducing the carbon and wider environmental impact of the grocery sector).
- The UK should work with other member states to ensure that there is a 'level playing field' in relation to the interpretation of targets. The UK has a reputation of being less flexible in application than other member states, and whether or not this is the case, efforts must be made to ensure that the UK is not taking an excessively severe approach compared to other EU nations.

9. a. *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?*

- No Comment

b. *How important is it for the UK to be part of "Team EU" at the United Nations Framework Convention on Climate Change (UNFCCC)?*

- Important, particularly as the UK has led on Climate Change targets.

### **Future challenges and opportunities**

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

b. *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?*

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

- The economic downturn is ensuring that viewing materials as waste is changing rapidly to viewing the same materials as a valuable resource. Additionally, less waste is being produced. This is having an increasing impact on the ability, particularly of councils, to meet the targets contained within the Waste Framework Directive, which are weight

bases. It would be beneficial if the EU started using a carbon metric to set targets as an alternative.

- More attention must be paid to adaptation for climate change, and to assist other nations globally to mitigate and adapt. Potential mass population shifts and conflicts related to food and water supplies outside the EU could have a massive cost implication for member states. Food security is an issue that must be considered at national and EU level.

### **Anything else?**

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

- Northern Ireland is the only part of the UK to share a land border with another EU member state, i.e. the Republic of Ireland.
- There have been some issues caused by the implementation of different systems in Northern Ireland and the Republic of Ireland (RoI) e.g. illegal cross-border waste disposal, fuel duty as a tax.
- Another example was the different interpretation of EU rules on the spreading of slurry, with Northern Ireland interpreting that spreading was not permissible. This was incredibly costly to Northern Ireland as it was allowed in the RoI.
- It was agreed that although such issues of competition were sometimes problematic, the situation would be significantly worse without the level playing field afforded by the EU.
- There are many integrated projects and collaborative working across the two Member States.
- The EU provides security that both states are offering the same level of protection to habitats. EU standards mean that both states are discussing the same rules and requirements.
- Councils, particularly in the border areas have benefitted from funding for collaborative cross-border projects. This has resulted in the development of renewable energy, data, health and myriad of other projects on a cross-border basis.
- Losing EU competence for the environment would result in significant problems. Northern Ireland shares a 300km land border, including 3 international river basins (North-West international RBD, Shannon International RBD and Neagh-Bann International RBD) with the Republic of Ireland.
- EU competence in the area of environment and climate change gives NI Government departments a common mandate by which to operate and quells any dispute between departments.
- In addition, there are many businesses in NI that also operate in the Republic of Ireland. Trade between the two countries is facilitated by the fact that both countries are part of the EU.

## **Nulife Glass Processing Limited**

**Q1** Introduction of the WEEE Directive has been good for UK recyclers of electrical and electronic equipment

**Q2** The REACH Directive has serious implications for the use of recycled materials as the initial exemption for recovered waste materials has been withdrawn. This has introduced cost and uncertainty into the sale of recycled plastics and other secondary raw materials

**Q3** National rather than EU level targets for waste recycling would benefit the UK as the profile of waste streams, processing capability and geographical location of recycling plants is different for every EU state. Targets for recycling which are appropriate for one country may be unachievable or alternatively be too easy for other countries

**Q4** Acceptable recycling practices "best available technique" should be the same for all countries. As an example, my company recycles waste glass from cathode ray tubes (CRTs) and we are competing with companies in Germany who simply dump waste glass down a mine shaft which in Germany is considered a "recycling" activity and back-filling mines with waste is allowed. In Holland another company is allowed to use glass containing 20% lead as an aggregate to make concrete blocks. Neither of these very cheap processes are true recycling and would not be permitted in the UK so an EU wide set of rules would ensure an even playing field.

**Q5** Very important but they have to be properly enforced at a local level

**Q6** It does introduce additional cost to businesses but provided the costs are similar in every member state the net effect on UK competitiveness is minimal. There is a much more significant impact when looking to the wider market outside of the EU where environmental controls (and therefore costs) are much less stringent e.g. China and India

**Q7** The WEEE Directive has been successful in stimulating recycling of electronic equipment across the EU and although there are questions on the integrity of some of the data on how much waste has actually been recycled, it can't be disputed that recycling of electronic equipment is now happening more frequently

**Q8** There is still a lot of debate regarding climate change but I feel that a precautionary approach is better as it stimulates the development of new technology and reducing the reliance of imported fossil fuel should have a positive economic as well as environmental benefit

**Q9** More consultation with stakeholders in each country when new Directives are being drawn up. More consistent application of the rules when Directives are translated into country specific regulations.

**Q10** This would be good if it means a more consistent application of the rules across the EU to create an even playing field.

**Q11** It is important the UK works to the same environmental rules as the rest of the EU so I would see this as a backward step

**Q12** The UK does seem to implement EU Directives to the letter of the law when other countries take a more relaxed and flexible approach to the rules. The UK should not "gold plate" the implementation of EU Directives

**Q13** If the EU has a reduced role in international agreements then the duty falls on the individual member states. This would mean a lot of duplicated effort and cost and the potential that some member states would decide to opt out of agreements leading to an uneven playing field which could disadvantage the UK. For example, if a country decided not to sign up to an EU Directive banning export of hazardous waste outside of the EU, they could then distort the recycling market by shipping material to India and China for low cost processing

**Q14** Very important, the UK's views need to be heard in this forum

**Q15** The UK Government targets for renewable electricity generation are pushing up costs for domestic and industrial users. The ease with which companies can get planning permission for wind farms means there is little incentive for them to invest in R&D on alternative generating technology. I believe that some EU member states will use their perilous economic situation as an excuse for not meeting EU targets for the environment and climate change.

**Q16** There must be a consistent application of the rules so every country in the EU must work to the same high standards as the UK. The only way this can be achieved is for the EU to issue directives which are watertight so that there is no room for member states to interpret and water down the directive when it is translated into national regulation.

**Q17** This is impossible to quantify without a more tightly defined question

**Q18** /

## **onePlanet Solutions Limited**

### **Introduction**

1. onePlanet Solutions Limited is an environmental consultancy with experience in the environmental and sustainability field with specific expertise in legal compliance and the use of accredited certification and environmental management systems to deliver enhanced environmental performance.
2. The consultancy has operated on a number of environmental projects within the European Union with experiences, which are directly relevant to the balances of competence review.

3. The opportunity to explore the balance of competencies in relation to environmental and climate change issues between the United Kingdom as a constituent Member State and the European Union is welcomed.
4. onePlanet Solutions Limited would be happy to discuss the issues raised in this response with Defra and DECC officials, if that would be helpful. onePlanet Solutions Limited is happy for its response to be published and we will be making our response available on our website.

### **Advantages and Disadvantages**

5. The benefits of EU competence in these areas has benefited the United Kingdom through consistent environmental legislation with other Member State particularity with our experience in the transfrontier shipment of waste and the relevant controls to ensure effective their management, hazardous waste management, registration systems for poly-chlorinated biphenyls (PCBs) and the EMAS Regulation.
6. The disadvantages to the United Kingdom have largely arisen through the late engagement of the United Kingdom with the EU legislative development or been slow in recognising the specific requirements, such as the case for the degassing of refrigerants from domestic fridges and freezers, due to the perception that EU legislation should be implemented without “gold plating”.

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

7. The national interest is best expressed within the European Union through effective resourcing of negotiating process for the development or amendment of EU legislation. At present, the United Kingdom has less engagement with the legislative process through its representation within the European Commission than at any time since our entry to the European Communities. This resourcing together with specialist technical experts from relevant industries should be used to develop a greater UK voice within this process.
8. The engagement of the United Kingdom at other national, regional and international levels have their place in our national representation at these levels but the most effective engagement can be made through the European Union and the European Commission.

### **Internal Market and economic growth**

9. The development of EU environmental standards are essential for the proper functioning of the internal market as legislation is moving from “end of pipe” measures to impact at the design and development stages of the product lifecycle, such as the RoHS (Restriction of Hazardous Substances) and WEEE (Waste

Electrical and Electronic Equipment) Directives. These measures affect our engagement with the European Union, whether we remain a Member State or act as a trading partner outside of the European Union.

10. The balance between the protecting the environment and the wider UK economic interest is not mutually exclusive and the development of EU legislation is desirable with the full engagement of the UK Government and economic interests to provide that balance.

### **Current legislation**

11. Current legislation is focused on outcomes within the agreed European Commission's 5 year Environmental Action Plans and, increasingly, is moving towards outcome based legislation as referenced elsewhere in this submission.
12. The use of scientific evidence and the assessment of environmental risk is not an exact science and open to the influence of the wider economic situation with the UK and elsewhere within the EU. Risk factors for the marketing of certain plasticisers and the impact of pesticides on the bee population are cases in point as well as the restrictions on the storage of PCBs, which were determined outside of the EU legislative process.

### **Doing things differently**

13. As presented previously in this submission, the United Kingdom should more effectively engage with the European Commission and the legislative process to promote its national interests and to provide a balance to the environmental and economic arguments.
14. Any changes to the UK approach to the implementation of EU Directives should be made with the benefit of greater engagement at the earliest stage with the interaction of UK legal and technical experts.
15. As from our personal experience in this process, the UK is, often, represented by one technical expert in comparison to a delegation from other Member States & although the UK case is effectively presented, the weight of the arguments come from the greater representation as a delegation.
16. Increasingly the weight of representation in international forum will be more effectively made through a block negotiation process with the UK interest being marginalised unless it is part of the wider representation of the interests from the EU.

### **Future challenges and opportunities**

1. Going forward, the optimum balance between action taken at international, EU, UK and industry level to address environmental and climate change challenges and opportunities will be made within the following framework:
  - a) Early and effective engagement with the European Commission and the legislative process to promote its national interests and to provide a balance to the environmental and economic arguments.
  - b) Greater engagement at the earliest stage by UK Technical Experts and the potential interaction with the UK legal framework.
  - c) Where appropriate, use of international standards as the basis for European Union and United Kingdom legislation to promote consistent approaches.

## Open Europe

August 2013

### Introduction

In October 2008 in its report “*The EU Climate Action and Renewable Energy Package: Are we about to get locked into the wrong policy?*”<sup>263</sup> Open Europe concluded that the inflexibility of a fixed target for the production of renewable energy would lock the UK into an expensive unworkable policy while ignoring cheaper methods of reducing CO<sub>2</sub> consumption. The report predicted unintended and negative consequences due to the production of biofuels and biomass energy production from a policy that would divert resources away from the most cost effective routes to reduce CO<sub>2</sub> consumption. These predictions have, to varying extents, all come true.

If the UK is going to pursue a climate change policy, some degree of coordination at the EU level is desirable, if it can meaningfully contribute to global emission reduction – the only means of effectively combatting climate change.

However, the EU’s current climate change policies suffer from a confused mix of objectives. Rather than focussing simply on reducing emissions at the lowest cost, the EU approach has been to intervene directly in member states’ energy policy via its target for a 20% share of EU energy consumption to come from renewables by 2020.

This deadline is driving a costly push for certain types of technologies, when there is great uncertainty regarding what the optimum energy mix will be, as well as the viability and future cost of many alternative technologies currently being developed, such as, tidal/wave, wind, nuclear, carbon capture storage and the extent to which carbon savings can be made through energy efficiency.

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<sup>263</sup> *Open Europe*, The EU Climate Action and Renewable Energy Package: Are we about to get locked into the wrong policy, 2008, [www.openeurope.org.uk/Content/Documents/carep\\_new.pdf](http://www.openeurope.org.uk/Content/Documents/carep_new.pdf)

The renewable target requires the UK to shift from just 1.3% of total energy from renewables in 2005 (the baseline year under the EU Directive) to 15% by 2020 – the largest proposed increase of any member state. The Government predicts that this will come at a net cost of £66bn to the UK over 20 years. This is a huge cost given that the UK already faces a major energy generation challenge – a quarter of existing power plants in the UK are due to close by 2020 – and that Britain should be in the enviable position of being the EU’s top energy producer, largely due to North Sea oil and gas, and therefore far less reliant on energy imports than other member states. The specific constraints facing the UK along with the onerous targets it has adopted mean it finds itself in a difficult and almost unique position amongst EU member states when it comes to environment and climate change policy.

In addition, the climate agenda has been adopted as a means of establishing genuine EU ‘soft power’ in foreign policy. However, given the EU’s modest and declining share of global emissions, this is an area where the EU is always likely to have limited leverage in global negotiations – as has been patently demonstrated over the past few years.

As with other types of EU regulation, there is a danger that top-down policies do not take into account national circumstances, thereby imposing unnecessary costs that are difficult to correct via the EU legislative process.

If the EU is to have a competence for Climate Change it should be limited to setting broad targets while allowing for national flexibility to pursue the best and most cost effective way to fulfil the targets taking into account national circumstances and an individual state’s energy mix.

For the UK the best approach would be to decide on a single desired objective – such as a specified reduction in greenhouse gas emissions – and then allow the market to find the most cost-effective options and technologies.

This approach could be consistent with an emissions target agreed at the EU level.

However, the EU should not be involved in policies that tie the hands of national Governments’ in how they implement these reductions or policies that have a direct impact on a member states energy mix.

The UK should therefore seek to reduce costs by renegotiating the existing renewable energy target, with the objective of abandoning it entirely or at least downgrading its ambition.

This approach does leave some scope for the continuation of the EU’s Emissions Trading Scheme (EU ETS), although whether it can be reformed effectively remains to be seen. Currently, the ETS has many flaws which mean that it is largely unfit for purpose. That said, an emission reduction target will require some form of market price signal for carbon set through policy intervention. A thorough assessment of the ability to reform the ETS is therefore needed, but alternatives should also be considered, such as a carbon tax, which is effectively how the UK decided to unilaterally underwrite the ETS’ carbon price from April 2013.



Aside from the EU's climate and renewable energy package, the UK could explore the possibility of gaining opt-outs from the costliest pieces of other EU environmental legislation, or seek greater flexibility to address issues that have a very concentrated local impact, such as the Landfill Directive.

Due to the acute lack of generation capacity as a result of existing EU and UK climate change policies, the UK should also seek derogations from the Large Combustion Plant Directive, even if the derogation is for use only at times of peak demand.

**Call for evidence questions:**

**1. What evidence is there that EU competence in the area of environment and/or climate change has:**

**i. benefited the UK / your sector?**

**ii. disadvantaged the UK / your sector?**

There is significant evidence that the current EU approach to dealing with climate change has imposed a large economic burden on both the UK economy generally but also specifically on consumers via energy costs. Below we provide a brief roundup of some of the estimated cost impact of various EU policies.

**a) Cost estimates of the CAREP**

**Table 1: Estimates of the cost of the CAREP to the UK**

<b>Study</b>	<b>Element of EU climate and renewable energy package under consideration</b>	<b>Cost/benefit to the UK</b>	<b>Notable assumptions</b>
Open Europe (2008) <sup>264</sup>	Entire CAREP	£9bn a year cost (£11.5bn including grid connection costs).	26% of cost met through ETS and non-ETS carbon reduction and 74% of cost met through renewables.
Pöyry (2008) <sup>265</sup>	Renewables target	€5bn-€6.7bn cost a year.	
Department for Energy and Climate Change (2009) <sup>266</sup>	Cost of carbon reduction in the ETS and non-ETS sectors through UK carbon budgets	£3bn a year cost.  Net cost-benefit range of £11.4bn cost to £221.5bn benefit over 8 years (net present value).	High end of benefit range “reflects world where EU action is pivotal in achieving a global deal.”
Department for Business, Innovation and Skills (2009) <sup>267</sup>	Renewables target	£4.8bn a year cost.  Net cost of £66bn over 20 years (net present value).	Distribution of renewables: 32% large scale electricity; 8.5% heat; 10% transport; 3.5% small

<sup>264</sup> *Open Europe*, ‘The EU Climate Action and Renewable Energy Package: are we about to be locked into the wrong policy?’, October 2008; [www.openeurope.org.uk/Content/documents/Pdfs/carep.pdf](http://www.openeurope.org.uk/Content/documents/Pdfs/carep.pdf)

<sup>265</sup> *Pöyry*, ‘Compliance costs for meeting the 20% renewable energy target in 2020: a report to the Department of Business, Enterprise and Regulatory Reform’, March 2008; <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file45238.pdf>

<sup>266</sup> *DECC*, ‘Impact Assessment of EU Climate and Energy package, the revised EU Emissions Trading System Directive and meeting the UK non-traded target through UK carbon budgets – Final’, April 2009;

[http://www.decc.gov.uk/assets/decc/77\\_20090423091800\\_e\\_@@\\_euclimateenergypackage.pdf](http://www.decc.gov.uk/assets/decc/77_20090423091800_e_@@_euclimateenergypackage.pdf)

<sup>267</sup> *BiS*, ‘Impact Assessment of UK Renewable Energy Strategy’, July 2009;

[http://www.ialibrary.bis.gov.uk/uploaded/1\\_20090715120705\\_e\\_@@\\_UKRenewableEnergyStrategy2009OverallImpactAssessmenturn09D683150609.pdf](http://www.ialibrary.bis.gov.uk/uploaded/1_20090715120705_e_@@_UKRenewableEnergyStrategy2009OverallImpactAssessmenturn09D683150609.pdf)

			scale electricity.
Renewable Energy Foundation (2011) <sup>268</sup>	Renewables target	£15bn a year cost.	£8bn in subsidy, £5bn in grid integration, and a further £2bn in VAT charged on these extra costs.

Estimates of the cost of the Climate Action and Renewable Energy Package (CAREP), or elements of it, vary, illustrating the uncertainty surrounding the current and future cost of these policies.

In its 2008 report, *The EU's Climate Action and Renewable Energy Package: are we about to be locked into the wrong policy?*, Open Europe estimated that the total cost to the UK of the entire package would be £9bn a year, increasing to £11.5bn including grid connection costs.

A 2008 Pöyry Consulting report for the UK Government looked just at the renewable targets, finding that the UK would bear the greatest cost of compliance in absolute terms – around 19% of the annual 2020 costs for the whole of the EU. The UK cost of meeting the targets was estimated at €5bn-€6.7bn a year. The Pöyry report states that these figures do not include grid connection costs (which are likely to be significant), and acknowledges that “costs are likely to be an indication of minimum resource cost”.<sup>269</sup>

In 2009, the Department for Business Innovation and Skills’ impact assessment for the UK’s Renewable Energy Strategy put the cost of meeting the renewable target at £4.8bn a year (with a net present value cost of £66bn over 20 years).<sup>270</sup>

In a 2011 Parliamentary Written Answer, DECC Minister Charles Hendry gave the following breakdown of expenditure to meet the renewables target between 2011 and 2020: “The spending is estimated at £32 billion from 2011 to 2020 under the Renewables Obligation; £3.6 billion under small-scale feed-in tariffs; £9.8 billion under the Renewable Heat Incentive; and £8.9 billion under the Renewable Transport Fuels Obligation.”

In 2011, the Renewable Energy Foundation estimated that cost of the renewable target alone at £15bn a year, once extra grid connection and VAT costs are included.<sup>271</sup>

<sup>268</sup> Renewable Energy Foundation, ‘Energy policy and consumer hardship’, 2011; [www.ref.org.uk/attachments/article/243/REF%20on%20Fuel%20Poverty.pdf](http://www.ref.org.uk/attachments/article/243/REF%20on%20Fuel%20Poverty.pdf)

<sup>269</sup> Pöyry, ‘Compliance costs for meeting the 20% renewable energy target in 2020: a report to the Department of Business, Enterprise and Regulatory Reform’, March 2008, see p2 and p28; [webarchive.nationalarchives.gov.uk/http://www.berr.gov.uk/files/file45238.pdf](http://webarchive.nationalarchives.gov.uk/http://www.berr.gov.uk/files/file45238.pdf)

<sup>270</sup> This is the most costly scenario, but all of the less expensive scenarios assume that less than 30% of the target would be delivered via electricity generation. The consensus is that 30-35% of the target will need to be met via electricity generation. In a Written Parliamentary Answer on the 18 January 2011, DECC Minister Charles Hendry stated: “The UK has a legally binding 2020 target of delivering 15% of energy consumption coming from renewable energy. To meet this, it is estimated that around 30% of electricity, around 12% of heat and around 10% of transport demand will come from renewable sources.”

<sup>271</sup> Hansard, 18 Jan 2011: Column 743W; [www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110118/text/110118w0004.htm#1101192000014](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110118/text/110118w0004.htm#1101192000014)

The Department for the Environment and Climate Change in 2009 estimated that carbon reduction as a result of the revised ETS and meeting the non-traded EU emissions target through UK carbon budgets would result in a net present value cost-benefit range of -£11.4bn to +£221.5bn.<sup>272</sup> The impact assessment noted however that the most optimistic benefit assumption rested on a scenario “where EU action is pivotal in achieving a global deal” – a deal which has yet to materialise.

***b) Impact on consumers, energy prices and bills***

While the figures above illustrate the huge levels of cost involved, the impact of the CAREP on individuals and businesses through higher energy prices is also significant.

**Table 2: Estimates of the impact on households**

<b>Study</b>	<b>Additional cost to household in 2020</b>	<b>Notes</b>
Open Europe (2008) <sup>273</sup>	£130-200 a year on energy bills	
Committee on Climate Change (2011) <sup>274</sup>	£110 a year on energy bills due to low-carbon policies.	Due to support for investments in low-carbon power generation (including renewables) and with a small increase (around £10) required to support energy efficiency measures (including smart meters).
Policy Exchange (2012) <sup>275</sup>	£400 a year paid through a combination of energy bills, general taxation, and higher prices for goods and services	

The Government’s 2011 statement on its energy policies and the impact on prices and bills suggested that its energy policies would actually *reduce* the average household energy bill by 7% by 2020.<sup>276</sup> However, upon closer examination, this *average bill* figure masks the

<sup>272</sup> “The carbon savings associated with the package are valued using the shadow price of carbon. This is based on estimates of the social cost of carbon (SCC) – the marginal damage cost of incremental emissions - summed over their lifetime and discounted back to the year of emission.” DECC, ‘Impact Assessment of EU Climate and Energy package, the revised EU Emissions Trading System Directive and meeting the UK non-traded target through UK carbon budgets – Final’, April 2009, 13; [http://www.decc.gov.uk/assets/decc/77\\_20090423091800\\_e\\_@@\\_euclimateenergypackage.pdf](http://www.decc.gov.uk/assets/decc/77_20090423091800_e_@@_euclimateenergypackage.pdf)

<sup>273</sup> Open Europe, ‘The EU Climate Action and Renewable Energy Package: are we about to be locked into the wrong policy?’, October 2008; [www.openeurope.org.uk/Content/documents/Pdfs/carep.pdf](http://www.openeurope.org.uk/Content/documents/Pdfs/carep.pdf)

<sup>274</sup> CCC, ‘Household energy bills – impacts of meeting carbon budgets’, December 2011; [http://downloads.theccc.org.uk/s3.amazonaws.com/Household%20Energy%20Bills/CCC\\_Energy%20Note%20Bill\\_book%20marked\\_1.pdf](http://downloads.theccc.org.uk/s3.amazonaws.com/Household%20Energy%20Bills/CCC_Energy%20Note%20Bill_book%20marked_1.pdf)

<sup>275</sup> Policy Exchange, ‘The full cost to households of renewable energy policies: analysis of government’s annual policy statement’, January 2012; [www.policyexchange.org.uk/images/publications/the%20full%20cost%20to%20households%20of%20renewable%20energy%20policies%20-%20jan%202012.pdf](http://www.policyexchange.org.uk/images/publications/the%20full%20cost%20to%20households%20of%20renewable%20energy%20policies%20-%20jan%202012.pdf)

<sup>276</sup> DECC, ‘Estimated impacts of energy and climate change policies on energy prices and bills’, November 2011; [www.decc.gov.uk/assets/decc/11/about-us/economics-social-research/3593-estimated-impacts-of-our-policies-on-energy-prices.pdf](http://www.decc.gov.uk/assets/decc/11/about-us/economics-social-research/3593-estimated-impacts-of-our-policies-on-energy-prices.pdf)

fact that energy *prices* are predicted to increase significantly by the Government as a result of its climate action and renewable energy policies.

The Government reaches its 7% average saving estimate by netting the costs of climate and renewable energy policies against the benefits of energy efficiency policies. DECC's figures reveal that it expects the average price of gas and electricity to *rise* by 7% and 27% respectively. The extent to which households will see a reduction depends on their ability to benefit from energy efficiency policies or to buy more energy efficient products. The fine print reveals that only 35% of households will have lower bills in 2020, while DECC recognises that 65% will have higher bills.<sup>277</sup>

Policy Exchange notes that the Government's figures also exclude a "large part of the full impact on households." These additional costs include "costs paid through general taxation, increased costs of the products and services that households buy, and energy system costs such as grid upgrades."<sup>278</sup>

The Government has also noted that the impact on businesses is expected to be larger "because households are supported by a greater number of energy efficiency policies than are available to the business sector." For businesses that are medium-sized consumers of energy the impact of the Government's policies is estimated to be a 19% increase to the cost of average energy bills by 2020.<sup>279</sup>

These costs are, of course, only one side of the equation. As many of the Government's own cost benefit analyses show, the expected return on such policies is huge given the importance of stopping climate change. However, many of these benefits are, by their very nature, hard to quantify. Furthermore, since these policies have been implemented, there has been little evidence of these benefits beginning to accrue. The UK has consistently missed its targets for renewable energy production and emissions reduction. Globally, there is little sign of climate change being stopped as emissions continue to grow and the psychologically significant threshold of 400 parts per million of carbon dioxide in the atmosphere is passed.

We discuss this issue in more detail further on but a key reason behind the lack of benefit is that many of the original assumptions backing the cost benefit analyses have failed to hold up. These include (but are not limited to): a failure to achieve a global deal, the failure of the ETS to stabilise the carbon price, advances in technology (and corresponding cost reduction) below expectations and incorrect predictions about developments in fossil fuel use and pricing.

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

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<sup>277</sup> See *Renewable Energy Forum*, 'Shortfall, rebound, backfire: can we rely on energy efficiency to offset climate policy costs?', May 2012; [www.ref.org.uk/attachments/article/257/ref.shortfall.21.05.12.pdf](http://www.ref.org.uk/attachments/article/257/ref.shortfall.21.05.12.pdf)

<sup>278</sup> *Policy Exchange*, 'The full cost to households of renewable energy policies: analysis of government's annual policy statement', January 2012, p1-2; [www.policyexchange.org.uk/images/publications/the%20full%20cost%20to%20households%20of%20renewable%20energy%20policies%20-%20jan%202012.pdf](http://www.policyexchange.org.uk/images/publications/the%20full%20cost%20to%20households%20of%20renewable%20energy%20policies%20-%20jan%202012.pdf)

<sup>279</sup> DECC, 'Estimated impacts of energy and climate change policies on energy prices and bills', November 2011, p11 and p38; [www.decc.gov.uk/assets/decc/11/about-us/economics-social-research/3593-estimated-impacts-of-our-policies-on-energy-prices.pdf](http://www.decc.gov.uk/assets/decc/11/about-us/economics-social-research/3593-estimated-impacts-of-our-policies-on-energy-prices.pdf)

One argument often cited in favour of EU action on climate change and environment regulation is that it helps prevent a 'race to the bottom' and facilitates fair competition in the single market. This is similar to the one voiced by proponents of EU involvement in social and employment law, i.e. that uniform rules and/or targets are necessary to avoid a 'race to the bottom' in order to gain a competitiveness advantage. An example of this would be a country tolerating higher air pollution, thereby allowing its industry to produce cheaper goods compared to member states whose regulations on air quality impose direct or indirect costs on their companies. The idea can also be extended further given that the costs of such environmental damage are often shared across borders while the benefits can be accrued to a single firm or country.

However, unlike employment law, environmental protection is a genuinely cross-border issue and efforts to provide environmental goods are more likely to be undermined if neighbouring states do not take a similar approach. The lack of cross-border coordination could undermine both the primary objective (environmental protection) and competition. This is therefore a far more compelling argument when applied to environmental regulation.

There is also a case to be made for harmonisation of product standards, as differing environmental product standards can act as non-tariff barriers in that they multiply compliance costs and fragment the market, in turn discouraging cross-border trade. This is particularly the case where there is a marked differentiation in quality and/or safety, which undermines consumer confidence. There is of course the question of the degree to which European standards burden businesses competing with global rivals who may have lower environmental standards.

That said, it is not clear that uniform environmental legislation or renewables policy is vital for the functioning of the Single Market. The key point is internalising the end of the road externality which such a 'race to the bottom' might produce. This again brings us back to an overall emissions target, with a corresponding carbon price. With this headline target, businesses could work within a loose framework allowing them to remain competitive but also providing the necessary outcome in terms of emissions reduction. As with other areas of regulation in the Single Market, environmental goals can become overly onerous and harm the competitiveness of Europe at a time when it can least afford it.

Furthermore, the Single Market aspect of environmental rules can also cut the other way, sometimes preventing member states from introducing more stringent environmental

protection laws. For example, EU rules on competition and market access forced Denmark to withdraw its ban on the use of aluminium cans in 2002.<sup>280</sup>

The internal standards have also threatened to spill over into 'Green Protectionism' – where the environmental concerns begin to hamper free trade. For example, both former French President Nickolas Sarkozy and current French President Francois Hollande have expressed support for 'carbon or environmental tariffs' to be imposed on imports that have been produced without certain environmental standards.<sup>281</sup> This obviously steps into the dangerous territory both politically and economically, not least because it falls into the realm of both global trade negotiations and global climate change agreements – both of which are notoriously difficult to find consensus on.

### ***5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:***

#### ***i. focused on outcomes (results)?***

##### ***a) The ETS***

The ETS is the leading EU scheme aimed at reducing CO<sub>2</sub> emissions. It includes around 11,000 installations, amounting to about 45% of EU CO<sub>2</sub> emissions. The aim is to reduce these emissions by 21% by 2030. The system works by allocating and trading emissions allowances – one allowance represents one tonne of carbon dioxide. An overall 'cap' is set on total emissions and allowances are then distributed, or auctioned, to emitters within the scheme. The overall rationale of the ETS is to act as a carbon-pricing mechanism for the entire EU, while reducing emissions at the lowest cost. It was clearly designed with outcomes (a reduction in overall emissions) in mind.

However, unfortunately, the various exemptions granted to special interests have rendered it ineffective, and carbon prices have collapsed (while also exhibiting significant volatility). This problem was further exacerbated by the financial crisis and ensuing recession, which saw demand for permits collapse as demand for energy was tempered. The price of carbon traded within the system now stands at around €4.30 a tonne.<sup>282</sup>

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<sup>280</sup> *Europolitics* 'Denmark to lift ban on aluminium drinks cans' 15 January 2002 [www.europolitics.info/environment-denmark-to-lift-ban-on-aluminium-drinks-cans-artr192512-10.html](http://www.europolitics.info/environment-denmark-to-lift-ban-on-aluminium-drinks-cans-artr192512-10.html)

<sup>281</sup> *Guardian*, 12 May 2012, [www.guardian.co.uk/environment/2012/may/18/france-eu-carbon-tariff](http://www.guardian.co.uk/environment/2012/may/18/france-eu-carbon-tariff)

*Euractiv*, 2008, [www.euractiv.com/climate-change/britain-us-arms-eu-carbon-tax-news-219240](http://www.euractiv.com/climate-change/britain-us-arms-eu-carbon-tax-news-219240)

[www.euractiv.com/climate-change/sarkozy-renews-pressure-co2-bord-news-222460](http://www.euractiv.com/climate-change/sarkozy-renews-pressure-co2-bord-news-222460)

<sup>282</sup> EEX Market data, accessed on 6 August 2013:

[www.eex.com/en/Market%20Data/Trading%20Data/Emission%20Rights/EU%20Emission%20Allowances%20I%20Spot](http://www.eex.com/en/Market%20Data/Trading%20Data/Emission%20Rights/EU%20Emission%20Allowances%20I%20Spot)

**Graph 1: The falling price of carbon (May 2009-May 2012)**



Source: *Bloomberg*<sup>283</sup>

This severely impacts the results focused approach. Industry has warned that without long-term certainty about the carbon price, investment in low-carbon technologies is not viable. This approach has been further undermined by the introduction of the 20% renewables target by 2020. As renewables take up more of the market there is a knock on effect reducing the demand, and therefore the price of carbon, significantly hampering the effectiveness of the ETS market and its ability to provide a useful guide to future carbon prices.

Due to these flaws, the UK has unilaterally decided to underwrite the ETS price with a Carbon Price Floor, which came into effect in April 2013, starting at around £16 per tonne of carbon dioxide and following a linear path to target £30/tCO<sub>2</sub> in 2020 (both in 2009 prices).<sup>284</sup> This approach suggests the ETS has lost its effectiveness as a tool for achieving the desired outcome of emissions reduction (although this may partly be down to

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<sup>283</sup> *Bloomberg*, Spot Carbon Dioxide (CO<sub>2</sub>) Emissions EUA Price/Europe; [www.bloomberg.com/quote/EUETSS1:IND/chart](http://www.bloomberg.com/quote/EUETSS1:IND/chart)

<sup>284</sup> See *HM Treasury*, 'Carbon price floor consultation: the Government response', March 2011; [http://www.hm-treasury.gov.uk/d/carbon\\_price\\_floor\\_consultation\\_govt\\_response.pdf](http://www.hm-treasury.gov.uk/d/carbon_price_floor_consultation_govt_response.pdf)



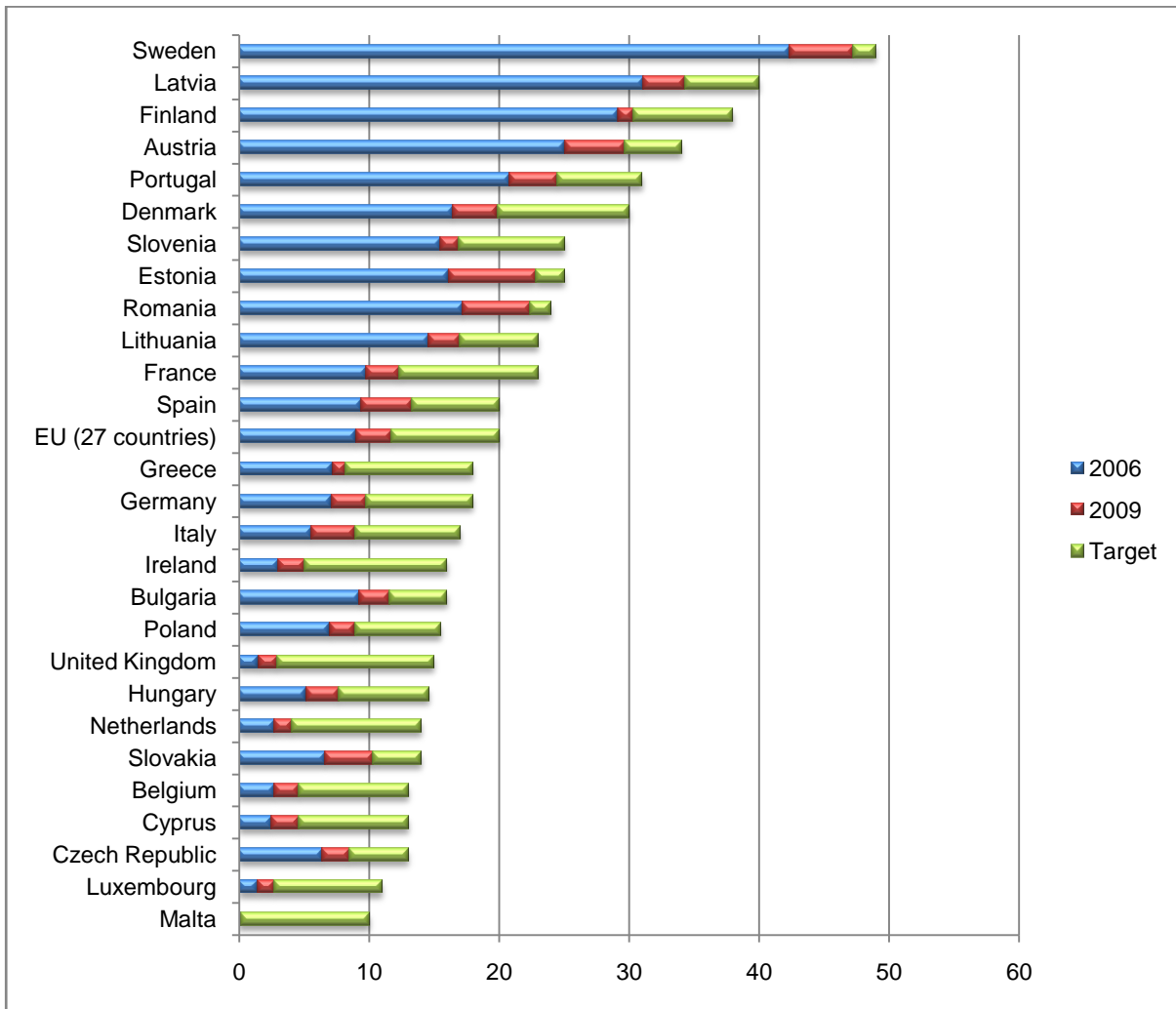
the need to meet the renewables target). Either way the conflicting mix of goals has rendered this tool useless, meaning both the EU and UK should seek to reform it and focus on its original goals.

***ii. based on an assessment of risk and scientific evidence?***

***b) Renewable energy targets***

As mentioned above, the renewable energy targets had some perverse effects on the ETS and the broader attempt to reduce emissions in the EU. However, the target is particularly damaging for the UK given that it involves a large-scale shift in UK energy policy. Under the renewable energy target, the UK is supposed to shift from sourcing just 1.3% of total energy from renewables in 2005, the baseline year under the Directive, to 15% by 2020 – the largest proposed increase of any member state.

**Graph 2: EU renewables targets by 2020**



Source: Eurostat

In 2008, the UK Government's former chief scientific adviser, Sir David King, suggested that Prime Minister Tony Blair and the other EU leaders did not understand what they were committing themselves to when agreeing the target:

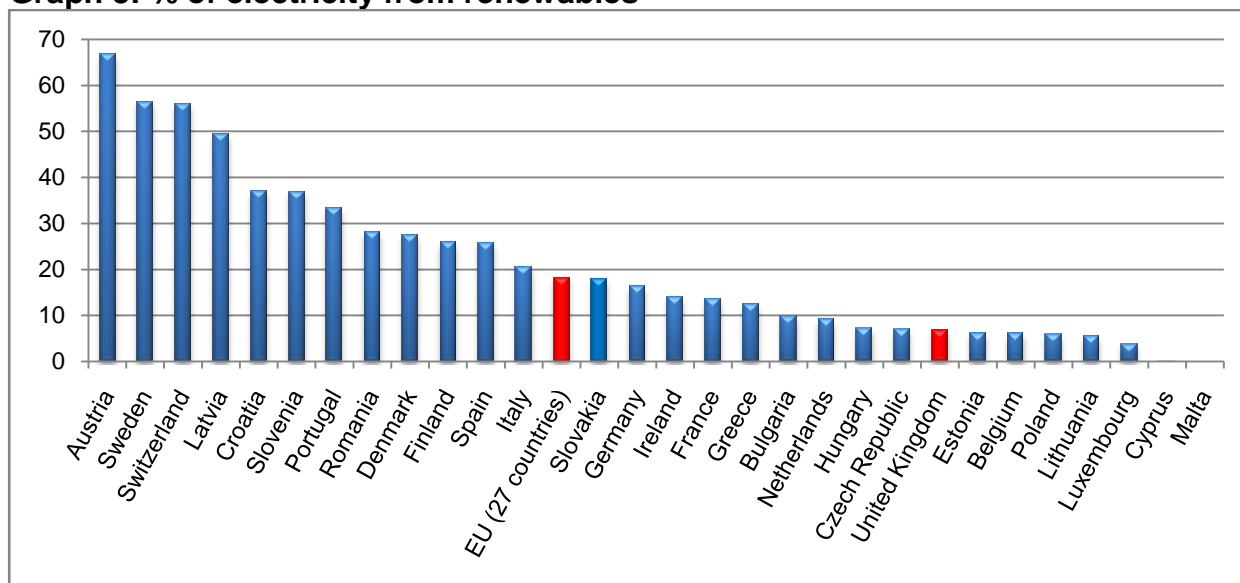
*"I think there was some degree of confusion at the heads of states meeting dealing with this. If they had said 20% renewables on the electricity grids across the European Union by 2020, we would have had a realistic target but by saying 20% of all energy, I actually wonder whether that wasn't a mistake."<sup>285</sup>*

The consensus is that the 15% target is likely to require the UK to produce 30-35% of its electricity from renewables by 2020, because it is far harder to source energy for transport or heating from renewables.<sup>286</sup> The UK currently has one of the lowest proportions of electricity generated by renewables in the EU, illustrating the scale of the challenge.

<sup>285</sup> BBC, 'Poverty fears over wind power', 4 September 2008; <http://news.bbc.co.uk/1/hi/uk/7596214.stm>

<sup>286</sup> Policy Exchange, 'Time for Plan B', 2011; [www.policyexchange.org.uk/publications/category/item/climate-change-policy-time-for-plan-b](http://www.policyexchange.org.uk/publications/category/item/climate-change-policy-time-for-plan-b)

**Graph 3: % of electricity from renewables**



Source: Eurostat

This suggests the approach may not have been grounded in the evidence and certainly looks to be beyond reach of the UK, which has consistently missed its targets for converting to renewable energy.<sup>287</sup>

Furthermore, the Renewable Energy Directive also requires member states to ensure that 10% of transport fuel comes from renewable sources. In the early 2000s the EU heavily promoted the use of biofuels for this purpose. The preamble to the 2009 Renewable Energy Directive states:

*“The European Council of March 2007 reaffirmed the Community’s commitment to the Community-wide development of energy from renewable sources beyond 2010. It endorsed a mandatory target of a 20% share of energy from renewable sources in overall Community energy consumption by 2020 and a mandatory 10% minimum target to be achieved by all Member States for the share of biofuels in transport petrol and diesel consumption by 2020.”<sup>288</sup>*

However, there has been increasing concern that some biofuels are harmful to the environment, particularly those that change the land use of agricultural land to biofuel production, therefore increasing food prices, for example.<sup>289</sup> The 2009 Directive therefore relaxed the biofuel target, stating only that 10% of transport fuel had to be ‘renewable’, whether from biofuels or otherwise (e.g. renewable electricity or hydrogen), although the majority of member states still plan to meet the target primarily through biofuels.

<sup>287</sup> Cited by *Renewable Energy Focus*, ‘UK off track for 2020 renewables target’, 31 July 2013:

<http://www.renewableenergyfocus.com/view/33706/uk-off-track-for-2020-renewables-target/>

<sup>288</sup> [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=Oj:L:2009:140:0016:0062:en:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=Oj:L:2009:140:0016:0062:en:PDF) point 9, p2

<sup>289</sup> See for example *Oxfam*, ‘Land and power: the growing scandal surrounding the new wave of investments in land’, September 2011; [www.oxfam.org/sites/www.oxfam.org/files/bp151-land-power-rights-acquisitions-220911-sum-m-en.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/bp151-land-power-rights-acquisitions-220911-sum-m-en.pdf)

The Directive also sets out strict ‘sustainability criteria’ for biofuels to ensure that only environmentally friendly biofuels are used and the Government has stated that the majority of the costs of meeting the target arise from a temporary increase in biofuel prices, resulting from the sustainability criteria (£318m over the period 2012 to 2030 under the central estimate).<sup>290</sup>

These targets for renewable energy generation and biofuels use were ends in themselves rather than means to the end of reducing emissions and halting climate change. As has already been seen, this has led to unattainable targets, ones which create perverse incentives and ones that do not fit with the realities of the UK present situation.

### **c) The UK’s energy framework – the same as other member states?**

Building on the above, we specifically think that the approach taken by the EU in this area (as with many others) failed to account for the wide diversity in energy structures across EU member states. Although, the 2020 targets have been predominantly sold to electorates as environmental commitments, they have major implications for the energy mix of member states and limit national governments’ room for manoeuvre – this is mostly due to the push for using renewable energy (of which only certain types are suitable for use in certain states).

This affects the UK in particular because, notwithstanding the EU targets, it already faces a major energy supply challenge. This seems to be a clear cut case of not fully assessing the relevant risks involved with the original strategy given the specific constraints of the UK energy sector. In 2011, the Government noted that,

*“Around a quarter of existing power plants in the UK are due to close by 2020. Replacing this capacity will require up to £110 billion of investment in new generation and grid connections by 2020. Compared with the last decade, rates of capital expenditure on energy infrastructure will need to double.”<sup>291</sup>*

Furthermore, a major driver of these closures is environmental legislation agreed at the EU level. The EU’s 2001 Large Combustion Plant Directive is designed to reduce the amount of sulphur dioxide, nitrogen oxides and dust emitted from large conventional power stations. Existing plants had the choice to either comply with the new targets by installing new technology to remove emissions or remain open for a limited period only. In the UK, 11GW of capacity opted out of the Directive and will consequently have to close in 2015.

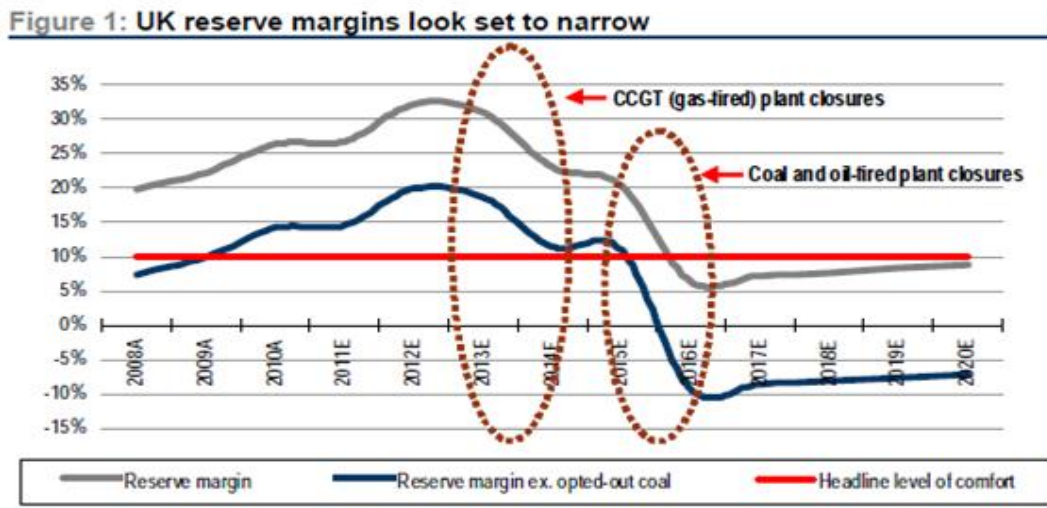
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<sup>290</sup> The Department for Transport’s 2011 impact assessment of the Renewable Transport Fuel Obligation, which is the instrument used to meet the target, states: “The mandatory sustainability criteria include a minimum greenhouse gas saving and those relating to land use, which require fuel suppliers to demonstrate that the cultivation of feedstocks for their fuels did not damage areas of high carbon stocks or high biodiversity.” *DfT*, ‘Amendments to the Renewable Transport Fuel Obligation for compliance with the Renewable Energy Directive -(5) Overarching Impact Assessment’, August 2011; <http://assets.dft.gov.uk/consultations/dft-2011-05/overarching-ia.pdf>

<sup>291</sup> *HM Treasury*, ‘Carbon price floor consultation: the Government response’, March 2011, p7; [http://www.hm-treasury.gov.uk/d/carbon\\_price\\_floor\\_consultation\\_govt\\_response.pdf](http://www.hm-treasury.gov.uk/d/carbon_price_floor_consultation_govt_response.pdf)

The short timeframe for the retirement of this capacity could have a serious impact on the UK's ability to cope with peak demand, when taken together with the slow pace of building new generation capacity, and the fact that it is impossible to rely on just renewables, such as wind, for peak demand, due to intermittency.

**Graph 4: UK reserve margins at peak demand are set to fall**



Source: Company data, Credit Suisse research and estimates

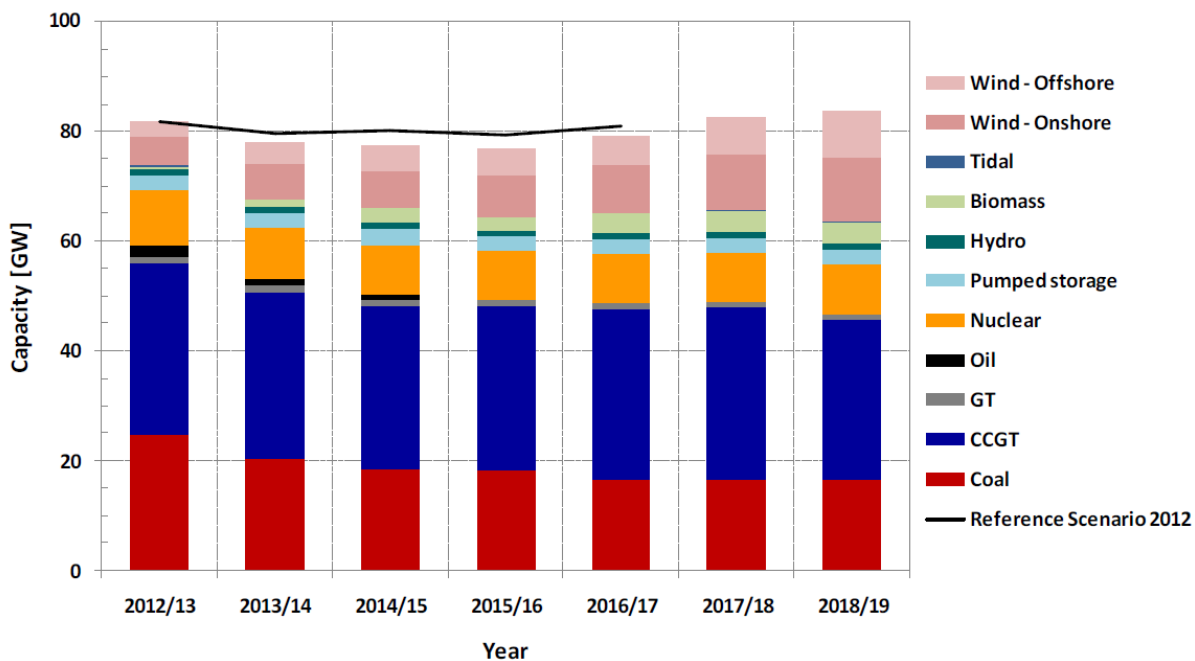
Source: Credit Suisse research<sup>292293</sup>

This issue was also flagged up by Ofgem in their recent review of future energy generation capacity which showed that a reduction in generation capacity and more importantly a reduction in flexible generation capacity leading to potential power shortages. They put this down to a mix of EU policies.<sup>294</sup>

**Graph 5: Installed capacity by generation technology type**

<sup>292</sup> Credit Suisse, 'UK Power Generators', (2012), these figures do not take into account nuclear power generation such as Wylfa, Hinckley point B and Hunterston B that are scheduled for closure prior to 2016.  
<sup>293</sup> Defra, Impact assessment LCP Directive, [www.defra.gov.uk/consult/files/industrial-emissions-amec-ia-lcp-120312.pdf](http://www.defra.gov.uk/consult/files/industrial-emissions-amec-ia-lcp-120312.pdf)

<sup>294</sup> Open Europe blog, 27 June 2013, 'When the lights go off who will be to blame the UK or EU?' [www.openeuropeblog.blogspot.co.uk/2013/06/when-lights-go-off-who-will-be-to-blame.html](http://www.openeuropeblog.blogspot.co.uk/2013/06/when-lights-go-off-who-will-be-to-blame.html)



Ofgem<sup>295</sup>

The UK currently has around 97 GW of generation capacity covering an estimated peak demand of 57.1 GW. Of this, only 64.1 GW of generation capacity is ‘base load’ or reliable for peak periods, this currently gives the UK a spare peak time capacity of 13%. However, as a result of the removal of large plants from production, the base load is predicted to fall to 46.8 GW. Unless measures are taken, this could leave the UK with very little or no peak time generation cover, leading to blackouts.<sup>296</sup>

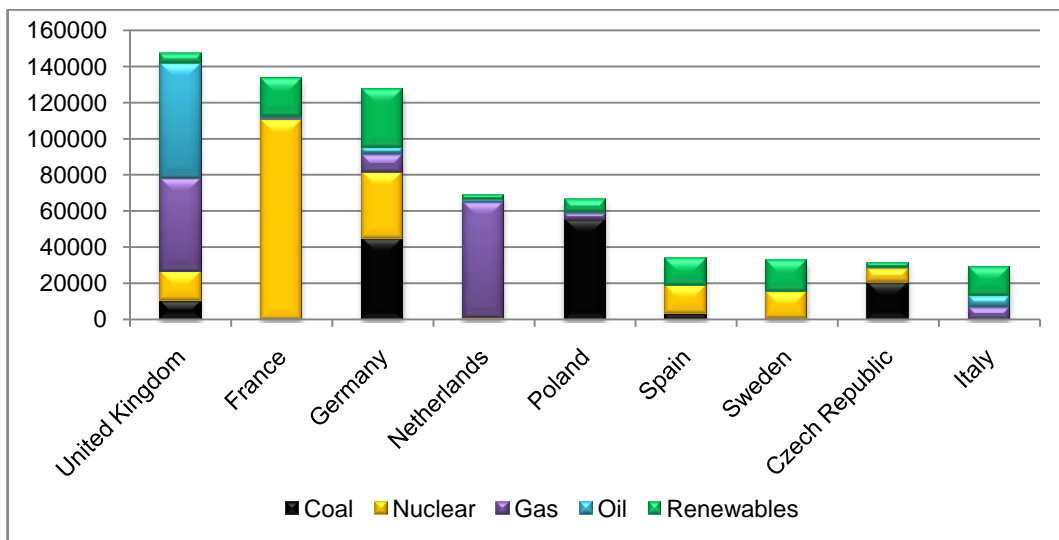
Despite these pressures, the UK should be in the enviable position of being the EU’s top energy producer and, therefore, far less reliant on imports than the other member states to meet its energy demands. Although North Sea oil and gas reserves are finite, there is clearly less time pressure on the UK to find alternatives to fossil fuels purely for the reasons of energy security or price volatility.

### Graph 6: Top ten EU energy producers

<sup>295</sup> Ofgem, 27 June 2013,

[http://www.ofgem.gov.uk/pages/moreinformation.aspx?docid=472&refer=media/pressrel&utm\\_source=twitter&utm\\_medium=tweet&utm\\_campaign=capacity](http://www.ofgem.gov.uk/pages/moreinformation.aspx?docid=472&refer=media/pressrel&utm_source=twitter&utm_medium=tweet&utm_campaign=capacity)

<sup>296</sup> Defra, [www.defra.gov.uk/industrial-emissions/eu-international/lcpd/](http://www.defra.gov.uk/industrial-emissions/eu-international/lcpd/)



Source: Eurostat

The UK is not only the largest producer, but its production is concentrated in oil and gas, whereas France specialises in nuclear and Poland in coal. Germany has a large proportion of both coal and renewables. With the exception of Denmark, which is a net exporter, the UK is the only state close to being self-sufficient in oil. The UK also has a comparably low dependence on imported gas, something that is important given the large proportion of gas in the UK's electricity generation mix.

The issue of energy capacity (or lack of it) cannot, of course, be blamed on the EU alone. However, it is clear from the facts above, that the renewables targets have significantly exacerbated (in terms of both time and cost) an already difficult problem. Even with simple headline emissions targets the UK would likely be able to manage both its capacity problems and meet the necessary environmental goals by allowing the market to decide the most efficient and effective way to do this. Such a move could also incorporate a carbon tax, as the UK has decided to do anyway.

## **7. How far do you think the UK might benefit from the EU taking:**

### ***i. More action on the environment/climate change?***

As we have touched on above, there are certainly potential benefits to the EU taking action on climate change and the environment, although this must be done in the right way under the right circumstances. Below, we lay out some of the potential benefits to EU action in this area, although these alone are unlikely to justify further action.

#### **a) Climate change knows no borders**

Any policy to tackle climate change must be global, since it is by nature a cross-border issue. It makes no sense for the UK to unilaterally decide to tackle its own emissions in the

absence of action by other states. The UK's share of world CO2 emissions is less than 2%. The UK on its own is therefore incapable of effecting any meaningful change unless it works with other like-minded countries.

By acting together, as they do in world trade talks, the EU's member states are likely to have more clout in global talks on climate change and to reach a common EU approach to the issue, which will strengthen the member states' collective hand.

However, the argument that by acting alone the UK would make no appreciable difference to overall emissions whilst still adding costs to UK business that European competitors would not have to bear, also applies to EU-level action in the absence of similar commitments from global competitors.

There is also a high degree of interdependency in environmental policy – decisions taken by one member state potentially has significant knock-on effects on others. For example, recent record high incidences of air pollutants such as nitrogen dioxide and sulphur dioxide in London – which pose a significant public health risk – were blamed in part on pollution from coal burning industries and domestic heating and traffic emissions crossing over from France.<sup>297</sup> Likewise, UK emissions of sulphur dioxide are a major component in 'acid rain' in parts of the continent.

As such, it is counter-productive for one state to undertake strenuous efforts to improve air quality if its neighbours do not do the same. Similarly, there is a strong case for the management of international river basins and of cross-border areas of significant biodiversity to be co-ordinated at the EU level. A good example of cross-border environmental protection could be the Bird's Directive aimed at protecting migratory birds that, despite inadequate enforcement, has produced results where individual member states would not have had the incentive to act.<sup>298</sup>

### ***b) The EU can be a global leader on climate change***

The Commission, the European Parliament and some member states have long championed the concept of the EU as a heavyweight international actor, particularly in

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<sup>297</sup> *Guardian*, 'London air pollution at record high', 15 March 2012  
<http://www.guardian.co.uk/environment/2012/mar/15/london-air-pollution-record-high>

<sup>298</sup> The Bird's Directive, [www.ec.europa.eu/environment/nature/legislation/birdsdirective/index\\_en.htm](http://www.ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm)



terms of projecting 'soft power'. Since the 2000s, the EU has enthusiastically positioned itself as a 'global leader' on climate change.

There are three ways in which the EU believes it can perform this role; first, by setting a good example by cutting its own emissions; second, by assisting developing countries in reducing their emissions through innovation and knowledge transfers; and finally, lobbying for a new legally binding agreement to succeed the UN's Kyoto protocol, key provisions of which expired at the start of this year.

A new agreement is necessary to bring developing industrialised countries like China, India and Brazil into the fold, which are not legally obliged to reduce their emissions unless the richest developing countries supply financial and technological assistance. However, a new agreement has proved elusive, with the EU outflanked on one hand by other developed countries which have resisted going further and faster – Canada even withdrew from the protocol altogether – and developing countries on the other, which reject a deal they see as unfairly blocking off their prospects for growth and development. This impasse was painfully marked by the failure of the 2009 Copenhagen talks, which the House of Lords' European Union Committee concluded illustrated the EU's "marginalisation" in this area, even when united, vis-à-vis China and the US.<sup>299</sup>

Although the 2011 Durban talks produced a commitment to a new legally binding framework, there has not been any progress on establishing concrete measures or a timetable, and countries have since attempted to backtrack on the commitment. Assessing the failure of the Bonn round of talks in May 2012, EU Climate Action Commissioner Connie Hedegaard argued that:

*"The EU is almost the only player taking a second commitment period under the Kyoto Protocol and so keeping it alive. Because we believe climate change needs to be addressed in a legally-binding international framework, we are willing to do this, even when other major economies are at present only willing to enter into voluntary commitments. But - and it is a big but - we need other major economies and significant emitters to play ball."<sup>300</sup>*

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<sup>299</sup> House of Lords European Union Committee, 'Stars and Dragons: The EU and China', 7th Report of Session 2009–10 [www.publications.parliament.uk/pa/ld200910/ldselect/ldeucom/76/76i.pdf](http://www.publications.parliament.uk/pa/ld200910/ldselect/ldeucom/76/76i.pdf)

<sup>300</sup> European Commission press release, 'Statement by EU Commissioner for Climate Action Connie Hedegaard on the conclusion of the climate change talks in Bonn', 25 May 2012; [www.europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/379&format=HTML&aged=0&language=EN&guiLanguage=en](http://www.europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/379&format=HTML&aged=0&language=EN&guiLanguage=en)

Given that the EU is only responsible for 11% of total global emissions<sup>301</sup> and that its share is only going to decrease in the coming years as developing countries increase their energy consumption, the belief that climate change can be a defining example of the EU's 'soft power' seems at best misguided and, given the costs involved, potentially damaging to economic competitiveness.

In addition, some of the EU's actions such as trying to impose a carbon tax on foreign airlines under the ETS, even though air travel only accounts for between 2% and 3% of global emissions,<sup>302</sup> have seriously angered partner countries such as the US, India, Russia and China, further undermining efforts to build a global consensus.<sup>303</sup> Therefore, although this area has the potential to be a boon to the EU's soft power, it can also have negative consequences. Furthermore, it is another prime example of conflicting objectives – mixing foreign policy goals with environmental ones will surely make it more difficult to target the desired outcomes.

**c) Protecting consumers from higher fossil fuel prices and political risks in the future**

Another argument for boosting EU renewable generating capacity is that it will help protect consumers and the wider economy from future price increases for fossil fuels or potential political instability that could result in shortages of supply. The EU, taken as a whole, is highly dependent on energy imports, mostly Russian gas and Middle Eastern oil (although the UK is somewhat less dependent). This can compromise the EU's ability to act on other foreign policy issues. Slow action on embargoes on oil imports from Syria and Iran is a reflection of this, while the pressure Russia exerted over certain EU member states during the Georgian crisis of 2008 was further evidence of the differing incentives at play.

However, it is difficult to see why government policies would be better suited than the market to respond to future price expectations. It can be accepted that there may be a negative externality in the form of climate change which the market is not fully accounting for, justifying broader emissions targets. However, this argument is less effective when it

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<sup>301</sup> Figure is for 2010, taken from the European Commission's Emissions Database for Global Atmospheric Research: [www.ec.europa.eu/clima/policies/g-gas/index\\_en.htm](http://www.ec.europa.eu/clima/policies/g-gas/index_en.htm)

<sup>302</sup> AEA Group report commissioned by the UK's Department for Transport, 'Report on International Aviation and Maritime Emissions in a Copenhagen (post 2012) Agreement', June 2009; <http://assets.dft.gov.uk/publications/about-eibr-int/intcopenhagenagreement.pdf>

<sup>303</sup> *BBC News*, 'Countries rally against EU's carbon tax on airlines', 21 February 2012 [www.bbc.co.uk/news/world-europe-17114312](http://www.bbc.co.uk/news/world-europe-17114312)

comes to the pricing of fossil fuels with reference to their scarcity – markets have traditionally been the most effective in telegraphing and pricing issues of scarcity.

As we have noted in question 1, this issue is of far less immediate importance to the UK than other member states because it is less dependent on energy imports than the vast majority of member states. Therefore, it makes little sense for the UK to be locked into short-term and expensive EU policies designed to move away from fossil fuel technologies, when many renewable technologies are at an early stage of their development and other non-fossil fuel alternatives, such as nuclear, are also in need of investment.

## ***ii. Less action on the environment/climate change?***

There are numerous arguments and significant evidence to suggest that it may be time for a reassessment of the EU's climate change and environment policy. Not just because it has shown to be ineffective (countries continually struggle to meet targets while energy costs in Europe sky rocket relative to the rest of the world) but also because the circumstances which it was designed under (and for) have changed.

### ***a) Assumptions underpinning the EU approach have not materialised***

The major assumption of the 20/20/20 targets was that a global climate change deal along similar lines would be struck not long after the policy was agreed. Much of the benefit assigned to the policy is derived from a global reduction in emissions and the halting (or slow down) of climate change. However, with a global deal failing to materialise, the expected reduction in emissions and impact on climate change has not occurred, thereby significantly reducing the benefit of the EU's policy. It is clearly time to reassess the policy given that circumstances have not progressed as expected.

A second assumption which has not held is the progression in renewables technology and importantly the role it plays in bringing down the cost per watt of energies such as solar and wind. This could partly be put down to a fall in investment and subsidies into renewable energy after the financial crisis hit but also due to uncertainty surrounding the carbon price and limited demand. Whatever the cause, costs for renewables remain prohibitively high in many cases, particularly since they often require very large initial capital outlays.

The final point links to a third assumption – the progression in the price and use of fossil fuels. Many of the EU policies are based on increasing fossil fuels price and the view that their use has peaked. However, this failed to see the discovery of new fossil fuel reserves and the development of technology to tap them – for example see the shale gas developments in the US. Even coal, seen as the ‘dirtiest’ of all fossil fuels, saw its use rise by 70% from 2000 to 2010,<sup>304</sup> this trend has continued over the past few years driven mostly by emerging market demand. Although this is not specific to Europe, it links to the global view of emissions and development of renewable energy – the progress expected has not taken place. This is obviously not a positive development from an emissions stand point, but has severely hampered the adoption of renewables and therefore the benefits from assigning hard and fast targets for their use in Europe.

These are just a few examples highlighting that events have not played out as expected. Given the impact of unexpected events such as the financial crisis and developments in the unpredictable energy sector, this is altogether surprising and should not be a source of blame. That said, it’s clear that the policies as designed do not fit the realities of today’s global energy system and approach to climate change.

**b) Prescriptive EU targets do not account for future economic and technological uncertainty**

Emissions reductions will require changes to the energy mix and the development of new technologies. However, there are many uncertainties regarding what the optimum mix will be or of the viability of many technologies currently being developed, such as carbon capture storage, and the extent to which savings can be made through energy efficiency. Other uncertainties include the relative costs of existing and new energy generation technologies and future energy demand.

Any changes to these factors are likely to challenge the assumptions underlying the short time frame of the renewable policies locked in at the EU-level. Setting a 2020 deadline means that there is limited flexibility to assess new technologies, as policymakers are foremost concerned with meeting the target. Investment will also be directed to meeting the target rather than in technologies that could make a longer term contribution to energy sustainability. This has led to a dash for expensive renewable technologies such as onshore and offshore wind.

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<sup>304</sup> Dieter Helm, “The Carbon Crunch: How We’re Getting Climate Change Wrong and How to Fix It”, Yale University Press: New Haven and London (2012).

Such inflexible policies are particularly problematic in the EU. As with other areas of EU competence, flawed or failing policies can be very difficult to scrap or even adjust, as in the vast majority of cases, this requires the agreement of the other member states and the European Parliament. As shown in question 1, the Large Combustion Plant Directive is leading to closures of UK generation capacity and abiding by the directive could result in the UK facing rolling blackouts.

**c) A complex mix of competing policies**

As we have seen the EU targets involve a complex mix of policies ranging from the ETS (essentially meant to be a carbon pricing framework) to the renewables target (designed to change the energy mix of member states).

In practice, these policies are in competition, with the EU renewable energy target undermining the ETS. This is because electricity generation falls under both the renewable target (around 30% will need to be renewable), and the ETS (generation is subject to the ETS cap). Forcing electricity generators towards renewable technologies through the target and government subsidies will lower the carbon price under the ETS because firms will require fewer carbon permits to meet the cap, undermining the ETS' carbon pricing function. A recent report noted:

*“This has the consequence of achieving carbon savings (through renewables) at a much higher cost than necessary. Carbon savings (cheaper than renewables) which would have been made at a higher carbon permit price, are not undertaken at the lower permit price. Therefore, the RET reduces emissions no further by 2020 than would have delivered by the ETS alone – just more expensively.”<sup>305</sup>*

A similar conflict can be seen between the EU's initial push for a biofuels target, and the subsequent move to sustainability criteria, and additional production costs, due to the previously unforeseen impact certain biofuel production can have on food prices. Lastly, as touched on above, the idea of using environmental and climate change regulations as foreign policy tools (examples of the EU 'soft power') only serves to further blur the lines from the original goal of emissions reduction.

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<sup>305</sup> Policy Exchange, '2020 hindsight: does the renewable energy target help the UK decarbonise?', 2011, p38; [www.policyexchange.org.uk/images/publications/2020%20hindsight%20-%20may%2011.pdf](http://www.policyexchange.org.uk/images/publications/2020%20hindsight%20-%20may%2011.pdf)

**d) Bidding war for same skills and equipment can inflate prices**

The short-term pan-EU target is likely to direct economic resources into the same sectors and technologies, increasing demand and potentially prices. The Committee for Climate Change has analysed the costs of installing renewable generation capacity. It found significant differences in the cost of installing different types of technologies, and concluded that these were likely to change over time and was influenced by factors including a congestion of demand, of the type that could be produced by policy inspired investment.<sup>306</sup>

**e) High costs act as a disincentive to other global emitters**

One of the objectives of the EU's coordination of emissions reductions is to incentivise other regions by example. It could, however, be argued that the EU's prescriptive and costly method of emission reduction could act as a disincentive to other less developed countries, whose agreement is required to conclude a global deal.

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

• **Climate change**

Unlike many other EU policies, the climate and renewable energy package has a sunset clause in that the targets are due to expire in 2020. The European Commission has identified three options:

- New goals for greenhouse gas emissions but no goals for renewable energy. The ETS would be the main instrument to cut down on CO2 emissions.
- Three national targets: renewable energy, energy efficiency and GHG.
- EU-wide targets: renewable energy, energy efficiency and GHG goals.

The Commission has stressed that it is "crucial to identify 2030 milestones as soon as possible."<sup>307</sup> Therefore negotiations on new targets are likely to be on the agenda soon but the UK Government has already said that it "cannot support a 2030 renewables target."

The following options are open to the UK:

***a) Renegotiate current renewable target and assess the viability of the ETS***

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<sup>306</sup> Committee on Climate Change, 'The Renewable Energy Review', May 2011, <http://www.theccc.org.uk/reports/renewable-energy-review>

<sup>307</sup> European Commission press release, 'Renewables: Commission confirms market integration and the need for growth beyond 2020', 6 June 2012 ; [www.europa.eu/rapid/pressReleasesAction.do?reference=IP/12/571&format=HTML&aged=0&language=EN&guiLanguage=en](http://www.europa.eu/rapid/pressReleasesAction.do?reference=IP/12/571&format=HTML&aged=0&language=EN&guiLanguage=en)

The best approach is to decide on a desired objective – such as a specified reduction in greenhouse gas emissions – and then allow the market to find the most cost-effective options and technologies. This is because governments and regulators do not have the necessary knowledge, expertise or information to judge the most effective and cheapest ways of meeting a particular goal. This is particularly the case for reducing carbon emissions where there are a range of competing technologies at different stages of development and whose costs may change rapidly over time.

This approach would be consistent with an emissions target agreed at the EU level. Although climate change is a global issue rather than a regional one, there is no reason why member states should not use the EU to make binding policy commitments. Unlike the Kyoto system, which lacks an enforcement system, the EU institutions would be an appropriate vehicle for setting legally-enforceable targets for absolute emissions reductions: these should be ambitious, but simple and transparent. EU member states should be able to pursue these goals independently, or through mutual cooperation in the way that suits them best.

The UK could, therefore, seek to renegotiate the existing renewable energy target by either abandoning it entirely or downgrading its ambition. Renegotiating the current target is likely to be very difficult and will require a vast amount of political capital but it would reduce much of the unnecessary costs being placed on consumers and businesses under the renewables target.<sup>308</sup>

The ETS has many flaws which mean that it is largely unfit for purpose but an emission reduction target will require some form of market price signal for carbon set through policy intervention. A thorough assessment of the ability to reform the ETS is clearly needed and alternatives should be considered, such as a carbon tax, a version of which the UK introduced in April 2013.

***b) Refuse to agree new renewables target post-2020 and assess the viability of the ETS***

Another alternative would be for the UK to accept the current renewables target to 2020 but refuse to agree a post-2020 renewables target, the current Government's position. This could also include an evaluation of the ETS and alternatives as outlined above.

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<sup>308</sup> This would probably have the effect of increasing the ETS carbon price, but the savings from reductions in renewables subsidies would more than make up for this increased cost of carbon.

**Box 1: How will new targets be decided – could the UK be outvoted?**

There is a degree of uncertainty as to how replacement EU climate targets would be decided.

Since the Maastricht Treaty, qualified majority voting (QMV) has been the norm for decisions on environmental issues in the Council of Ministers. However, for the 2008 climate and energy package, Commission President Jose Manuel Barroso and French President Nicolas Sarkozy, holder of the rotating Council Presidency, both stated that approval of the package would have to be unanimous for the agreement to have political legitimacy. President Sarkozy took the unorthodox, and controversial, step of moving decision-making up from the Environment Council to the European Council, where unanimity applies.<sup>309</sup>

However, the legal base of the Renewable Energy Directive<sup>310</sup> as published in the EU Official Journal is ex-Article 175(1) (Article 192 TFEU under the Lisbon Treaty), which stipulates the use of QMV and co-decision with the European Parliament. It is likely that a new Commission proposal would use the same legal base and therefore, theoretically, the UK could be outvoted and forced to accept a new renewables target.

The Government argued that the original proposal should have been tabled under ex-Article 175(2) as this article provides for the adoption of “measures significantly affecting a Member State’s choice between different energy sources and the general structure of its energy supply” and by unanimity. However, the House of Lords EU Committee noted that the Commission “rejected the use of 175(2) because Member States already use renewables. It argued that increasing renewable generation would not alter the general structure of a Member State’s energy supply given that the same grid infrastructure is used as for conventional power.”<sup>311</sup>

**c) A more cost-effective implementation of existing targets?**

If the above options were not possible, and the UK did not wish to break its EU treaty commitments, another option would be to implement the current target in a more cost-effective manner. In 2011, Policy Exchange estimated that £9 -12.5bn could be saved by altering the current policy to meet the EU renewable target. However, this would include

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<sup>309</sup> See A. Hayden, ‘Europe’s climate and energy policy: lessons for Canada in sharing the effort of emission reductions’, *Dalhousie University*, 2011; [www.euce.dal.ca/Files/Anders\\_Hayden\\_Occasional\\_paper\\_No\\_11\\_2011.pdf](http://www.euce.dal.ca/Files/Anders_Hayden_Occasional_paper_No_11_2011.pdf); D. Guéguen and S. Iosif, ‘Climate-energy package adopted by unanimity: Legal or illegal?’, *Europolitics*, 14 November 2008; [www.europolitics.info/climate-energy-package-adopted-by-unanimity-legal-or-illegal-artr180775-10.html](http://www.europolitics.info/climate-energy-package-adopted-by-unanimity-legal-or-illegal-artr180775-10.html)

<sup>310</sup> Directive 2009/28/EC; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=Oj:L:2009:140:0016:0062:en:PDF>

<sup>311</sup> *House of Lords EU Committee*, ‘The EU’s target for renewable energy: 20% by 2020’, October 2008, p14; [www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/175/175.pdf](http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/175/175.pdf)



deeply unpopular planning reform to allow greater onshore wind, which is cheaper than offshore wind.<sup>312</sup>

#### **d) *Unilaterally pull out of renewables targets and/or the ETS***

If renegotiation of the renewables target is not possible or the UK were outvoted on future targets, the UK could refuse to implement the renewable target. The UK would find itself in breach of the EU Treaties and would face infraction proceedings at the ECJ. Although infraction proceedings take a long time to be brought into full effect, member states ultimately face stiff penalties for failing to comply with EU law, with the UK facing a maximum fine of €703,104 a day or €256.6m (£225.6m) a year.<sup>313</sup> While such large fines are very rare, it is possible that the UK could face sizeable fines and wider political fallout.

Ultimately the UK would have to decide if the financial benefits of ignoring EU environmental legislation outweighed the economic and political costs of non-compliance.

The UK could take the same approach with other aspects of the CAREP such as the ETS and the 'Effort Sharing Decision', however this would be a rejection of the EU's entire emissions reduction strategy.

- **EU environmental regulation**

#### **a) *Status quo***

The Government could decide that in order to focus on reforming the EU's climate change policies, or indeed other EU competences, it would not be worth seeking a renegotiation of other EU environmental regulation.

However, this would mean continuing to bear the costs of environmental rules, some of which such as the Large Combustion Plant Directive could have an impact on UK energy

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<sup>312</sup> *Policy Exchange*, '2020 hindsight: does the renewable energy target help the UK decarbonise?', 2011; [www.policyexchange.org.uk/images/publications/2020%20hindsight%20-%20may%2011.pdf](http://www.policyexchange.org.uk/images/publications/2020%20hindsight%20-%20may%2011.pdf); Other savings could be found by a greater emphasis on co-firing biomass, greater use of trading provisions to purchase 'statistical transfers' of renewable energy from Germany and Spain and cutting subsidy support for generation capacity no longer required due to reduced demand as a result of the recession.

<sup>313</sup> The ECJ can either impose a daily penalty payment or a lump sum penalty. The basic flat-rate penalty payment is €640 a day. This is multiplied by a coefficient for seriousness (ranging between 1 and 20) and a coefficient for duration (a multiplier of between 1 and 3, calculated at a rate of 0.10 per month from the date of the first ECJ ruling). This is then multiplied by a country specific coefficient (currently 18.31 for the UK). See Application of 'Article 228 of the EC Treaty'; [www.ec.europa.eu/eu\\_law/docs/docs\\_infringements/sec\\_2005\\_1658\\_en.pdf](http://www.ec.europa.eu/eu_law/docs/docs_infringements/sec_2005_1658_en.pdf) and 'Application of Article 260 of the Treaty on the Functioning of the European Union. 'Up-dating of data used to calculate lump sum and penalty payments to be proposed by the Commission to the Court of Justice in infringement proceedings'; [www.ec.europa.eu/eu\\_law/docs/docs\\_infringements/sec\\_2010\\_923\\_en.pdf](http://www.ec.europa.eu/eu_law/docs/docs_infringements/sec_2010_923_en.pdf)

generation capacity. The UK would continue to be bound by future laws in this area, the majority of which are decided by QMV, and co-decision with the European Parliament.

***b) Secure opt-outs and limit the impact of existing laws***

The Government could alternatively leave the bulk of EU environmental legislation untouched but seek to tailor its impact to fit UK circumstances, for example by not going above or beyond the minimum requirements, and/or by amending the UK laws that implement existing EU Directives.

Alternatively, the UK could go even further and seek opt-outs from specific EU environmental laws in the same way that it has a partial opt-out under the Working Time Directive.

Given that the impact of the UK's environmental policies is more self-contained than that of continental member states, there could be an argument that certain directives or regulations could be subject to a UK opt-out. That said, this would require a large amount of political capital and the UK could be blocked from securing opt-outs by either other member states, MEPs or possibly a ruling by the ECJ.

***c) A complete opt-out of environmental policies via EU Treaty change***

Unlike the first two options outlined above, a complete opt-out along the lines that the UK enjoys from the euro or the internal border free Schengen zone would require changes to the EU Treaties, something that would require the unanimous consent of all member states. This could prompt other member states, particularly those with lower environmental standards, to also be exempt from this area.

If the UK Government were successful in this endeavour, the result would be that new or existing Directives or Regulations in this area of EU competence would no longer apply to the UK. The UK laws implementing the Directives that formerly applied to the UK would remain in place but, crucially, Parliament would become free to amend or repeal them.

Given that the EU's climate change legislation is based on the environment articles of the EU treaty, this approach would also remove the UK from the CAREP policies outlined above.

**d) *Unilateral withdrawal from EU environmental policy***

As with other EU policy areas, there is theoretically nothing preventing the UK from unilaterally ceasing to implement EU environmental laws, although it would find itself in breach of the EU Treaties and therefore face infraction proceedings at the ECJ.

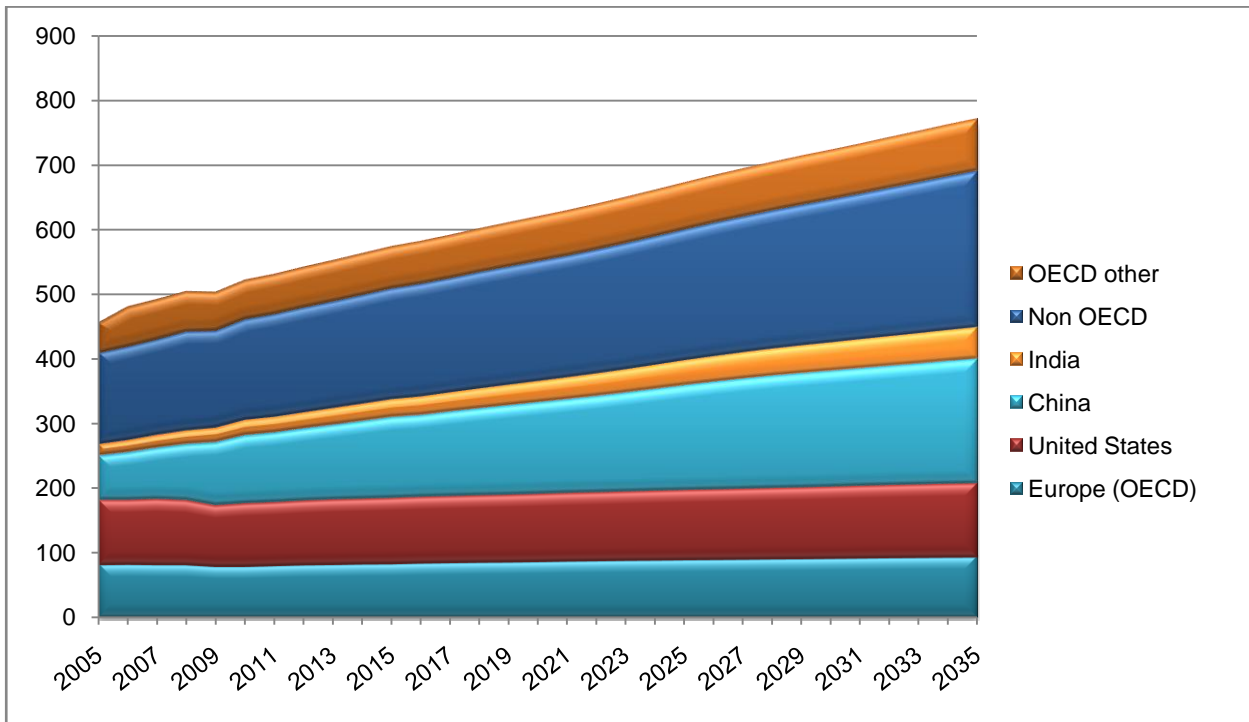
**10. a. *What future challenges or opportunities might we face on environmental protection and climate change?***

**b. *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?***

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

While a degree of European regional cooperation on climate change and energy policy makes sense, the reality is that any battle to mitigate climate change will not be won or lost by reducing the EU's emissions, but by reducing *global* reliance on carbon. Therefore the biggest potential impact (although even this might be optimistic) is through setting an example of how this can be achieved in a cost effective manner, for other countries to follow.

**Graph 7: Projected world primary energy consumption by region (Quadrillion btu)**



Source: US Energy Information Commission<sup>314</sup>

The graph above shows projected global energy consumption, and the EU's comparatively small share of it, which begs the question of how much leverage the EU can hope to have in global talks on emissions reduction.

### **Outlook for the CAREP post-2020?**

In December 2011, the European Commission published a new energy roadmap, *Energy Roadmap 2050*, in which it states its ambitions for a post-2020 framework. The Commission argues that “in 2030, all the decarbonisation scenarios suggest growing shares of renewables of around 30% in gross final energy consumption.”<sup>315</sup>

In its response to the Commission's roadmap, the UK Government stated that it “cannot support a 2030 renewables target.” The UK is instead arguing for a ‘technology neutral’ approach that recognises that competition between low carbon technologies, such as renewables, nuclear and carbon capture storage, is likely to drive down capital costs “as the market forces innovation and greater efficiency.” The Government argues that a new post-2020 renewables target could “force the EU down a more expensive route to 2050 than necessary.”<sup>316</sup>

<sup>314</sup> [http://205.254.135.7/oiaf/aeo/tablebrowser/#release=IEO2011&subject=0-IEO2011&table=1-IEO2011&region=0-0&cases=Reference-0504a\\_1630](http://205.254.135.7/oiaf/aeo/tablebrowser/#release=IEO2011&subject=0-IEO2011&table=1-IEO2011&region=0-0&cases=Reference-0504a_1630)

<sup>315</sup> European Commission, ‘Energy roadmap 2050’, 15 December 2011, p10; [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0885:FIN:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0885:FIN:EN:PDF)

<sup>316</sup> DECC, ‘UK comments on 2050 energy roadmap to EU Commission’, March 2012; <http://www.decc.gov.uk/assets/decc/11/tackling-climate-change/2050/4619-uk-comments-on-2050-energy-roadmap-to-eu-commissio.pdf>

The Commission has also said that it will propose binding national targets on energy efficiency if in 2014 it comes to the conclusion that the EU is not likely to achieve the 20% energy efficiency target.<sup>317</sup>

## **Policy Exchange**

1. Policy Exchange is one of the UK's leading think tanks. We are an educational charity whose mission is to develop and promote new policy ideas that will deliver better public services, a stronger society and a more dynamic economy.
2. Our vision is for climate and environment policies that are sustainable - achieving society's environmental goals at least economic and social cost. Scientific evidence shows the natural environment is under considerable pressure from human development. This poses risks to both the variety of nature and human prosperity. Environmental challenges need to be tackled while minimising adverse impacts on living standards. The social and economic needs of the present should be met without compromising the ability of future generations to meet their own needs. A pluralist approach usually provides the best way to achieve outcomes for society. Well-designed, regulated markets – with competing decision-makers given the freedom to innovate, respond to new information and fail – have been far more successful in achieving benefits for society than private or government monopoly decision-making.

## ***Advantages and disadvantages***

### **1. What evidence is there that EU competence in the area of environment and/or climate change has:**

- i. benefited the UK / your sector?**
- ii. disadvantaged the UK / your sector?**

EU competence in climate change policy is appropriate, and should be beneficial to the UK. For a problem such as climate change, where emissions anywhere contribute to the problem everywhere, policies to address the problem should be set on the widest possible geographic basis. At present, the EU appears to be the broadest practicable level at which to set policy. However, one cannot separate the theoretical reasons for addressing climate change at the European level, which are sound, with the policies that the EU has

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<sup>317</sup> *European Commission press release, 'The Commission's new Energy Efficiency Directive', 22 June 2011; <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/440&format=HTML&aged=0&language=en&guiLanguage=en>*

implemented to attempt to address the problem, and on those policies the record is mixed. On the one hand, the Emissions Trading System (ETS), though flawed, provides the best basis for identifying the most cost-effective opportunities for reducing greenhouse gas emissions. A larger market covering a greater proportion of global emissions allows the cheapest cuts to be found. Providing the ETS cap is sufficiently stringent, the widest possible geographic base is desirable.<sup>318</sup> On the other hand, other EU policies, particularly the renewable energy target, undermine this approach by forcing member states to deploy expensive technologies in the short-term, squandering the total resources available for decarbonisation, and damaging the prospects for meeting the ultimate 2050 carbon target. As a result, Europe presently has an ETS with a carbon price too low to encourage greenhouse gas reductions that cost €5/tCO<sub>2</sub>, while simultaneously having a renewable energy target forcing reductions at well over €100/tCO<sub>2</sub>. It would be beneficial for the UK, the EU (and given the nature of the climate problem, the world) to have policy much more rigorously focused on achieving the most cost-effective emissions reductions, and eliminating the expensive, politically-driven technology-specific targets that have compromised the carbon market.<sup>319</sup>

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

## **2. 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?)**

There is no obvious reason for decisions about the appropriate technology mix of different countries' energy systems to be taken at the EU level. While setting an EU-wide carbon cap is sensible, decreeing that Member States get a prescribed proportion of their energy from renewable sources cannot be justified on environmental or common market grounds. The conflation of climate policy and energy technology choices is unnecessary. It has led to the undermining of climate objectives, by reducing their cost-effectiveness, and of Member States' energy policies, by reducing their flexibility. Clear separation should be drawn, leaving climate policy (including decisions such as the form of the ETS and the setting of its carbon cap) at a European level, while leaving choices about the suitability of particular technologies to countries' energy and industrial systems to the Member States and to companies operating in them.

### **ii. currently made at another level were instead made at EU level?**

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<sup>318</sup> Moore, Simon; *If the Cap Fits*; Policy Exchange; 2013  
[www.policyexchange.org.uk/publications/category/item/if-the-cap-fits-reform-of-european-climate-policy-and-the-eu-emissions-trading-system?category\\_id=24](http://www.policyexchange.org.uk/publications/category/item/if-the-cap-fits-reform-of-european-climate-policy-and-the-eu-emissions-trading-system?category_id=24); pp27-28

<sup>319</sup> *Ibid.* pp. 58-63

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

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

**4. 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?**

See question 1

### ***Current legislation***

**5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

**i. focused on outcomes (results)?**

EU climate policy has tended to focus on outcomes. Too often, however, the outcomes specified in legislation contradict the overarching intent of policy. The renewable energy target is a clear example. It specifies an outcome – that a Member State must draw a set proportion of its energy from renewable sources by 2020. However, this narrowly defined outcome has little to do with the overarching policy objective – to prevent the worst effects of climate change, as set in the commitment to avoid a greater than 50% chance of a 2°C rise in global temperatures.<sup>320</sup> Of the many pathways to meeting the 2° objective, some include EU Member States achieving these renewable energy goals in 2020, but many others do not. By restricting the scope of mitigation efforts, and in doing some by requiring the use of very expensive options, EU climate policy has shown itself often to be focused on the wrong outcomes.

**ii. based on an assessment of risk and scientific evidence?**

### ***Doing things differently***

**6. 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>320</sup> Moore, Simon; *2020 Hindsight*; Policy Exchange; 2011; [www.policyexchange.org.uk/publications/category/item/2020-hindsight-does-the-renewable-energy-target-help-the-uk-decarbonise?category\\_id=24](http://www.policyexchange.org.uk/publications/category/item/2020-hindsight-does-the-renewable-energy-target-help-the-uk-decarbonise?category_id=24)

**7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change?**

**ii. Less action on the environment/climate change?**

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

**9. a. 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?**

**b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

***Future challenges and opportunities***

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

**b. 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?**

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

***Anything else?***

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

**Prospect**

Prospect is an independent, thriving and forward-looking trade union that represents over 118,000 professionals: scientists and specialists in the public and private sectors. Our members are engineers, scientists, managers and specialists in areas as diverse as agriculture, defence, energy, environment, heritage, shipbuilding, telecoms and transport.

As a union, we are uniquely placed to make a significant contribution in combating the dangers of climate change and protecting the environment. Members in the Met Office, research councils, the Environment Agency, the energy sector and many other areas have



a scientific or professional expertise and a common concern to address the most serious threat to the future of life on our planet.

Almost 8,000 Prospect members work in environment and food in a variety of key roles including the natural environment, biodiversity, plants and animals, sustainable development and the green economy, food, farming and fisheries, environmental protection and pollution control, rural communities and heritage sites.

We are also the union for scientists and managers employed by the research councils with members directly involved in tackling issues such as climate change, biodiversity and natural hazards. The Biotechnology and Biological Sciences Research Council supports world-class research in areas such as the impact of climate change, a healthier old age, and sustainable food production, land use and energy production.

Prospect has a proud tradition of leadership and activity on environmental issues. We have helped to shape policies and action at a UK level through the Trades Union Congress, and internationally through our global union federations.

Other workplaces in England and Wales dealing with environmental issues include the Agriculture and Horticulture Development Board, Ordnance Survey, National Trust, Royal Botanic Gardens and Countryside Council for Wales.

In Scotland, Prospect has members in the Scottish Research Establishments, Scottish Natural Heritage, Scottish Agricultural College, Royal Botanic Garden Edinburgh and National Trust for Scotland.

Both the local environment, climate change and the impact of climatic changes are major issue for Prospect because:

- the move to a low-carbon economy has massive implications for jobs and huge economic consequences
- it is linked to many Prospect policies, eg international development and energy
- it has implications for the working environment and working patterns

This submission does not aim to answer all the questions laid out in the consultation document but does aim to give evidence of why we believe having a regulatory and legislative framework across Europe is beneficial to the United Kingdom.

## **It's a global problem**

A UK *climate science statement* published jointly between the Met Office, Natural Environment Research Council and The Royal Society in November 2009<sup>321</sup> reinforces the 2007 Assessment Report of the UN's climate change panel (the IPCC) of the "unequivocal evidence for a warming climate, and a high degree of certainty that human activities are largely responsible for global warming since the middle of the 20<sup>th</sup> century".

The statement states further that, even small changes in global temperatures can produce damaging local and regional effects and that some countries and regions are already vulnerable to climate variability and change, but in the coming decades all countries will be affected, regardless of their affluence or individual emissions. It goes on to state that, in the UK, we will be affected both directly and indirectly, through the effects of climate change.

The urgency of the climate challenge is confirmed by the National Oceanic and Atmospheric Administration report 'State of the Climate 2012', to which the Met Office and other leading UK institutions contributed.

There is a plethora of published research that clearly demonstrates that climate change and environmental degradation is a global problem manifesting differently for regions and countries and thus needs a cohesive and aligned framework that is not swayed or diluted by national and local politics.

### **Enabling environment for the region**

The EU Competence ensures that at a regional level there is a consistent approach and targets that all in Europe aspire to. This, in tandem with a regulatory framework, provides an enabling environment that has seen a growth of trans-national multi stakeholder activity and partnerships developing across science, civil society, business, trades unions, political parties, academics and NGO's

An example of this is a recent seminar held by EDF energy that met with stakeholders, including scientists, NGO's and representatives from trade unions across the EU, to develop a cohesive corporate sustainability plan to not only meet their statutory requirements but ensures no harm to people or planet.

Another example of this is the "Right to Water campaign"<sup>322</sup>, which includes calls on the EU to exclude water and sanitation services in Trade Agreements such as CETA, to enshrine the "water is not a commodity" principle of the Water Framework Directive in all EU water and water-related policies and to define that protecting our water environment will prevail over commercial policies. A range of civil society organisations and institutions form the core of this campaign.

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<sup>321</sup> UK Climate Statement [www.royalsociety.org/uploadedFiles/Royal\\_Society\\_Content/policy/publications/2009/4294969083.pdf](http://www.royalsociety.org/uploadedFiles/Royal_Society_Content/policy/publications/2009/4294969083.pdf)

<sup>322</sup> European Water Campaign [www.right2water.eu/who-we-are-organizations](http://www.right2water.eu/who-we-are-organizations)

## Responding to political shocks and change

The major benefit of decision making at EU level is that it promotes a stronger voice on a global problem at a regional level. In parallel to this the EU Competence on environment and climate change is a foundation that withstands national political changes and ideological trends within the UK.

Prospect's greatest concern is the erosion of the ability within the UK to enforce, monitor and contribute effectively to environmental regulation and climate change discussions.

Prospect has run two campaigns that highlight the systematic dismantling of our public sector capacity to address environmental degradation, mitigate against climatic changes and prepare for adaptation.

Our "*Is this the lightest green government ever?*"<sup>323</sup> publication highlights how public spending cuts are harming the UK's environmental progress and tarnishing the government's green image. Significant spending cuts to a range of environmental and climate change related bodies is indicative of the sitting governments disregard for protecting the environment and mitigating/adapting to changes brought about by climate change.

For example:

- marine renewables deployment fund cut from £50million to £20million;
- budget cuts of 34% for forest research and funding cuts for the Carbon Trust;
- The Sustainable Development Commission and the Royal Commission on Environmental Pollution **have both been abolished.**

Prospect's "*I'm not a number*"<sup>324</sup> campaign highlights the important work being undertaken by specialist public sector scientists and engineers. The climate scientist case study (Annex 2) indicates the level of staff knowledge that is being lost to the UK through spending cuts these include Natural England (down 21%), Environment Agency (down 17%), Flood management (down 23%), Marine Management Organisation (down 21%) and Royal Botanical Gardens Kew (down 30%).

Prospect's report "*Government that can needs people who know how*"<sup>325</sup> highlights the fact that PwC estimates that environmental science alone is worth millions of pounds to the UK economy and yet it is being dismantled, eroded and diluted.

It then begs the "what if?" question – without the EU framework in place – would the UK return to having the unattractive name from the 1970s and 80s for being the "Dirty Man of Europe"

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<sup>323</sup> Is this the lightest green government ever? <http://library.prospect.org.uk/id/2011/00949>

<sup>324</sup> I'm not a number ..... I'm a climate scientist <http://library.prospect.org.uk/id/2011/00297>

<sup>325</sup> GOVERNMENT THAT CAN needs people who know how <http://library.prospect.org.uk/id/2012/00374>

We would agree with the assessment by Dr Charlotte Burns, Environment Department, University of York in the Report, *“Implications for UK Environmental Policy of a vote to Exit the EU”*<sup>326</sup> that states; “From an environmental perspective it seems likely that leaving the EU will see a watering down of environment policy. With the notable exception of climate change legislation, in recent times the UK has failed to play a leadership role in the environmental policy field. The UK government has sought to block strict rules limiting imports of tar sands at the European level, tried to water down the EU energy efficiency directive, and threatened to block an EU pesticide ban that will protect bees. Rhetoric from key players in the Tory party and the UK Independence Party suggests that they would like to see the clock turned back on progressive environmental policies, condemning UK citizens to poor water and air quality, and negatively affecting business throughout the UK that benefit from tourism and wider ecosystem services, and raising the prospect of an increasingly built-up countryside with fewer green spaces. Such a perspective is peculiarly short-sighted and narrow, failing to take into account both the wider economic benefits that environmental policies deliver and their popularity with the public.”

### **Prowse, Hazel Anne**

**Q1** None

**Q2** Added excess unnecessary regulation, most of it silly.

**Q3** ALL decisions must be made in the UK.

**Q4** Nothing must ever be at 'EU' level. Each industry has its own rules and the UK was perfectly OK before the EU interfered

**Q5** Not at all

**Q6** Not at all. VAT is grinding the faces of our poor and 'green taxes' only worsen matters -

**Q7** No. I am a scientist, and the way to save the environment is first of all, reduce our population, starting with instant repatriation of all immigrants

**Q8** I AM a scientist. GM is a good idea, and I want Britain to lead. Evidence? The USA has had GM corn for years and my American friends are doing just fine

**Q9** By NOT doing anything at all! For example, for centuries countries along a river have made their own agreements on its use and their activities. It worked. The EU only antagonises everyone. Has it stopped the flooding in the Danube basin? No. it FAILED

**Q10** NOT AT ALL. Tell it to take its immigrants back, so releasing the excess pressure on our limited island

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<sup>326</sup> Implications for UK Environmental Policy of a vote to Exit the EU [www.foe.co.uk/resource/briefings/eu\\_referendum\\_environment.pdf](http://www.foe.co.uk/resource/briefings/eu_referendum_environment.pdf)

**Q11** It would give us hope of returning to being a thriving economy, inventing and developing stuff for the new world.

**Q12** Yes. Do not implement any 'directives' at all and repeal all those currently in force. English law and our own rules are best.

**Q13** None. I have not found any benefit to anyone of the EU - unless you include the over-paid Bureaucracy.

**Q14** Not at all. We have the expertise in Britain - we do not need the EU. NONE of the German universities feature in the world's top twenty, while many of ours have already developed, for example, carbon capture and storage.

**Q15 OVER POPULATION**

Everything else follows from this, be it internal migration, excess demand on water, fish, land, or air. The CFP has wrecked our fish stocks in the North Sea, where Spanish pirates are now given free rein. My ancestors fought with Drake - and I am willing to fight again.

**Q16** Just abolish the EU. Two many levels yield to conflict, let alone the time delays and errors resulting from multiple translations. I know, I have worked in the UK and overseas using my collection of languages, as has my brother, and many of my friends and relations. I have also worked with hazardous chemicals, being taught the rules for handling them at the start. This is common practice in all sectors. WE DO NOT NEED AN EU.

**Q17** We would save BILLIONS by just leaving the EU, before losing the thousands of EU migrants. My friends and family moved only in ones and twos, but the Poles come in bus-loads. I have seen them at Victoria. We could make money, and a better world, if we were once again free to develop our own products, such as GM, different types of air filters, and to keep our country free of unwanted infrastructures such as HS2. We could reclaim our fish stocks in the North Sea, we could insist on no long-distance travel of animals for slaughter, we could put up our borders against tree saplings carrying diseases AND WE COULD LOWER THE TAXES ON THE POOR.

**Q18** I have not yet found one, (1) instance of any benefit of the EU. What has it done for me? Has it stopped the wholesale slaughter of songbirds migrating from southern countries, or the massacre of innocent bulls in Spain? We already had organisations to look after our environment, from whales to birds, hedgehogs to fish.

I repeat, the EU has done nothing useful at all, to anyone. The only good thing ever to come out of Brussels is sprouts.

**Quiet Market Approval Limited**

**Q18** Quiet Mark is a trading arm of UK charity, the Noise Abatement Society. It is not possible for Quiet Mark to give definitive comments on whether EU competence related to noise has been a net benefit or not to the UK because the consultation paper confines

itself to broad generalisations and does not have the scope to present scenarios on what UK policies or actions would have been pursued in the absence of such EU competence. However, Quiet Mark recognises that much product development takes place in response to contexts much wider than the nation state, and that, in principle, international co-operation offers opportunities for addressing the health and other disbenefits of noise at lower cost. In response, Quiet Mark actions include the establishment, in January 2012, of the world's first mark of approval for quiet goods and services. The mark is trademarked in the EU and has established a universal symbol; with 30 categories represented so far, Quiet Mark provides a system of support for consumers and industry alike and is a vehicle to finance transformation of the aural environment for the benefit of all, [www.quietmark.com](http://www.quietmark.com).

### **Ravnkilde, Kristian**

**Q1** Movement towards compliance with WFD has had visible benefits to the environment and hence all our lives, and provided interesting work in my professional sector (water and environmental consultancy)

**Q2** None that I know of.

**Q3** I do not think that this would help. A race to the bottom in terms of environmental protection would be more likely to occur, with individual countries undercutting each other for short-term advantage.

Q4 /

**Q5** Absolutely essential. They prevent a race to the bottom.

**Q6** I do not see a conflict. A safe and diverse environment is essential for our long term survival and prosperity.

**Q7** Taking WFD as an example, I see it as highly focused on outcomes that are of value.

**Q8** Similarly, I see the WFD and being based on the most solid science and risk assessment available.

**Q9** There are no alternatives to legislation that can reliably protect the environment. Voluntary agreements won't work as non-compliance results in short-term profit, punishing good behaviour.

**Q10** More action is essential. A safe and diverse environment is essential for our long term survival and prosperity.

**Q11** This would be a bad idea.

**Q12** No comment - we seem to be on the right track.

**Q13** As a larger body than individual nations, with the clout to deliver action, the EU can negotiate more effectively and efficiently. Inconclusive negotiations are far too common. At the same time, the EU needs to streamline its processes for arriving at negotiating positions and ratifying agreements made.

**Q14** Very important. A fragmented approach will reduce the chance of achieving progress.

**Q15** Resistance by vested interests protecting short-term profits could be a major obstacle. The uncertainties involved in climate change predictions are a major challenge, affecting the viability of investments in mitigation measures and, to a lesser extent, ongoing environmental protection measures. We need to develop flexible approaches and measures that can be adapted as time progresses.

**Q16** Overall targets and monitoring set at international and EU level, monitored and enforced at national level. Means of achieving them decided at national level, with matching obligations imposed by law, monitored and enforced at national level. Individual companies should be free to assess their investment needs but based on minimum requirements, meaningful monitoring and penalties for non-compliance that make it a business-critical decision.

**Q17** The level is not the real issue. We cannot afford in the long term to avoid or defer environmental protection or climate change mitigation and adaptation measures, or try to pass the responsibility on to others, in the interests of short term profit.

**Q18** The need to protect our global environment, for its own sake as well as our long-term survival, is urgent and increasing. We cannot afford the time-wasting involved in arguing over jurisdictions and institutions, but need to create the broadest possible agreement over action. Legally binding obligations are the only reliable way forward, creating the demand for appropriate technologies and so generating the economies of scale which will make them affordable. There are benefits in being at the forefront of technologies that will become essential world-wide, and major risks in playing “you first” with the rest of the world. Arguing the toss over the involvement of the EU is just wasting time and making matters worse in the long run.`

## **Redcar & Cleveland Borough Council**

### **Advantages and disadvantages**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

*EU ETS has had a significant impact on emission reduction and also resulted in a knock-on effect of modest increases in company performance. Carbon abatement behaviour has also changed across the phases of the scheme (although it is recognised that the scheme took some time to ‘bed in’ between the initial and second phases).*

*The introduction and roll-out of the European Performance of Buildings Directive has served to raise the profile and priority of energy efficiency within our building portfolio. Display Energy Certificate ratings are an easily recognisable system by which to quickly view the efficiency of the use of a building and are now an indicator by which we prioritise improvements to our buildings and aim to improve performance of the whole building portfolio year by year. Anecdotal evidence is that this is mirrored throughout many UK local authorities and whilst some organisations may still not place significant emphasis on EPBD compliance the net effect will still result in improvements in efficiency across the UK estate.*

ii. disadvantaged the UK / your sector?

*The burden of compliance and reporting cannot be ignored. Depending on organisation size, the time and effort taken to report can be disproportionate and measures to 'tier' reporting requirements would be beneficial.*

*The benefit outlined above in regard to EPBD did bring with it particular disadvantage in terms of resource requirement to implement a programme to comply, during a time of budget cuts within local authorities.*

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

2. 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?)

*European legislation is a significant driver for improving processes and implementing measures to reduce emissions and improve the environment in other ways. Were the driver to be removed then substantial alternative measures would be needed in order to maintain improvements. The removal of a recognisable and embedded system such as labelling under EPBD would be a backward step and the advantage of an EU wide scheme is that reporting is standardised. Reporting is already normalised by region to take account of variances in temperature, for example, and therefore any 'unfairness' due to this standardisation is mitigated.*

*EU, International and national decisions undoubtedly act as a driver for action in the local authority sector, however regional decisions tend to have less impact.*

ii. currently made at another level were instead made at EU level?

*A definite benefit would be further standardisation, particularly when working on activities which contribute towards commitments made under the Kyoto Protocol. In terms of CO<sub>2</sub> emissions reduction on a smaller scale than EU ETS a standardised approach linked to EU ETS would make much more sense than the simplified CRCEES reporting. Simplification of CRC served to lessen the encouragement of carbon reduction schemes and has removed reporting altogether in Phase 2 for this organisation, which in terms of influencing emissions reduction is a backward step. Therefore a scheme similar to EU ETS for smaller participants would be welcome in order to progress CO<sub>2</sub> reduction programmes.*

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



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

*They are important to ensure an even marketplace with equal standards, however it is understood that these standards increase resource requirements, and therefore costs, in order to comply.*

4. 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?

*The burden of compliance (in terms of additional cost and delays) will always be an issue, whether that burden comes from the EU or from UK Government in the form of alternative legislation. This will balance out where intra-EU trade is concerned however the balance is shifted when looking at trade with countries outside of the EU (however this is not considered in this consultation as it is captured in the Trade and Investment report).*

### **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

*Overarching targets do not filter down to local level and so although the main legislation is outcome driven, it is difficult to match our own programmes to these high-level targets whilst attaching the same level of priority as is given at higher level. Increased focus on priority of specific outcomes at a local level would be welcomed in order to improve and accelerate environmental protection programmes.*

ii. based on an assessment of risk and scientific evidence?

*In terms of Climate Change legislation it is widely accepted that initiatives are based upon a robust assessment of risk and scientific evidence.*

### **Doing things differently**

6. 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?)

- *Better translation of EU targets / initiatives to encourage action at a local level.*
- *Better use of incentive schemes rather than burdensome reporting or compliance requirements so that action is not seen as simply a necessary evil but productive action with positive outcomes.*
- *Effective replication of successful initiatives targeted at lower level emitters – filtering down what works.*

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

*Definite benefits (environmentally). As previously mentioned EU legislation is an important driver for action which then results in environmental improvement. In terms of reporting and compliance burden there are obvious disadvantages however increased action is necessary in order to achieve environmental goals.*

ii. Less action on the environment/climate change?

*No benefit.*

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

*By using more of a 'carrot' rather than 'stick' approach. The removal of the cap and trade scheme for CRC and further simplifying the scheme have only served to create negativity around CO<sub>2</sub> reporting at a level underneath EU ETS.*

9. a. 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?

*Distinct advantage in having a greater role. Standardisation of reporting works well within the EU and should be encouraged on a wider scale.*

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

*Very. Action on climate change issues is needed to continue and accelerate and the UK needs to feed into that process in order to protect the interests of the UK.*

### **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

- *Striking a correct balance between doing the right thing for the environment whilst encouraging and ensuring growth.*
- *Ensuring that sufficient action is taken to adapt to climate change – there is always the danger that whilst no ill effects are felt on a local level that this important work is 'put on the back burner'.*
- *Enabling effective implementation of renewable technologies whilst balancing local impacts.*
- *Ensuring that environmental protection is given credence in it's own right rather than being seen as a cost-saving opportunity.*

b. 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?

- *Legislation, whether EU or UK, must always play a part as there will always be those who will not act without it.*
- *Action needs to be collaborative and co-ordinated to give the greatest effectiveness.*
- *A mix of incentives from different levels of hierarchy is likely to have the greatest impact.*

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

*The benefit would be that addressing challenges at EU level creates a level playing field within the Community and offers standardised approaches. However this may result in increased bureaucracy particularly for smaller emitters and some work may need to be done to ease the burden of compliance in this area, perhaps by introducing scaled-down versions of the same methodology.*

*There may be a negative impact in terms of the UK not being able to operate flexibly and tailor programmes to effect positive impacts in other areas of policy.*

### **Anything else?**

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

<sup>1</sup> *Zachmann, Ndoye & Abrell, 2011*

### **Renewable Energy Association/Organics Recycling Group**

**Q1** There has been significant change in recent years regarding the manner in which biodegradable waste is managed in the UK. The most relevant of these has been the implementation of Council Directive 99/31/EC known as the Landfill Directive. The objective of this directive is to prevent or reduce as far as possible the negative impacts on the environment from the landfilling of wastes including biodegradable waste. It is intended in particular to reduce the adverse effects of landfilling on surface and groundwater, soil, air and human health

**Q2** There is evidence of a three tier rate of adoption with a different understanding and compliance level being adopted by members states leading to a uneven playing field.

There is evidence to support that where derogation negotiations have been implemented this slows the whole process down and this has proved to be detrimental to the UK.

**Q3** Within the 28 member states there is significant disparity in the level of competencies and infrastructure development so imposing the same regulatory constraints across all nations will mean that in some instances the demands are unrealistic and/or achievable. National regulation can meet the bespoke needs of member states to better effect and will not impose undue cost where it is not necessary. Where targets have been set in the WFD for households to achieve 50% recycling by 2020, there has been the opportunity in the UK to extend this to National Targets for Scotland and Wales, this offers a useful extension.

**Q4** For overarching policy such as Green House Gas emissions, there needs to be a holistic view taken as one nation needs to be working in harmony with all of the others and in fact the world if we are to be effective at reducing emission levels . A coherent and cohesive plan would be better imposed at a EU level in this case.

**Q5** If by internal market you mean the UK market in this instance, then I do not think that it is necessary to impose the will of the EU on all member states in order for internal markets to function correctly. The key issues are often local and need to be dealt with in a sympathetic manner appropriate to individual needs as opposed to central diktat.

**Q6** There needs to be enforcement at a level that does not unduly place too heavy a burden on industry. Enforcement must be consistently applied across all member states.

**Q7** The landfill directive have been very positive in respect to their environmental outcomes. There is an additional benefit of adding value to waste both at a perceptual level and at a physical level which is beneficial to industry.

**Q8**

**Q9** Although a holistic view can be helpful. We are seeking an outcome that improves environmental protection in each member state. Each country will have a different set of problems which require bespoke solutions. Carrying out country specific risk assessments would provide improved results at a local level as they are designed for a specific purpose and not generic in origin, the latter often dilutes the problem or creates a problem which may not exist in the first place.

**Q10** This would be beneficial as it would enable the UK to export technology further afield. This is a global issue

**Q11** This would not be a good thing in respect to the wider energy and climate change debate there needs to be a European position on this as this will carry more weight at a global level.

**Q12** Where possible there should be derogation allowing the UK to tailor the current EU regs in a manner which suit our needs best. A flexible approach within the confines of the EU legislation may provide a happy medium for many but there must be the opportunity to meet local objectives through EU legislation rather than imposing ineffective and unachievable targets.

It is important that the UK is engaged with at an early stage rather than being presented with a fait accompli this will ensure that it is relevant to the UKs needs.

**Q13** There will be occasions when working with an ally will be beneficial to our needs, particularly when the requirements of the third party is similar to our own as this adds strength to the argument where the ambition is the same. Many of the climate change issues are global in scale.

**Q14** Important to be within this group as can be seen by my response to Q 2 ii

**Q15** Food security and the food/fuel debate will undoubtedly pose many challenges ahead for us as a nation. This combined with our need to ensure that our energy needs are met at a time when we are facing a looming energy crisis. Our current power stations are soon to be redundant as a result of over burdensome regulation in some cases old age, it is estimated that a fifth of our current power stations will become redundant in the next decade. Opportunities are many and include the development of greater stocks of renewable energy platforms such as wind, wave, solar and AD all of these low carbon technologies will improve our environmental impact immeasurably. The UK seek certainty

in regulation and pricing for support mechanisms, without this there is a risk that innovation and investment will be scarce leading to fewer renewable projects being deemed to be bankable. There should be greater emphasis given to environmental impact .

**Q16** Local problems require local solutions any EU intervention should not hinder competition, increase burden or slow down development, currently the EU is seen as a hindrance on many occasions due to the time it takes to make a decision. What industry requires more than anything else is stability and confidence in making future investments, this can only happen where is certainty of regulation and support mechanism.

**Q17** An improvement in standards is desirable but without the additional cost burden which often accompanies this, the latter will do little to generate growth or sector confidence.

## **Renewable Energy Systems Limited**

RES is one of the world's leading renewable energy developers working across the globe to develop, construct and operate projects that contribute to our goal of a sustainable future. We have a portfolio of low-carbon energy technologies and a range of services which together can meet demand from the industrial, public and commercial sectors on whatever scale.

RES has been an established presence at the forefront of the wind energy industry for over three decades. Our core activity is the development, design, construction, financing and operation of wind farm projects worldwide. RES has developed or built almost 7GW of wind energy worldwide and we have several thousand megawatts under construction and in development, we continue to play a leading role in what is now the world's fastest growing energy sector. RES is also involved in the biomass, solar, offshore wind, wave and tidal sectors.

RES welcomes the opportunity to respond to DEFRA and DECC's call for evidence on the above review of the balance of competences between the UK and EU relating to environment and climate change. We also endorse the comments that have been submitted on our behalf by our trade association, RenewableUK.

We shall be submitting detailed comments to the call for evidence on the Energy Report (semester 3, commencing autumn 2013) aspect of the Balance of Competences review but as renewable energy policy is closely linked to environmental and climate change policy, and as the latter has an impact on our business interests in the former, we are also submitting some comments to this consultation on the Environment and Climate Change Report.

We attach our response to a selection of the consultation questions, but the key points we would like to make are outlined below:

1. EU policy on renewable energy, which flows from its leadership on climate change policy and targets for greenhouse gas emissions reduction, has been successful in

delivering renewable energy generating capacity at a UK member state and at a cumulative EU level, formed from the individual member state targets set under the burden-sharing agreement, which is designed to be a fair approach. It has therefore been beneficial to RES, our sector and the UK's economic growth and has made a significant contribution to reducing greenhouse gas emissions and mitigating climate change.

2. EU-level legally-binding targets have supported a stable investment environment by countering the political risk that can and does occur at a national level and which has been rising in many member states. Targets are important in that they support the development of supply chains, skills, jobs and investor confidence but most importantly economic growth. With reference to consultation questions 3 and 4, this is an example of how legislation to protect the environment can also serve the UK economy – it is complementary, not mutually exclusive – and achieves other objectives such as reducing energy import dependence, improving the national trade imbalance and improving security of supply.

3. A common energy and climate change framework promotes competition and avoids distortions that might occur as a result of different national standards within the member states. It facilitates trade in green technologies and services within the internal market at the same time as achieving the European objective of cross-border environmental protection.

4. EU membership can be used by the UK to open up trade in environmental goods and services, via the ongoing EU trade talks.

5. Because binding greenhouse gas emission reduction, renewable energy and energy saving targets have been shown to work, RES supports the continuation of EU-level low carbon energy policy in the form of a 2030 climate package that specifically includes all three targets: greenhouse gas emissions, renewable energy and energy efficiency. A continuation of targets beyond 2020 is needed to tackle climate change and to help deliver the EU's goal of limiting global temperature rise to 2 degrees<sup>327</sup>.

RES is grateful for the opportunity to comment and look forward to your response. We hope you take our comments on board and welcome any further contact in relation to this response.

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<sup>327</sup> [www.ourclimate.eu/ourclimate/euclimatepolicy.aspx](http://www.ourclimate.eu/ourclimate/euclimatepolicy.aspx)

## Questions

### Advantages and disadvantages

#### **1. What evidence is there that EU competence in the area of environment and/or climate change has:**

**i. benefited the UK/your sector?**

**ii. disadvantaged the UK/your sector?**

EU policy on renewable energy, which flows from its leadership on climate change policy and targets for greenhouse gas emissions reduction, has been successful in delivering renewable energy generating capacity at a cumulative EU level, formed from the individual member state targets set under the burden-sharing agreement. This structured approach has been effective and has therefore benefited our sector and the UK. For example, in the UK renewable electricity generation has increased from under 3% in 2001<sup>328</sup> to 11.3% in 2012<sup>329</sup> since the introduction of the 2001 Renewables Directive. Furthermore, total renewable energy generation has increased from 2.4% in 2008 to 3.8% in 2011 since the introduction of the 2009 Renewable Energy Directive<sup>330</sup>. Additionally, within the 27 EU countries the share of renewable energy in gross final energy consumption increased from 9.6% in 2008 to 13% in 2012<sup>331</sup>. The 2020 energy and climate policy framework recognised Member States' different energy mixes, economic wealth and capacity to act and therefore included mechanisms to ensure a fair distribution of effort between them.

EU level legally-binding targets under the 2020 framework have supported a stable investment environment by countering the political risk that can and does occur at a national level. Political risk around renewable energy has grown in recent years. Enhanced investor confidence minimizes the risk premium for financial investors, thereby driving down costs. This is critical for capital intensive technologies such as wind energy. Reducing costs will also, of course, have important benefits for consumers.

A common EU-wide energy and climate change policy also promotes competition and avoids distortions that might occur as a result of different national standards within the member states of the EU. It facilitates trade in green technologies and services within the internal market at the same time as achieving the European objective of cross-border environmental protection.

EU membership can be used by the UK to open up trade in environmental goods and services. For example, sustainable development agreements can be pursued in the ongoing EU trade talks with US, Japan and China.

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<sup>328</sup> Page 52, Energy Trends, DECC, June 2012, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/65908/5627-energy-trends-june-2012.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65908/5627-energy-trends-june-2012.pdf)

<sup>329</sup> Page 45, Energy Trends, DECC, March 2013, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/170736/energy\\_trends\\_march\\_2013.PDF](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/170736/energy_trends_march_2013.PDF)

<sup>330</sup> Page 55, Energy Trends, DECC, June 2012, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/65908/5627-energy-trends-june-2012.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65908/5627-energy-trends-june-2012.pdf)

<sup>331</sup> Eurostat, [www.epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=t2020\\_31&plugin=1](http://www.epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=t2020_31&plugin=1)

The current 2020 framework has therefore resulted in the growth of the renewable energy sector, which is a key contribution to reducing carbon emissions and tackling climate change. A continuation of targets beyond 2020 is needed to tackle climate change and to help deliver the EU's goal of limiting global temperature rise to 2 degrees<sup>332</sup>.

While long-term targets at an EU level provide the necessary investor confidence to optimise cost-efficient achievement of climate and energy objectives, specific renewable energy support, energy efficiency and greenhouse gas reduction *schemes* should be set at the Member State level. Support schemes should be set at a national level by Member States to reflect the different potential of different renewable energy technologies, national markets and their features (including grid connection, administrative and capital costs).

Member States should maintain the ability to operate a joint mechanism when suitable. *Members States already have the ability to meet their renewable energy target through a flexibility mechanism agreed with another Member State, either through a: statistical transfer, joint project or joint support scheme. For example Sweden and Norway has operated a successful joint support scheme since January 2012. We support the utilisation of these schemes if they increase the development of renewable energy capacity and welcome increased interconnection. Furthermore, the alignment of energy markets under the EU Target Model will enhance the potential for renewable energy flexibility mechanism. However, the flexibility mechanism should not undermine renewable energy developments in the procuring Member State as this will impact the development of supply chains, skills, jobs and investor confidence in that Member State. Flexibility mechanisms should provide a benefit to both Member States, as the bill payers of the procuring Member State will ultimately have to fund the renewable power generated by the other.*

EU-level greenhouse gas emission reduction, renewable energy and energy saving targets have worked and should continue. However, the European Union Emissions Trading Scheme (EU ETS) is not currently providing a sufficient carbon price to support low-carbon investments in the power sector and should be adjusted. Therefore, the EC needs to persevere with its ambitions to adjust the EU ETS scheme to increase the price of carbon either by backloading or another structural measure which could provide a sustainable solution to the surplus in the longer term<sup>333</sup>.

RES recognises the important role EU environmental law plays in protecting biodiversity, the environment and tackling climate change. However, overly prescriptive implementation of EU environmental law may limit the ability of companies operating under the laws of individual member states to deploy renewable energy, such as onshore and offshore wind. This is a missed opportunity to further the aims of EU environmental law as renewable energy can also make a

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<sup>332</sup> [www.ourclimate.eu/ourclimate/euclimatepolicy.aspx](http://www.ourclimate.eu/ourclimate/euclimatepolicy.aspx)

<sup>333</sup> European Commission, [www.ec.europa.eu/clima/policies/ets/index\\_en.htm](http://www.ec.europa.eu/clima/policies/ets/index_en.htm)



significant contribution to protecting and enhancing biodiversity, the environment and tackling climate change.

An example of this is the requirement to prove that a project would have absolutely no impact upon a Natura 2000 site, designated under the Habitats Directive, Birds Directive or RAMSAR Convention. This may be blocking potential developments that will in reality have no impact upon the integrity of the designation, and could positively contribute to renewable energy generation.

Allowing flexibility to appropriately implement EU legislation at a national level may assist in the deployment of renewable energy. This could be achieved by adopting a “proportionate principle” as opposed to “precautionary principle” in the application of EU environmental law.

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

#### **4. 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?**

Under the broad objective of sustainable development, measures to protect the environment and to promote economic growth are not mutually exclusive but integrated. Policies to promote renewable energy, within the framework of targets, not only reduce carbon emissions but also support the development of supply chains, skills, jobs and investor confidence. A recent report undertaken in the UK found that “in 2010/11, the UK renewables industry was worth £12.5 billion and supported 110,000 jobs, with 400,000 in total required to meet the 2020 renewables targets”. The report also revealed that the overall increase in market value from 2009/10 to 2010/11 was 11% - outstripping economic growth over the same period (1.4%) by a factor of eight<sup>334</sup>. Ed Davey the Secretary of State for Energy and Climate Change also recently stated in a speech that: “new research by my Department estimates that, since 2010, across the UK, over £29bn of private sector investment in renewables has been announced, supporting almost 30,000 jobs.”<sup>335</sup>

A recent EWEA report on the impact of wind energy on jobs and the economy concluded that “the wind energy industry increased its contribution to the EU’s gross domestic product (GDP) by 33% between 2007 and 2010. In 2010, the industry’s growth was twice that of the EU’s GDP overall, with the sector contributing €32 billion to an EU economy in slowdown”. The EWEA report also stated that “the sector created 30% more jobs from 2007 to 2010 to reach nearly 240,000, while EU unemployment rose by 9.6%. By 2020, there should be 520,000 jobs in the sector”<sup>336</sup>. This unrivalled growth is possibly because of the innovation and dynamism of the renewable energy sector supported by the investor confidence that

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<sup>334</sup> REA and Innovas, 23<sup>rd</sup> April 2012, [www.r-e-a.net/news/report-on-employment-and-skills-in-the-uk-renewable-energy-sector-to-be-launched-with-greg-barker](http://www.r-e-a.net/news/report-on-employment-and-skills-in-the-uk-renewable-energy-sector-to-be-launched-with-greg-barker)

<sup>335</sup> Ed Davey, DECC, 22<sup>nd</sup> May 2013, [www.gov.uk/government/speeches/edward-davey-address-to-the-all-energy-conference](http://www.gov.uk/government/speeches/edward-davey-address-to-the-all-energy-conference)

<sup>336</sup> Green Growth: The Impact of Wind Energy on jobs and the Economy, April 2012, EWEA, [www.ewe.org/fileadmin/files/library/publications/reports/Green\\_Growth.pdf](http://www.ewe.org/fileadmin/files/library/publications/reports/Green_Growth.pdf)

is only possible with the political stability provided by clearly defined targets within an EU-level framework.

EU-level targets and competition within the internal market have led to investments in R&D, innovation and large scale deployment in the sector, which have all contributed to reductions in the cost of renewable energy technologies. Long term targets have enabled quicker cost-reductions and reduced the need and level for support schemes or market incentives for renewables. For example in the UK, due to cost reductions in onshore wind the level of support provided to onshore wind generators from ROCs has been reduced from 1 ROC per MWh to 0.9 ROCs per MWh from April 2013<sup>337</sup>. The UK is also reducing the support level for offshore wind: “the Government has decided to set the level of support for offshore wind at 2 ROCs/MWh for new accreditations and additional capacity added in 2014/15, reducing to 1.9 ROCs/MWh for new accreditations and additional capacity added in 2015/16 and 1.8 ROCs/MWh for new accreditations and additional capacity added in 2016/17”<sup>338</sup>. Also the support levels for solar PV have decreased across the EU since 2010 as the cost of the technology has decreased. Successfully driving down technology costs benefits the consumer and improves Europe’s competitiveness. Overall targets reduce the need for renewable energy support mechanisms that impact on the consumer. Cost reductions need economies of scale and that can only be achieved by developing a strong pipeline of projects within a clear and stable policy framework.

#### **Doing things differently:**

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

**7. How far do you think the UK might benefit from the EU taking:  
i. More action on the environment/climate change?**

As described above, UK renewable energy developers such as ourselves, and the UK renewable energy sector as a whole, would benefit from the EU setting robust post-2020 climate and energy policies, including specific renewable energy targets. Longer-term targets provide a positive incentive for investment, creating a climate of economic growth and jobs. The EU taking a strong lead at international climate negotiations would send the right signals to other nations and increase the likelihood of a science-based agreement that would achieve the objective of limiting global

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<sup>337</sup> Page 30, Government response to the consultation on proposals for the levels of banded support under the Renewables Obligation for the period 2013-17 and the Renewables Obligation Order 2012, DECC, July 2012, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/42852/5936-renewables-obligation-consultation-the-government.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/42852/5936-renewables-obligation-consultation-the-government.pdf)

<sup>338</sup> Point 4.6, Page 33, Government response to the consultation on proposals for the levels of banded support under the Renewables Obligation for the period 2013-17 and the Renewables Obligation Order 2012, DECC, July 2012, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/42852/5936-renewables-obligation-consultation-the-government.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/42852/5936-renewables-obligation-consultation-the-government.pdf)

temperature rise to 2 degrees, which would bring important economic and social, as well as environmental benefits.

**ii. less action on the environment/climate change?**

We are of the opinion that, while the UK Government should be commended for its strong position on climate change and the benefits of the Climate Change Act, the UK would not benefit from the EU taking less action on climate change. A jointly robust position and mutually supportive programme of action is beneficial.

**9 a. 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?**

See answer to question 7 above, with regard to climate change agreements.

**9 b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

Extremely important. The EU has played a leading role in climate negotiations to date and has been instrumental in promoting ambitious targets and policies based on scientific recommendations and which promote green economic growth. The UK has, likewise, played a constructive role within “Team EU” and is to be commended for setting a good example on climate legislation with the Climate Change Act, which has a world leading emissions reduction target of 80% by 2050, and which can continue to drive growth in green technologies and renewable energy investment. For example, the UK is already established among the top ten global destinations for renewable energy investment<sup>339</sup>

Separating itself from Team EU would send the wrong signal and would weaken the position of both the UK and the EU in promoting a common interest. The UK should work within Team EU for a meaningful global climate agreement in 2015, which would further drive expansion of markets for green goods and services.

## **RenewableUK**

RenewableUK welcomes the opportunity to comment on the call for evidence on the review of balance of competences. Below we briefly outline RenewableUK’s views.

For the renewables sector, EU level carbon reduction and renewable energy targets have been key in creating and maintaining momentum for the industry. EU Renewables and low carbon targets make a very positive contribution to the development of policy in this area in the UK, and have benefitted the renewable energy sector in the UK. They help maintain long-term policy stability and also establish a fair and equitable EU-wide strategy for progress in this area.

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<sup>339</sup> Pew Charitable Trusts, Who’s winning the clean energy race? 2011 and 2012 editions

EU environmental law on the other hand has potential to be a break on implementation of renewable energy. Environmental protection is best served by national legislation that takes account of national and subnational circumstances. Setting environmental law at the EU level gives rise to particular difficulties due to the inevitable imperfections or uncertainties in the transposition of EU law into national law and regulation. This has been a particular issue with the Habitats Directive, but is a danger more generally when restrictive policies are set at the EU level with the intention of being imported into national legislation.

## Responses to questions

### 1. What evidence is there that EU competence in the area of environment and/or climate change has:

#### i. benefited the UK/your sector?

#### ii. disadvantaged the UK/your sector?

EU policy on renewable energy, which flows from its leadership on climate change policy and targets for greenhouse gas emissions reduction, has been successful in delivering renewable energy generating capacity at a cumulative EU level, formed from the individual member state targets set under the burden-sharing agreement. This structured approach has been effective and has therefore benefited our sector and the UK.

For example, in the UK renewable electricity generation has increased from under 3% in 2001<sup>340</sup> to 11.3% in 2012<sup>341</sup> since the introduction of the 2001 Renewables Directive. Furthermore, total renewable energy generation has increased from 2.4% in 2008 to 3.8% in 2011 since the introduction of the 2009 Renewable Energy Directive<sup>342</sup>. Additionally, within the 27 EU countries the share of renewable energy in gross final energy consumption increased from 9.6% in 2008 to 13% in 2012<sup>343</sup>. The 2020 energy and climate policy framework recognised Member States' different energy mixes, economic wealth and capacity to act and therefore included mechanisms to ensure a fair distribution of effort between them.

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<sup>340</sup> Page 52, Energy Trends, DECC, June 2012, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/65908/5627-energy-trends-june-2012.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65908/5627-energy-trends-june-2012.pdf)

<sup>341</sup> Page 45, Energy Trends, DECC, March 2013, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/170736/energy\\_trends\\_march\\_2013.PDF](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/170736/energy_trends_march_2013.PDF)

<sup>342</sup> Page 55, Energy Trends, DECC, June 2012, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/65908/5627-energy-trends-june-2012.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65908/5627-energy-trends-june-2012.pdf)

<sup>343</sup> Eurostat, [www.epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=t2020\\_31&plugin=1](http://www.epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=t2020_31&plugin=1)

EU level legally-binding targets under the 2020 framework have supported a stable investment environment by countering the political risk that can and does occur at a national level. Political risk around renewable energy has grown in recent years. Enhanced investor confidence minimizes the risk premium for financial investors, thereby driving down costs. This is critical for capital intensive technologies such as wind energy. Reducing costs will also have important benefits for consumers.

A common EU-wide energy and climate change policy also promotes competition and avoids distortions that might occur as a result of different national standards within the member states of the EU. It facilitates trade in green technologies and services within the internal market at the same time as achieving the European objective of cross-border environmental protection.

EU membership can also be used by the UK to open up trade in environmental goods and services. For example, sustainable development agreements can be pursued in the ongoing EU trade talks with US, Japan and China.

The current 2020 framework has therefore resulted in the growth of the renewable energy sector, which is a key contribution to reducing carbon emissions and tackling climate change. A continuation of targets beyond 2020 is needed to tackle climate change and to help deliver the EU's goal of limiting global temperature rise to 2 degrees<sup>344</sup>.

While long-term targets at an EU level provide the necessary investor confidence to optimise cost-efficient achievement of climate and energy objectives, specific renewable energy support, energy efficiency and greenhouse gas reduction schemes should be set at the Member State level. Support schemes should be set at a national level by Member States to reflect the different potential of various renewable energy technologies, national markets and their features (including grid connection, administrative and capital costs).

Member States should maintain the ability to operate a joint mechanism when suitable. Member States already have the ability to meet their renewable energy target through a flexibility mechanism agreed with another Member State, either through a: statistical transfer, joint project or joint support scheme. For example Sweden and Norway have operated a successful joint support scheme since January 2012. We support the utilisation of these schemes if they increase the development of renewable energy capacity and welcome increased interconnection.

Furthermore, the alignment of energy markets under the EU Target Model will enhance the potential for renewable energy flexibility mechanism. However, the flexibility mechanism should not undermine renewable energy developments in the

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344 [www.ourclimate.eu/ourclimate/euclimatepolicy.aspx](http://www.ourclimate.eu/ourclimate/euclimatepolicy.aspx)

procuring Member State as this will impact the development of supply chains, skills, jobs and investor confidence in that Member State. Flexibility mechanisms should provide a benefit to both Member States, as the bill payers of the procuring Member State will ultimately have to fund the renewable power generated by the other.

EU-level greenhouse gas emission reduction, renewable energy and energy saving targets have worked and should continue. However, the European Union Emissions Trading Scheme (EU ETS) is not currently providing a sufficient carbon price to support low-carbon investments in the power sector and should be adjusted. Therefore, the EC needs to persevere with its ambitions to adjust the EU ETS scheme to increase the price of carbon either by backloading or another structural measure which could provide a sustainable solution to the surplus in the longer term<sup>345</sup>.

RenewableUK recognises the important role EU environmental law plays in protecting biodiversity, the environment and tackling climate change. However, overly prescriptive implementation of EU environmental law may limit the ability of companies operating under the laws of individual member states to deploy renewable energy, such as onshore and offshore wind. This is a missed opportunity to further the aims of EU environmental law as renewable energy can also make a significant contribution to protecting biodiversity, the environment and tackling climate change.

An example of this is the requirement to prove that a project would have absolutely no impact upon a Natura 2000 site, designated under the Habitats Directive, Birds Directive or RAMSAR Convention. This may be blocking potential developments that will in reality have no impact upon the integrity of the designation, and could positively contribute to renewable energy generation.

Allowing flexibility to appropriately implement EU legislation at a national level may assist in the deployment of renewable energy. This could be achieved by adopting a “proportionate principle” as opposed to “precautionary principle” in the application of EU environmental law.

## **Internal market and economic growth**

### **4. 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?**

Under the broad objective of sustainable development, measures to protect the environment and to promote economic growth are not mutually exclusive but integrated. Policies to promote renewable energy, within the framework of targets,

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<sup>345</sup> European Commission, [www.ec.europa.eu/clima/policies/ets/index\\_en.htm](http://www.ec.europa.eu/clima/policies/ets/index_en.htm)

not only reduce carbon emissions but also support the development of supply chains, skills, jobs and investor confidence. A recent report undertaken in the UK found that “in 2010/11, the UK renewables industry was worth £12.5 billion and supported 110,000 jobs, with 400,000 in total required to meet the 2020 renewables targets”. The report also revealed that the overall increase in market value from 2009/10 to 2010/11 was 11% - outstripping economic growth over the same period (1.4%) by a factor of eight<sup>346</sup>. Ed Davey the Secretary of State for Energy and Climate Change also recently stated in a speech that: “new research by my Department estimates that, since 2010, across the UK, over £29bn of private sector investment in renewables has been announced, supporting almost 30,000 jobs.”<sup>347</sup>

A recent EWEA report on the impact of wind energy on jobs and the economy concluded that “the wind energy industry increased its contribution to the EU’s gross domestic product (GDP) by 33% between 2007 and 2010. In 2010, the industry’s growth was twice that of the EU’s GDP overall, with the sector contributing €32 billion to an EU economy in slowdown”. The EWEA report also stated that “the sector created 30% more jobs from 2007 to 2010 to reach nearly 240,000, while EU unemployment rose by 9.6%. By 2020, there should be 520,000 jobs in the sector”<sup>348</sup>. This unrivalled growth is possibly due to the innovation and dynamism of the renewable energy sector supported by the investor confidence that is only possible with the political stability provided by clearly defined targets within an EU-level framework.

EU-level targets and competition within the internal market have led to investments in R&D, innovation and large scale deployment in the sector, which have all contributed to reductions in the cost of renewable energy technologies. Long-term targets have enabled quicker cost reductions and reduced the need and level for support schemes or market incentives for renewables.

For example in the UK, due to cost reductions in onshore wind the level of support provided to onshore wind generators from ROCs has been reduced from 1 ROC per MWh to 0.9 ROCs per MWh from April 2013<sup>349</sup>. The UK is also reducing the support

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<sup>346</sup> REA and Innovas, 23rd April 2012, <http://www.r-e-a.net/news/report-on-employment-and-skills-in-the-uk-renewable-energysector-to-be-launched-with-greg-barker>

<sup>347</sup> Ed Davey, DECC, 22nd May 2013, <https://www.gov.uk/government/speeches/edward-davey-address-to-the-all-energyconference>

<sup>348</sup> Green Growth: The Impact of Wind Energy on jobs and the Economy, April 2012, EWEA, [www.ewea.org/fileadmin/files/library/publications/reports/Green\\_Growth.pdf](http://www.ewea.org/fileadmin/files/library/publications/reports/Green_Growth.pdf)

<sup>349</sup> Page 30, Government response to the consultation on proposals for the levels of banded support under the Renewables Obligation for the period 2013-17 and the Renewables Obligation Order 2012, DECC, July 2012, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/42852/5936-renewables-obligationconsultation-the-government.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/42852/5936-renewables-obligationconsultation-the-government.pdf)



level for offshore wind: “the Government has decided to set the level of support for offshore wind at 2 ROCs/MWh for new accreditations and additional capacity added in 2014/15, reducing to 1.9 ROCs/MWh for new accreditations and additional capacity added in 2015/16 and 1.8 ROCs/MWh for new accreditations and additional capacity added in 2016/17”<sup>350</sup>.

Successfully driving down technology costs benefits the consumer and improves Europe’s competitiveness. Overall, targets reduce the need for renewable energy support mechanisms that impact on the consumer. Cost reductions need economies of scale and that can only be achieved by developing a strong pipeline of projects within a clear and stable policy framework.

### **Doing things differently:**

#### **7. How far do you think the UK might benefit from the EU taking:**

##### **i. More action on the environment/climate change?**

As described above, UK renewable energy developers and the UK renewable energy sector as a whole, would benefit from the EU setting robust post-2020 climate and energy policies, including specific renewable energy targets. Longer-term targets provide a positive incentive for investment, creating a climate of economic growth and jobs. The EU taking a strong lead at international climate negotiations would send the right signals to other nations and increase the likelihood of a science-based agreement that would achieve the objective of limiting global temperature rise to 2 degrees, which would bring important economic and social, as well as environmental, benefits.

##### **ii. less action on the environment/climate change?**

We are of the opinion that, while the UK Government should be commended for its strong position on climate change and the benefits of the Climate Change Act, the UK would not benefit from the EU taking less action on climate change. A jointly robust position and mutually supportive programme of action is beneficial.

#### **9 a. 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?**

See answer to question 7 above, with regard to climate change agreements.

#### **9 b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

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<sup>350</sup> Point 4.6, Page 33, Government response to the consultation on proposals for the levels of banded support under the Renewables Obligation for the period 2013-17 and the Renewables Obligation Order 2012, DECC, July 2012, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/42852/5936-renewables-obligationconsultation-the-government.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/42852/5936-renewables-obligationconsultation-the-government.pdf)



Extremely important. The EU has played a leading role in climate negotiations to date and has been instrumental in promoting ambitious targets and policies based on scientific recommendations and which promote green economic growth. The UK has, likewise, played a constructive role within “Team EU” and is to be commended for setting a good example on climate legislation with the Climate Change Act, which has a world leading emissions reduction target of 80% by 2050, and which can continue to drive growth in green technologies and renewable energy investment.

For example, the UK is already established among the top ten global destinations for renewable energy investment<sup>351</sup>

Separating itself from Team EU would send the wrong signal and would weaken the position of both the UK and the EU in promoting a common interest. The UK should work within Team EU for a meaningful global climate agreement in 2015, which would further drive expansion of markets for green goods and services.

## **Resource Association**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

ii. disadvantaged the UK / your sector?

i) EU competence in the area of environment has undoubtedly benefited the resources and recycling sector and the UK more broadly. EU directives on waste have provided a common standard for the permitting of waste facilities, and common objectives for waste management across the EU. This has facilitated development of cross EU working, where larger waste companies operating in the UK have expanded their operations to incorporate activities in other EU member states and enabled EU-based waste operating companies to expand their activities to encompass UK operations. In general the EU driven legislation has accelerated the modernisation of the waste industry in the UK and has improved the environmental impacts of waste when looked at in the round through the enhanced levels of materials recycling and environmental protection. It is debatable as to whether the UK would have implemented similar levels of environmental improvements if the EU legislation had not been in place.

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<sup>351</sup> Pew Charitable Trusts, Who's winning the clean energy race? 2011 and 2012 editions.

For example, the UK has had the fastest recycling rate increase in the last 10 years. This is due to EU influence, via Landfill Directive targets and Waste Framework Directive requirements. The Landfill Directive set out requirements for improving the environmental impact of gas emissions from landfill, as well as leachate control, along with identification and separation of hazardous, non-hazardous and inert wastes in landfill. The prevention of tyres for example into landfill has moved these and other materials (organic municipal wastes) to recycling and recovery streams.

The Waste Framework Directive has resulted in the implementation of the waste hierarchy that encourages the prevention of wastes and the reuse, recycling and recovery of resources.

The UK has gained a stronger voice in Europe; the UK has allied with other Member States over End-of-Waste issues. The UK has benefited through its 'Team EU' role.

EU legislation has helped steer the UK in relation to meeting household/municipal waste targets but there is still much to do with regards to commercial and industrial waste.

ii) Derogation negotiation slowed the implementation of some Directives, which has been a disadvantage to the UK.

There has been a variable rate of adoption of Directive requirements leading to a two-tier or even three-tier EU. The UK has taken a prescriptive view on adopting some Directives, whereas other Member States have been more interpretive. Data reporting and definitions are a couple of the examples where different levels have been adopted.

2. 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?

For resource and waste management the markets are bigger than just Europe. There are specific requirements at a more local level, which could be served on a national basis.

i) Landfill tax is one example where the overarching requirement came from the Landfill Directive to divert material from landfill. The UK decided to use fiscal instruments to divert material from landfill to other processes and this fits within the

EU 'framework' and is something that operates in many Member States. Within the EU different approaches for landfill bans/diversions do not lead to waste tourism as there is legislation in place to prevent this - namely Transfrontier Shipment Regulations.

ii. Transfrontier shipments of waste would be a potential area where the absence of EU legislation would result in significant additional problems on an international basis.

Commercial and industrial waste has now moved up the agenda with the requirement in the Waste Framework Directive for materials to be collected separately for recycling, something that has been mooted for many years in the UK but has not really happened on a large scale.

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

The Resource Association believes that EU environmental standards are vital and necessary for the proper functioning of the internal market.

4. 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?

EU legislation on the environment provides the right level of balance between protecting the environment and allowing the UK economy to benefit from such protection. UK expertise and knowledge in environmental protection allows the UK economy to benefit from selling such a service to other Member States and the international market.

In the short term there may be a cost impact to the environment industry in relation to EU legislation but in the long term there is environmental value to businesses and resource efficiency.

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

ii. based on an assessment of risk and scientific evidence?

i) The Landfill Directive is outcome focused. There have been reduced greenhouse gases being emitted to air due to the diversion of biodegradable waste from landfill.

The Packaging and Packaging Waste Directive is focused on targets (outcomes) and in doing so has put a value on waste to stimulate resource efficiency.

ii) PoPs, hazardous waste, transfrontier shipment, ozone depleting substances, Landfill Directive and to some extent RoHS have been based, in some way, on appropriate risk assessment and or scientific evidence.

6. 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?)

More effective input from the UK as a Member State in the negotiating period would improve ways of developing proposals and/or impact assessments as well as increasing the recognition of national circumstances. This entails better liaison and consultation with industry via its representative bodies and trade associations. Some trade associations have a voice through to the EU via their own EU trade body whilst others have to rely on government to include them in wider and more encompassing consultations - we are an example of this, as we represent a range of recycling and reprocessing companies and other major players in the supply chain and also across a range of materials. We do not have an equivalent EU representative body, and major material interests are represented by EU bodies such as CEPI (for paper), FEVE (for glass).

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

ii. Less action on the environment/climate change?

i) If the EU took more action on the environment this would benefit the UK. The UK would continue exporting technology and expertise in these areas. Global standards would give the UK a business advantage.

Another benefit would be certainty in long-term direction giving confidence in long-term investment. A circular economy will not happen at Member State level alone, it

needs EU drive. The Roadmap to a Resource Efficient Europe is a good example of the type of market signal and drive that the EU generates that we in the UK would be well advised to embrace rather than resist.

ii) The EU cannot reduce its action on climate change or environment, this would be a disbenefit to the UK. Less action at EU level would undermine regulatory stability and investor confidence. In the international market the UK may have a voice in relation to climate change or environment but the EU has a stronger voice.

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

The UK record for implementing directives has not been consistent. The UK was not one of the first movers under the Landfill Directive, so we do not have the expertise of those such as Germany for AD or most other Member States, when it comes to technology. There are definitely first mover advantages in skills and technology which the UK missed out on.

The use of 'cut and paste' for Directives cannot be the best way to implement such legislation. The UK should not be afraid to interpret, as long as it takes into consideration free market trade and other key aspects of EU principles, it will not then be challenged.

Engaging with industry, stakeholders and citizens early on in the process to ensure that UK interests are taken account of could help with forming Directives, as well as their subsequent implementation. This is also true for EU Regulations, more so because once the Regulation has passed the UK has no way to change anything, until the next update/review

9. a. 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?

There is an advantage in the EU having a stronger voice internationally; any impact from climate change is not just on one country or one river, it has an impact on the whole EU. .

The EU being able to influence the global market in international agreements could also bring better economic advantage to the EU and/or UK.

There would also be an advantage in the EU influencing eco-design and the circular economy.

b. How important is it for the UK to be part of “Team EU” at the UNFCCC?

The Resource Association believes that our role in Team EU has been beneficial. The UK has a lot of experience and expertise, so we should not give up our voice lightly. One example where Team EU has been very important, is in the context of international waste shipments.

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

Strategic resources and their continued supply could produce challenges but may well offer opportunities, especially in improved capture of recyclable resources in Europe and rebooting of the EU's manufacturing capacity to utilise such resources.

One of the key challenges will be counting lifecycle cost, moving away from just measuring activity to understanding and including the full environmental impact.

Development of an infrastructure to protect citizens, industry, soils and water from recurring extreme events as a result of climate change.

Identification of changing resources and markets as a result of climate change with adaptation and planning for industry, agriculture and populations.

b. 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?

To address the challenges and opportunities highlighted above, the Resource Association sees the right balance being best met by active UK engagement in the EU based on partnership and intelligent constructive negotiation. Waste and resources in the EU are already recognised in international markets as important. Action in the first instance may be best served at the EU and international level.

There needs to be a level playing field. Legislation cannot favour one Member State and completely disadvantage another. Negotiation is key to this.

There needs to be opportunities to encourage investment - this can be undermined by instability/uncertainty.

Eco-design has a key role to play. Products better designed with re-use and recycling in mind could assist with strategic resources.

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

The Commission has made estimates of the jobs and European benefits and the UK has indicated similar. In the UK, studies by Friends of the Earth Europe/UK (with the RGR consultancy) show that if we increase our recycling rate to 70% this could provide up to 50,000 additional jobs. The global carbon market is valued at £3-4 trillion and waste legislation could reduce Member State spending by €70 billion and create 400,000 jobs.

There are likely to be significant benefits by addressing these issues via the EU, through improved standards, for example. These issues are likely to come with greater risks and increased costs, if tackled at the UK level, outside of the EU.

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

Greater emphasis on a more consistent approach to the interpretation and transposition of EU law into national law(s) by Member States, to ensure that inter Member State markets remain fair and open and do not become either too restrictive or conversely too lax, due to perceived economic benefits outweighing environmental impact(s).

**Rowan, Peter**

**Q1** how it is has benefitted the UK is the awareness of the different ideas coming from the other member states and from Brussels. On the evidence of this is the negotiations for a 2030 goal of the EU, that shows that there is more than one option for the UK, which is good as this will keep the UK informed and open to new ideas.

**Q2** The disadvantages are the small, but the conflict within the UK between the political parties and the focus on addressing climate change action is now been polarised in two camps and the EU is in generally seen in the opposition camp. This has then led to the denial of man-made climate change due to this political posturing and means the EU is now see as a "baddy" in the UK and that means all climate change adaption and mitigation ideas coming from it are wrong.

**Q3** I would then say regional level, but this again is the EU level. I cannot think of a specific example of how the UK might be better served not working with the EU on this.

**Q4** At the international level and currently via the UNFCCC, the Clean Development Mechanism is a bit of shambles in its current state, but this could be because the ETS was the only buyer of the CERs in the world. If the EU pulled back giving access here and may be pull out of Kyoto even and have tighter and stronger rules inside this might actually work better at this level.

**Q5** Very important as the food we eat will be affected by strong environmental standards, and if the customer cannot trust the food on the table is safe to eat from another country this will lead to a breakdown of trade between countries.

**Q6** As climate change is affecting not just the internal lands of the UK, but is a global problem we need to work with the EU to actually force the country to change and bring in sustainable development ideas and ways of working. The EU helps bring these ideas to the table.

**Q7** A fixed target will force the UK to meet its targets, if these are not fixed, there may be a fudge on attaining them. Also companies invest in a long term fixed items and need to have to stability in a target to be able to invest. The decarbonisation amendment to the Energy Bill that failed in the vote in Commons is an example, where party politics got in the way, but even then was only won with a 23 vote majority.

**Q8** To talk and have scientific discussion with our neighbours means a better answer can be developed to a problem. The EU programmes have addressed this and have actually benefited the UK where a majority of EU funding on research is targeted compared to other member states.

**Q9** A clearer use of stakeholders would be better and is lacking, I have attended a few consultations in Brussels and half of the given time is for set statements from industry bodies and leaves little time to actually discuss differences of approach

**Q10** As the environment crosses boundaries and is not nationalistic, an overall approach to climate change adaption and mitigation where the EU has a stronger role will take away the political party bantering that goes on in the UK at the moment. The climate is changing and it is man-made.



**Q11** I can't see this is an alternative in the current state of our environment.

**Q12** Have a greater input in the negotiation stages of the EU directives so it fits our economy and environment better. Become more involved in the EU, show the people the benefits of the EU in the environment.

**Q13** The EU is a very powerful partnership in international negotiations and is generally present at the behind closed doors horse trading that goes on.

**Q14** Very important as otherwise the UK will not get access to the horse trading that goes on and have an influence on it, the UK has been used a lot in the negotiations of these COPs representing the EU, which is of benefit to the UK as a whole.

**Q15** With the negotiations of post 2015 still going on, the UK working with the EU has to be a bit more forceful and not always be the nice guy in the room at the international negotiations. Other challenges is the Eurosceptic feeling sweeping the UK championed by a number of national newspapers and manmade climate change deniers getting into places of influence to affect our standing in the climate change debate.

**Q16** it is all about how well the message is communicated towards the public as in the end this is what all these organisations are representing. To negotiate a coordinated message and do it effectively.

**Q17** Shared costs and shared experiences. the intertwining of the member states will mean that the EU as a whole will have to coordinate an answer that benefits all and not just a few.

**Q18** Shared costs and shared experiences. the intertwining of the member states will mean that the EU as a whole will have to coordinate an answer that benefits all and not just a few. A good set of questions, I hope they are listened to.

## **Royal Society for the Protection of Birds**

RSPB Response to Balance of Competences Review

Environment and Climate Call

Introduction

1. The RSPB welcomes this opportunity to submit initial evidence to this Review, following our attendance at the first stakeholder workshop.
2. The RSPB believes that we have a responsibility to protect our environment. This is a view supported by over one million RSPB members, but also by many people throughout the UK. As a result of the Millennium Ecosystem Assessment, the UK National Ecosystem Assessment and The Economics of Ecosystems and

Biodiversity, we now understand better than ever that here, and across the world, a healthy environment provides us with a vast range of essential services which underpin all activities, including the economy.

3. The UK was once derided as the “Dirty Man of Europe” for its failure to protect its environment and tackle its emissions of atmospheric pollution, water pollution and hazardous waste.
4. The UK now stands to lose the key EU legislative instruments that protect our wildlife, keep our air, rivers, beaches and seas clean, and prevent overexploitation of our precious natural resources.
5. Emblematic bird species like the Osprey, Red Kite, Cirl Bunting, Marsh Harrier and White-tailed Eagle that were once virtually extinct in the UK have returned to grace our skies and enrich our countryside, in part thanks to the protection provided by European legislation for these species and the habitats they depend on.
6. At the same time UK rivers that were once heavily polluted now support a wide range of freshwater fish, mammals and invertebrates. The Thames, which was declared biologically dead fifty years ago, now supports more than 100 fish species. Otters, once on the brink of extinction, have now returned to every English county. The EU’s water Directives have been instrumental in delivering the improvements in water quality needed to allow our wildlife to return to our rivers.
7. The UK’s beaches have similarly benefitted from the EU Bathing Waters Directive, which significantly reduced the discharge of untreated sewage into the sea along the UK’s coastline. Raw sewage is known to contain micro-organisms responsible for serious human illnesses, including cholera, typhoid, gastroenteritis, and hepatitis.
8. The quality of the UK’s air has also improved dramatically since the smogs of the 1950s<sup>352</sup>, and this has been driven by the EU’s Air Quality Directive and other European emissions reduction initiatives.
9. All of these improvements in the UK’s environment, and in the quality of life of UK citizens, would be at risk, were the UK to withdraw from or seek to water down EU environmental legislation.
10. According to an Environmental Audit Committee report from 2011<sup>353</sup>, even now the Government is putting thousands of lives at risk by trying to water down EU air quality rules instead of prioritising action to cut pollution on UK roads. The same report found that 30,000 deaths in the UK were linked to air pollution in 2008 - with 4,000 in London alone.

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<sup>352</sup> [http://uk-air.defra.gov.uk/reports/cat07/1305031312\\_EoAQP1970-2011\\_pq.pdf](http://uk-air.defra.gov.uk/reports/cat07/1305031312_EoAQP1970-2011_pq.pdf)

<sup>353</sup> [www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news/air-quality-a-follow-up-report/](http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news/air-quality-a-follow-up-report/)

11. The UK has a profound natural capital deficit, and just as with our financial deficit, there is a moral imperative to ensure that we do not pass this on to future generations and certainly not to increase that deficit. The desire to pass on a natural environment in a better state than we inherited it was formally recognised in Natural Choice, the first White Paper on the natural environment, published in 2011.

#### About us

12. The RSPB is a wildlife conservation charity with over 1 million members. We have many years of experience in working with EU nature conservation and environmental protection legislation and policy across the UK. We gather data on the spatial distribution and abundance of birds and other species, and make the case for their conservation through protected areas. We campaign for effective legislation to protect special places, and for improved EU sectoral policies that support biodiversity conservation in the wider environment. Through strategic planning, we seek to integrate economic, social and environmental outcomes, to deliver the best outcomes for people and nature.

13. The RSPB also manages over 150,000 ha of land in the UK as nature reserves. Where this land is designated SPA, SAC or SSSI/ASSI, we are regulated by the appropriate statutory nature conservation agency, including major projects for habitat restoration or the enjoyment of visitors. We draw on this experience in this submission.

#### Our Submission

14. RSPB's experience of European environmental legislation encompasses the development of policy and legislative proposals within the EU institutions, EU-wide research projects to support policy development and implementation, national implementation of EU policy instruments, and implementation on the ground in our own reserves, in protected sites, and in the wider countryside. We actively engage with European policy relating to agriculture, freshwater, marine issues including fisheries, climate change and renewable energy, nature conservation, and EU funding programmes relevant to these topics.

#### Key Points

15. There is a clear risk that a review of this nature will focus on individual legislative instruments or policies, coloured by perceptions around particular causes celebres. In practice, European legislation and policy establishes a framework for action, the impacts and outcomes of which are far greater than the sum of its parts. In this summary we would like to highlight some key messages that are set out in our detailed response.

#### Environmental Benefits

16. Long-term evidence gathered by the RSPB clearly demonstrates that EU environmental competence has delivered improvements in: species and habitat protection and restoration in terrestrial and marine environments; water quality;

air quality; climate change mitigation and adaptation; and the delivery of economically vital ecosystem services.<sup>354</sup>

17. It would be impossible for the UK or any individual Member State alone to deliver many of the environmental, social, and economic benefits that are currently provided by EU environmental standards.<sup>355</sup>

18. The resource base for many economic activities comes from natural resources and these activities are therefore wholly dependent on a functioning natural environment.<sup>356</sup>

Environmental protection is one of the three pillars of sustainable development. The European environmental acquis affords, in theory, excellent protection for the environment across the continent. Though there are some legislative gaps that are of critical importance, the central problem is in implementation of the legislation which is in place.<sup>357</sup>

While much of the UK's environmental and climate legislation derives from European initiatives, many of these – not least in the field of climate change – have been actively driven by the UK and have been instrumental in enabling the UK to achieve its own environmental objectives as well as fulfilling international biodiversity conservation obligations. The UK's objectives do not only include environmental outcomes within the UK, but also overseas – where the nature of the environment either affects 'our' environment directly (e.g. trans-boundary pollution, migratory birds) or the British public, who care about the global environment, and wish to see improvements.<sup>358</sup>

There is no shortage of future challenges that could threaten our environmental and economic security, justifying at the very least the retention of existing policy instruments, and making a strong case for better implementation, or additional policy instruments and approaches.<sup>359</sup>

## Economic Benefits

A key justification for environmental protection at EU level is to ensure a level playing field in competition terms across the Single Market. It is in the UK's interest that the level playing field of the single market is maintained. Common environmental legislation across the EU allows UK companies to compete on the same terms with those of other member states, subject to the same level of regulation. Consistency of implementation is crucial for business certainty, and indeed matters more to business than over-implementation <sup>360</sup>.

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<sup>354</sup> See case studies under Question 1.i.

<sup>355</sup> See case studies under Question 1.i

<sup>356</sup> See information and case studies under Questions 3 and 4

<sup>357</sup> See case studies under Question 1.i, 1.ii, and 4

<sup>358</sup> See case studies under Questions 1.i and 4

<sup>359</sup> See case studies under question 10. a, and Horizon scan of global conservation issues for 2013

<sup>360</sup> See case studies under Question 3

Recent experience with the attempted sell-off of publicly owned forests in England strongly suggests that any attempt to remove protection for the environment wholesale in an attempt to gain a short-term competitive advantage would not be publicly acceptable in the UK.<sup>361</sup>

An EU level approach to decisions on the environment ensures access to transboundary natural resources that are essential to the UK economy, without the need for lengthy bilateral negotiations with the individual states that have jurisdiction over these resources. For example, the UK fishing industry would be unable to deliver the quantity and variety of fish products demanded by UK customers without access to the waters and markets of other Member States granted under the EU's Common Fisheries Policy. It would be almost impossible to secure such access through bilateral negotiations.<sup>362</sup>

Aside from the functioning of the internal market, it is also important to recognise the role played by EU environmental standards in supporting the EU economy more broadly. There is a growing body of evidence regarding the importance of the natural environment in relation to the valuable goods and services it provides. The UK National Ecosystems Assessment has highlighted the economic value of the UK's environment, and the UK's increasing dependence on overseas ecosystems.<sup>363</sup>

There is a growing body of evidence suggesting that, in the long-run, environmental regulation is good for business by opening up new market opportunities and driving cost-reducing innovation. EU environmental legislation has helped create and boost the "green economy" through the creation of new roles and sectors, including new environmental professionals, and new renewable energy businesses, as well as promoting improved levels of environmental protection globally among countries wishing to trade with the EU. Given the extent to which a healthy environment underpins and is a prerequisite for a thriving economy and healthy society, there can be no doubt that action is needed to address current and future environmental challenges.<sup>364</sup>

Long-term economic sustainability is intricately bound to long-term environmental sustainability. As one of the three pillars of sustainable development, environmental protection is therefore a key element of the current political objectives of the single market and delivery of a smart, sustainable and inclusive European economy under the Europe 2020 Strategy. The Aldersgate Group report "Green Foundations", notes that, "no economic policy which sacrifices environmental quality can succeed in the long term."<sup>365</sup>

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<sup>361</sup> See information under Question 4 on the results of a 2010 Eurobarometer poll

<sup>362</sup> See case study on the CFP under Question 2.i.

<sup>363</sup> See information on the UK National Ecosystems Assessment under question 3

<sup>364</sup> See our response under Question 4.

<sup>365</sup> See our responses under Questions 3 & 4.

## UK Approach to EU Legislation

Much EU legislation, particularly in the field of the Environment, is in the form of Directives, which leave much of the decision-making to Member State level. There is significant scope, even within binding legislative instruments like Directives, for national authorities to make decisions with a view to better serving the national interest.<sup>366</sup>

While a proactive and bold approach to the implementation of EU environmental law benefits business by giving certainty and opening up new areas of business, doing the minimum necessary to avoid infraction is not necessarily in the best interests of the UK. The piecemeal approach adopted by the UK to transposition has been a cause of ongoing uncertainty for business.<sup>367</sup>

Perceptions that environmental regulation is a burden on business are an unreliable indicator of the true regulatory burden; evidence suggests that there may be a gap between business perceptions of regulation and objective reality.<sup>368</sup>

The UK has missed opportunities to secure environmental outcomes and benefits for the UK's economy and society through its approach to the implementation of EU environment and climate change policy and legislation.<sup>369</sup>

## EU Action on the Environment and Climate

EU environmental regulations have an excellent track record in terms of achieving their objectives; securing and improving environmental quality and ensuring businesses and the private sector act in a responsible and sustainable manner towards wildlife and natural resources.<sup>370</sup>

There are still some notable gaps in EU environmental legislation, notably on invasive species and soil biodiversity, and deficiencies in the mechanisms intended to support implementation. Addressing these gaps and deficiencies could help generate significant environmental and economic benefits for the UK, through enhancing environmental quality, reducing the costs of environmental damage, and delivering greater certainty for business.<sup>371</sup>

Poor implementation of EU environmental legislation in some Member States and the evident limitations of some instruments, such as the Common Agricultural Policy, should not obscure the central question of where competence should lie: to that question, the answer remains that it is both practically necessary (because of cross-border effects) and pragmatically

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<sup>366</sup> See response to Question 2.i.

<sup>367</sup> See information and case studies under Question 6

<sup>368</sup> See our response under Question 4.

<sup>369</sup> See our response under Question 8 and case studies

<sup>370</sup> See information under question 1.i and case study on Birds Directive

<sup>371</sup> See response and case studies under question 7.i.

necessary (in the interests of a level playing field) to deal with environmental matters at the EU level.<sup>372</sup>

As a major economic and political force there is a very strong case for the EU taking more action and encouraging other countries to do the same, particularly in light of the massive ecological footprint of the EU on the global environment. The scale of the EU gives it the ability to face up to global challenges in a meaningful fashion. Given the scale of the crisis facing biodiversity, there is no case for less action, and it is vital that there are international organisations capable of taking meaningful and implementable decisions on behalf of large parts of the world.<sup>373</sup>

Voluntary agreements should be seen, at best, as a complementary instrument to, not a substitute or replacement for, alternative government regulatory and supervisory measures on the basis that they are unlikely to be effective unless they are backed up by a sound government regulatory and policy framework.<sup>374</sup>

As a major trading bloc the EU carries a great deal of weight in international negotiations. As a Member State the UK can both influence the EU's position, and bolster its own influence in international negotiations. In particular the EU has long been a very important, influential party to the United Nations Framework Convention on Climate Change (UNFCCC)<sup>375</sup>.

RSPB 26th July 2013

## Call for evidence – questions

### Advantages and disadvantages

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

#### **Benefit to UK**

Long-term evidence gathered by the RSPB clearly demonstrates that EU environmental competence has delivered improvements in: species and habitat protection and restoration in terrestrial and marine environments; water quality; air quality; climate change mitigation and adaptation; and the delivery of economically vital ecosystem services. It would be impossible for the UK or any individual Member State alone to deliver many of the environmental, social, and economic benefits that are currently provided by EU

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<sup>372</sup> See response to Question 1.ii

<sup>373</sup> See responses to Questions 9.a and b

<sup>374</sup> See our response under Question 8

<sup>375</sup> See our response to Question 9.b

environmental standards.

The European environmental acquis affords, in theory, excellent protection for the environment across the continent. Though there are some legislative gaps that are of critical importance, the central problem is in implementation of the legislation which is in place. Much of the UK's environmental and climate legislation derives from European initiatives. Many of these – not least in the field of climate change – have been actively driven by the UK. Environmental protection is one of the three pillars of sustainable development, and there is strong evidence that these initiatives have helped improve the quality of the UK's environment, and have had knock-on benefits for the UK economy, as well as health benefits for the UK's citizens.

A further key justification for environmental protection at EU level is to ensure a level playing field in competition terms across the Single Market. This is one of the main drivers of legislation and policy in the environment field, with a view to avoiding a “race to the bottom” through deregulation, or a protectionist “race to the top”.

It is in the UK's interest that the level playing field of the single market is maintained. Were decisions to be left to national or regional levels, it is more likely that the environment would suffer through a race to the bottom as nations and regions sought a competitive advantage through destroying long-term sustainability. Given levels of concern for the environment amongst UK citizens, the UK would be unlikely to profit from such a race. The benefits of additional protection can often be most clearly seen when shared across Member States.

Many EU environmental initiatives have been proposed and driven by the UK, and have been instrumental in enabling the UK to achieve its own environmental objectives as well as fulfilling international biodiversity conservation obligations. The EU Birds Directive<sup>376</sup> and Habitats Directive<sup>377</sup> have been key in improving the efficacy of conservation legislation in many Member States, and offer important additional protection for biodiversity in the UK while also promoting the adoption of UK interests and values by the other Member States. The Floods Directive has similarly exported UK best practice to other Member States, while also delivering significant benefits for the UK environment and householders.

#### **Benefit to the nature conservation sector**

The RSPB works for the conservation of wild birds, other wildlife and the places in which they live. There is strong evidence that the EU competence in the area of environment / climate change has been beneficial for our work, and for the work of other UK environmental NGOs.

Many elements of the UK's natural environment that the RSPB works to protect are intimately linked with that of the European continent. For instance, air quality legislation addresses pollution issues with cross-boundary impacts. A key area where international

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<sup>376</sup> [www.ec.europa.eu/environment/nature/legislation/birdsdirective/](http://www.ec.europa.eu/environment/nature/legislation/birdsdirective/)

<sup>377</sup> [www.ec.europa.eu/environment/nature/legislation/habitatsdirective/index\\_en.htm](http://www.ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm)



legislation is critical for the RSPB is in relation to migratory birds. To ensure the conservation of migratory birds an international approach is crucial, to prevent conservation efforts in one country being undermined by actions in another country. The EU's Birds Directive and Habitats Directive deliver this by setting EU-wide rules for the protection of wild birds, wildlife and the places where they live.

In addition the EU offers substantial funding opportunities for nature conservation - the RSPB has been a beneficiary of a number of EU environmental funding programmes, and important land purchase appeals, the Forsinard Estate in Scotland's Flow Country being a good example. This has enabled the RSPB to deliver its work, while also achieving UK, EU and Global nature conservation policy objectives.

### Case studies

- **Birds Directive**

In a ground-breaking paper published in *Science*<sup>378</sup>, it has been shown that the Birds Directive - a law protecting birds across the European Union - has successfully protected those species considered to be at most risk and in need of most urgent protection and has made a significant difference in protecting many of Europe's birds from further decline;

#### 1. Scientific results

The study shows that there is strong scientific evidence to suggest that the Birds Directive makes a significant difference to the conservation of birds in the EU. These differences are multi-faceted:

##### a) The most threatened species are progressing better

Before being given special protection on Annex I of the Directive, this group of the EU's most threatened species were doing significantly worse than non-Annex I species. However, once these species were put on Annex I, and received the targeted conservation help associated with Annex I (e.g. they can be the focus of EU Species Action Plans, can receive specific EU LIFE funding etc.), these species, including UK BAP priority species like Bittern, did better than non-Annex I birds.

##### b) Birds Directive more successful than non-EU conservation measures

Outside the EU, where the Birds Directive does not apply, Annex I species did no better than birds that were not on Annex I. Following implementation of the Birds Directive, Annex I species did better inside the EU than outside the EU.

##### c) Bird populations take time –more than ten years– to recover

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<sup>378</sup> Donald, P. F., Sanderson, F. J., Burfield, I. J., Bierman, S. M., Gregory, R. D., & Waliczky, Z. (2007). International conservation policy delivers benefits for birds in Europe. *Science*, 317(5839), 810-813

It is shown that the longer a bird spends on Annex I of the Birds Directive, the more likely it is to show recovery. On average it takes over ten years of policy measures before improvements in whole populations are detectable.

d) EU protected areas are directly helping European birds

On average, the more land is designated as an EU-protected area (in particular as a 'Special Protection Area' identified by the Birds Directive), the more likely bird populations are to improve. Annex I species respond nearly twice as well as the average due to specialised conservation measures targeted at them.

## 2. Wider policy messages

The study provides scientific backing for wider policy messages that have been advocated by RSPB in relation to the Birds Directive and wider EU environmental policy instruments.

a) World-leading piece of conservation legislation

One of the principal strategic messages is that the Birds Directive is a world-leading piece of conservation legislation that produces concrete results across many countries.

b) Unlocking of structured funding

The study demonstrates that a structured funding mechanism aimed at continent-sized priorities can work and does work. This makes a strong case for increased EU funding for birds protected under the Birds Directive as well as national funding mechanisms.

c) Birds know no borders, and neither does the Birds Directive.

We believe this type of legislation can serve as a model for how the EU should act in the environmental field.

The study highlights the fact that strong conservation priorities determined at an international level can and do work. This shows that this is a successful model for the future and that such a robust EU 'framework' approach works, while allowing Member States to choose the details of what specific measures would best suit their country.

- **EU LIFE Programme**

Launched by the European Commission in 1992, LIFE (The Financial Instrument for the Environment) is the only area of European spending that is dedicated solely to the environment. LIFE supports projects that contribute to the implementation of the EU's Birds and Habitats Directives (the Natura 2000 Network), the integration of biodiversity into other policy areas, the assessment and monitoring of pressures on biodiversity and its response to those pressures. The LIFE programme represents a major contribution to the EU's goal of halting the loss of biodiversity by 2020 and also plays a key role in maximising the leverage effect of the EU budget.

The projects delivered under the programme have provided value for money, secured and created jobs, have helped to establish innovative projects across the EU and have delivered successful results on the ground despite a tiny investment of only €2.2 billion from 2007-2013, only representing 0.23% of the overall EU budget.

For the UK, LIFE funding has been instrumental in improving the status of some of our most charismatic species and habitats, and enabling the UK to meet national, EU and international biodiversity conservation objectives. Examples of projects the RSPB has delivered in the UK in partnership with UK nature conservation agencies, local groups and the private sector include;

### **Flow Country LIFE projects**

The Flow Country is the common name for the vast blanket peatlands of Caithness and Sutherland - mainland Scotland's most northern counties. Peat has been forming here for thousands of years and reaches, in some places, up to five metres in depth.

As well as storing over 400 million tonnes of carbon, this area is a stronghold for a wide variety of wildlife, such as otters, water voles, mountain hares, greenshank, dunlin, black-throated divers and hen harriers.

In 2001 the EU's LIFE programme helped fund a £2.8 million project, led by a partnership of RSPB Scotland, Scottish Natural Heritage, the Forestry Commission and Plantlife, to bring conservationists and foresters together to restore damaged blanket bog at a landscape scale.<sup>379380</sup>

### **Bittern LIFE projects**

Bitterns, *Botaurus stellaris*, were once common in wetlands, but became extinct as breeding birds in the UK in the late 19th century, as a result of wetland drainage and hunting. Although Bitterns had returned by the 1950s, numbers dropped again as their reedbed habitats became drier through lack of management. By 1997 only 11 booming bitterns were recorded in the UK and there was a similar pattern of decline in bitterns across western Europe.

EU LIFE funding supported two projects focussed on reedbed habitat restoration and creation that have helped bring the Bittern back from the brink. By 2004, the UK bittern population had risen to a minimum of 55 booming male birds, thus achieving the UK's 2010 Biodiversity Action Plan target.<sup>381</sup> The Bittern's recovery has continued over the last decade.

### **Futurescapes LIFE Project**

Climate change is the biggest long-term threat to biodiversity, and poses a considerable

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<sup>379</sup> [www.rspb.org.uk/Images/flowcountry\\_tcm9-286460.pdf](http://www.rspb.org.uk/Images/flowcountry_tcm9-286460.pdf)

<sup>380</sup> [www.rspb.org.uk/reserves/guide/f/forsinard/work.aspx](http://www.rspb.org.uk/reserves/guide/f/forsinard/work.aspx)

<sup>381</sup> [www.rspb.org.uk/ourwork/conservation/species/casestudies/bittern.aspx](http://www.rspb.org.uk/ourwork/conservation/species/casestudies/bittern.aspx)

challenge to nature conservation. Large-scale habitat creation offers one of the best solutions to the challenge of adapting to climate change.

RSPB's Futurescapes LIFE project<sup>382</sup> aims to deliver a landscape-scale approach to nature conservation through the restoration of ecological function across whole landscape units, rather than just protecting limited nature reserves or sites. Futurescapes represents a major contribution to the creation of green infrastructure<sup>383</sup> across the UK, and will help establish a mosaic of habitats, integrated with other land uses such as farming, forestry or housing, that allows wildlife to move through a landscape and thrive within it.

- **Habitats Directive**

The Habitats Directive has played a vitally important role in the UK and across the EU in effectively conserving species and their habitats, and securing ecosystem services needed by man, such as clean water, carbon storage and flood and sea defence.

#### **Wallasea / Crossrail Project**

The Wallasea Island Wild Coast project was conceived as a habitat restoration project to create 465ha of intertidal habitat behind currently unsustainable sea defences. Fulfilling the requirement of the Habitats Directive to compensate for the loss of existing designated intertidal habitat was a key driver for this project.

In early 2008, RSPB were approached by Crossrail, a British project to build major new railway connections under central London, who were seeking a beneficiary to reuse the clean spoil from their tunnelling. Agreement was reached that excavated material from Crossrail would be used to raise existing land levels and create raised areas within the existing island sea walls.

This solution has saved Crossrail money, because they were able to find a local, environmentally sustainable site to take around 4.5 million tonnes of excavated material. Movement of the excavated material by freight train and ship will also reduce the impact of Crossrail's construction on London.

The new habitats created through this project will support a stunning array of nationally and internationally important bird populations, as well as a host of other wildlife. The Wallasea Project will also act as a carbon sink. Recent calculations have estimated that the carbon storage value of Wallasea Island when completed will be £8.82 million over 50 years<sup>384</sup>.

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<sup>382</sup> [www.rspb.org.uk/futurescapes/](http://www.rspb.org.uk/futurescapes/)

<sup>383</sup> [www.naturalengland.org.uk/ourwork/planningdevelopment/greeninfrastructure/default.aspx](http://www.naturalengland.org.uk/ourwork/planningdevelopment/greeninfrastructure/default.aspx)

<sup>384</sup> This uses the latest government figures for the price of carbon: [http://www.decc.gov.uk/en/content/cms/what\\_we\\_do/lc\\_uk/valuation/valuation.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/valuation/valuation.aspx), and a carbon sequestration rate of 2.1 tonnes per hectare per year, taken from the UNEP report on Blue Carbon 2009.

In addition the project has saved the money that would have been spent on further shoring up Wallasea's sea wall to protect the low-lying land against sea level rise, by delivering a sustainable solution to long-term coastal realignment.

- **Urban Waste Water Treatment Directive**

The Urban Waste Water Treatment Directive (UWWTD) sets minimum criteria for waste water treatment according to population size of conurbations and sensitivity of receiving waters. According to the Defra publications - *Waste water treatment in the United Kingdom – 2012* the UWWTD has been pivotal in driving investment in the water industry (£8 billion on UWWTD in England since 1990 according to Defra<sup>385</sup>) and underpinning substantial river water quality improvements since 1991 as reported under Government's General Quality Assessment scheme.<sup>386</sup>

The impact of this Directive was clearly illustrated in Liverpool where, prior to 1991 sewage ran into the Mersey untreated making a significant contribution to the Mersey's reputation as one of the most polluted estuaries in the UK. In a move to comply with the Directive a new collector system was built to feed this sewage into a state of the art sewage treatment works at Sandon Dock.<sup>387</sup>

The fact that Liverpool had one of the oldest Victorian sewer networks but no treatment works until European Legislation suggests that simply waiting for regional or national legislative drivers had failed for generations – a picture repeated across the UK.

- **Marine Strategy Framework Directive**

The aim of the MSFD is to achieve GES (good environmental status) in EU waters by 2020. The marine environment knows no political borders and consequently, improvements in the waters adjoining the UK supports the UK in achieving its own objectives for an improved marine environment under the Marine & Coastal Access Act 2009 and the Marine (Scotland) Act 2010. It will also help the UK meet the international Aichi biodiversity targets to halt and reverse the loss of biodiversity in the marine environment.

The marine environment is an area that the UK cannot possibly hope to influence and improve on its own. The UK's national influence does not extend beyond its territorial waters. Tackling marine issues at EU level enables the UK to influence how other states with adjoining territorial waters manage their marine resources, and so benefit from improved management of these areas. There remain gaps in how the EU delivers marine protection, though the reform of the Common Fisheries Policy is a significant step forward. Binding targets across Member States on, for example, reduction of

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<sup>385</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69592/pb13811-waste-water-2012.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69592/pb13811-waste-water-2012.pdf)

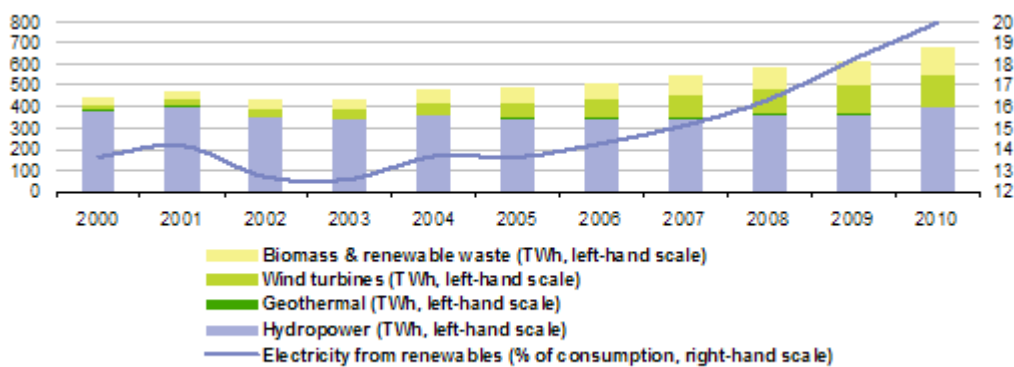
<sup>386</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/141697/rwq-ind-sus-2009-resultsv2.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141697/rwq-ind-sus-2009-resultsv2.pdf)

<sup>387</sup> [http://www.unitedutilities.com/documents/Sandon\\_Dock.pdf](http://www.unitedutilities.com/documents/Sandon_Dock.pdf)

marine litter, could be vital to delivering on the UK's own aims for a healthy marine environment. Such measures will be more effective and fair if pursued at an EU level than by each Member State individually.

- **Renewable Energy Directive**

Climate change is a huge threat to birds and biodiversity. The RSPB supports a transition to a safe, sustainable energy system based on renewables. The 2008 Renewable Energy Directive has been a game changer in the delivery of renewable energy across Europe. By establishing shared, legally binding targets the Directive has prompted policy development across the Union to stimulate investments, and has given industry the confidence to invest. For example in the electricity sector, renewably generated power is now over 20% of total consumption and continues to grow despite EU wide economic recession in recent years (see figure below).



Source: Eurostat (online data codes: nrg\_105a and ts dcc330)

The designation of Natura 2000 sites in the UK and across the EU has enabled the roll out of onshore wind without some of the significant adverse impacts on birds that have happened in other parts of the world. In Scotland, in particular, there has been a very significant growth in onshore wind, such that RSPB Scotland has been able to support the Scottish Government's aim to have an equivalent of 100% of Scotland's energy demand from renewables by 2020, and have confidence that this can be delivered without impacting the most important terrestrial sites for wildlife.

- **Environmental components of the Common Agricultural Policy (CAP)**

The CAP is a sprawling, complicated and extremely expensive policy and the RSPB maintains that fundamental and far reaching reform is required in order to unleash its full, and significant, potential to improve environmental quality on EU agricultural land and beyond. However, some positive steps have been taken in the last 20 years to improve the environmental performance of the CAP, or more accurately, to improve the ability of CAP payments to reward and drive positive change on the ground.

CAP environmental measures (Pillar II): The most important environmental component of the CAP is the legislative requirement for all Member States to offer at least one agri-environment scheme to farmers and land managers (although entry into such schemes is voluntary). Under the current CAP, there is also a legislative requirement for each

Member State to spend at least 25% of their Pillar II allocation on 'environmental measures', including, but not restricted to agri-environment schemes. Whilst the quality of schemes currently on offer in the UK, and across the EU, varies considerably, there is clear evidence that well designed, targeted and funded schemes can have a significant and positive effect on biodiversity (although it must be noted that such schemes represent a disappointingly small proportion of schemes overall). Such schemes are the principal mechanism utilised in the UK to secure appropriate management of Natura 2000 sites (as required under the Habitats Directive) and to provide a sufficient diversity and area of habitat for birds listed in Annex 1 of the Birds Directive).

#### **CAP Case study 1: Regionally specific action to prevent UK extinction of the ciril bunting.**

In 1989, the UK population of ciril buntings fell to just 118 pairs in the South West of England. Rapid changes to farming practices and the loss of vital feeding habitat were identified as the major force behind the declines, with the birds' extremely small range (only moving up to 2 km between their breeding and wintering areas) further reducing their ability to find alternative places to nest and feed. A special project was implemented utilizing the Countryside Stewardship Scheme (CSS) and farmers in target areas were supported to provide optimal habitat conditions for ciril buntings (and other farmland birds) alongside their farming businesses. By 2009, ciril buntings had increased to 862 pairs, with numbers increasing by 83% on farms under a CSS agreement – compared to just a 2% increase on adjacent, non-agreement farms.

#### **CAP Case study 2: Corn bunting recovery in Scotland.**

The corn bunting is one of Scotland's fastest-declining birds. Eastern Scotland now holds most of the remaining Scottish population, but even here, they are declining rapidly. A recent study shows there has been an 83 per cent decline in singing males on 25 sites in Aberdeenshire and Tayside between 1989 and 2007. The combination of a late breeding season, a preference for nesting in growing crops and a seed diet centred on grains is likely to have made corn bunting populations especially vulnerable to modern agricultural practices. In order to tackle the declines, the RSPB initiated a special agri-environment scheme, support by Scottish Natural Heritage, which attempted to provide the right mix of nesting and feeding resources on farmland. On farms in the targeted scheme, corn bunting numbers increased by 5.6% per annum. In contrast, numbers showed no significant change on farms in the Scottish government's standard agri-environment scheme, and declined by 14.5% per annum on farms outside both schemes.

#### **CAP Case study 3: Hope Farm and the potential of schemes to tackle declines of generalist farmland birds in the wider countryside.**

Hope Farm, a 181ha arable farm in Cambridgeshire, was bought by the RSPB in 2000 in order to trial new agri-environment options and demonstrate that increases in biodiversity could be secured alongside a productive and profitable farm business. To this end, Hope Farm entered the English 'Entry Level Stewardship' scheme and implemented a range of land management options to deliver the 'big three' for farmland birds: appropriate and adequate nesting sites, spring food for chicks and over winter

food resources. Ten years after buying the farm, farmland bird numbers had risen by 201%, in contrast to regional and national trends of ongoing decline. At the same time Hope Farm is as profitable and productive as equivalent farms that have not implemented these measures. This case study is not, however, a celebration of the Entry Level Stewardship scheme but rather of the land management options it contains, which when implemented well, can secure meaningful biodiversity benefit. It also highlights that broad and shallow schemes which allow entrants free choice over the options they implement are highly unlikely to deliver population recovery of declining species, or address wider environmental issues, as most applicants choose the easiest options and those which require the least modification to their current land management practices.

**CAP Case Study 4: Yellowhammers in Northern Ireland.** Over the past 50 years NI Agriculture has moved from being a predominantly mixed system to be one dominated by intensive grass/dairy/beef/sheep. This has led to a decrease cereal land use, as source of food for seed eating birds such as yellowhammers. As a result yellowhammers decline as much as 90% in some places in NI. East County Down is one of the remaining strongholds for cereal production in NI. A recovery project was launched targeting AES measures where they were needed most, and coupled with advisory support. The result of a 5 year period was a 79% increase in yellowhammers, with a 21% increase on nearby farms which did not partake in AES or receive advisory support - showing an overspill affect into the wider countryside

- **CAP environmental measures (Pillar I)**

Due to the nature of its payments, which are annual and non-contractual (in contrast to Pillar II schemes), Pillar I is much less able to secure environmental improvements than Pillar II. However, the introduction of cross compliance in 2005 was a significant step forward as it recognised, for the first time, the principle of linking Pillar I direct payments to a range of requirements encompassing the environment, public, plant and animal health. This system, whilst not yet delivering its full potential to secure a basic level of good farming practice and land management, has delivered a range of environmental benefits. These include the retention and protection of landscape features, such as hedgerows and lines of trees, as well as the introduction of buffer strips alongside watercourses to help tackle diffuse pollution. Furthermore, much of the most environmentally valuable farmland is currently excluded from receiving direct payments (due to 'non herbaceous' forage being a component of pasture), a situation with no agronomic good reason. There is no justification for areas of environmentally valuable grazing land being ineligible for direct payment.

- **Air Quality Framework Directive**

Policies implemented in Europe to tackle air pollution, notably the Air Quality Framework Directive, have been extremely successful in improving air quality through large emissions reductions compared to a counterfactual business-as-usual scenario<sup>388</sup>.

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<sup>388</sup> AEA, T. (2004). A Comparison of EU Air Quality Pollution Policies and Legislation with other Countries. Brussels, European Commission, DG Enterprise.



An evaluation of air quality policy in the UK between 1990 – 2001 found that there had been major improvements in air quality compared to a counterfactual scenario without such policies, as well as “extremely large benefits in reducing the health and environmental impacts of air pollution.” Overall, the benefits exceeded the costs by a substantial margin<sup>389</sup>. A recent study reported that, since 1990, emissions of sulphur dioxide from large industrial sources in the UK have fallen by nearly 80%, oxides of nitrogen have fallen by 40% and particulate matter has fallen by approximately 75%. Reductions in these emissions from major industrial processes in the UK between 1990 and 2005 has led to an improvement in average life expectancy of equivalent to around five days per person, a UK increase of a million life years, and a reduction in the numbers of premature deaths and hospital admissions due to air pollution<sup>390</sup>. However, as a recent Policy Exchange report demonstrated, significant gaps in implementation remain.<sup>391</sup> The Environmental Audit Committee reported in 2011<sup>392</sup> that the Government is putting thousands of lives at risk by trying to water down EU air quality rules instead of prioritising action to cut pollution on UK roads.

- **Floods Directive**

Flood damage is increasingly likely to affect all EU member states as a result of climate change. The EU identified the need for a legislative driver to co-ordinate action across Member States to adapt to this increasing flood risk, and the ‘Directive on the Assessment and Management of Floods’ stems from an Action Programme developed after several devastating floods across Europe since 2000. It is designed to help prevent and limit floods and their damage to health, environment, property and infrastructure.

In England and Wales, the Environment Agency, alongside other FRM Operating Authorities, already runs a flood management regime which incorporates the three major asks of the Directive. The Floods Directive has seen the UK standard of flood risk mapping adopted across the EU. The only substantial work it has required in England and Wales is the mapping of surface water flood risk, which was also one of the core recommendations of the Pitt Review<sup>393</sup>. This work has been crucial to maintaining universal flood insurance, as full flood risk mapping is necessary for the agreed “Flood Re” model to be viable.

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<sup>389</sup> Watkiss, P., et al (2004). An Evaluation of the Air Quality Strategy, AEA Technology Environment, EMRC, the Institute of Occupational Medicine and Metroeconomica. Report to DEFRA.

<sup>390</sup> Executive, U. B. R. (2009). Better Regulation, Better Benefits: Getting the Balance Right. London, BIS.

<sup>391</sup> [www.policyexchange.org.uk/publications/category/item/something-in-the-air-the-forgotten-crisis-of-britain-s-poor-air-quality](http://www.policyexchange.org.uk/publications/category/item/something-in-the-air-the-forgotten-crisis-of-britain-s-poor-air-quality)

<sup>392</sup> [www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news/air-quality-a-follow-up-report/](http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news/air-quality-a-follow-up-report/)

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<http://webarchive.nationalarchives.gov.uk/20100807034701/http://archive.cabinetoffice.gov.uk/pittreview/the-pittreview.html>

## ii. disadvantaged the UK / your sector?

The RSPB actively seeks to change key areas of EU policy to lift threats from birds and their habitats or to improve their protection. Examples include taking actions to change the Common Agriculture Policy (CAP) which has been, and still is, the cause of considerable environmental damage. Similarly the destructive elements of the EU structural funds which threaten biodiversity in many Member States. Poor implementation of EU environmental legislation in some Member States and the evident limitations of some instruments, such as the Common Agricultural Policy, should not obscure the central question of where competence should lie: to that question, the answer remains that it is both practically necessary (because of cross-border effects) and pragmatically necessary (in the interests of a level playing field) to deal with environmental matters at the EU level.

As per our response to question 10(b), given the extent to which a healthy environment underpins and is a pre-requisite for a thriving economy and healthy society, there can be no doubt that action is needed to address current and future environmental challenges. There is clear evidence that action by the EU to tackle existing environmental challenges has been effective at delivering environmental, economic and social benefits. It is RSPB's view that the EU should not be ignored as a framework for tackling such challenges. The evidence that some actions taken by the EU to tackle environmental challenges have not been fully effective, and in some instances have exacerbated environmental problems, does not in any way justify the abandonment of the EU as the appropriate level to address these challenges, but rather reflects the difficulties likely to be encountered in tackling these challenges at any level.

In RSPB's view the low levels of funding currently dedicated under EU policy instruments to managing EU protected areas that form the Natura 2000 network is also unhelpful for conservation, as is the EU's failure to properly integrate environmental concerns into its sectoral policies with a resultant loss of ecosystem service benefits.

### Case studies

- **CAP and biodiversity declines:**

Rapid and widespread changes to agricultural practices in last 50 years are widely recognised as the driving force behind many species declines in the UK and beyond. The UK's entry into the European Economic Community, and the production linked payments on offer through the CAP, provided a clear impetus to further intensification and specialisation of farming practices, bringing with it the loss of significant areas of farmland habitat and declines in many species. Whilst successive CAP reforms have introduced a number of measures to try and reduce the CAP's negative environmental impacts and indeed attempt to be a force for good (through agri-environment schemes for example) the vast majority of the CAP's considerable budget is still consumed by wasteful and inefficient subsidies which have no clear policy objective and which secure minimal public goods. As a result of the inadequate investment in farmland biodiversity, many species declines are ongoing. The European Environment Agency observes that "*biodiversity in agro-ecosystems is under considerable pressure as a result of*

*intensification and land abandonment*<sup>394</sup> and in 2011, the European Farmland Bird Index, which monitors farmland bird populations, fell to its lowest ever recorded level<sup>395</sup>. The well-documented decline in farmland birds is also mirrored by declines in other farmland biodiversity, as highlighted in the recent 'State of Nature report': 60% of the 1064 species studied were declining, including 64% of farmland moths, 70% of carabid beetles and 76% of the plant species preferred by bumblebees as food sources<sup>396</sup>.

- **Failure to support High Nature Value farming systems:**

HNV farms (including many of the UK's extensive livestock and crofting systems) often receive little or no support from current CAP payments, despite the high level of ecosystem services they provide. Direct payments, which are still allocated on an historical basis in most 'old' EU member States (and including parts of the UK), are biased towards high-output farming systems and because HNV farms are often small in size (despite covering up to 80 million hectares across the EU), they can fall below the size threshold for payments and so receive nothing. Urgent solutions are needed to support the economic viability of these beneficial farming systems to ensure that they can continue to exist and deliver environmental public goods which are important not just in their own right but for wider society. HNV farms need targeted economic support that is linked to the continuation of well-defined land management practices and the delivery of environmental public goods, as they are vulnerable to both intensification and abandonment (or abandonment of part of the holding). Well-designed agri-environment schemes can provide useful support and recognition of the environmental public goods that HNV and crofting systems provide but they can only form part of a wider package of support to such farms. The payment logic that governs agri-environment schemes is also not always suited to the realities of HNV farming. For many HNV farms, extremely low (or even negative) incomes mean that paying for the 'income-foregone' for agri-environment activities may not make economic sense. Paying for the 'costs incurred' can also be inappropriate, as in most cases the desired outcome is a continuation of current practices. At a domestic level, little progress has been made against the EU level requirement for all Member States to identify, monitor and support their existing HNV farming systems (Regulation 1698/2005 establishing EAFRD), with the notable exception of Scotland (which has moved forward significantly with identifying a HNV farming indicator).

- **Financial drivers: Inadequate funding for nature conservation and disproportionate funding for harmful subsidies.**

A recent study<sup>397</sup> by the Institute for European Environmental Policy estimates that somewhere in the region of €34bn per year would be required to cover the cost of

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<sup>394</sup> European Environment Agency (2010) 10 messages for 2010: Agricultural ecosystems

<sup>395</sup> Pan-European Common Bird Monitoring Scheme: [www.ebcc.info/index.php?ID=457](http://www.ebcc.info/index.php?ID=457)

<sup>396</sup> Burns F, Eaton MA, Gregory RD, et al. (2013) State of Nature report. The State of Nature partnership. [www.rspb.org.uk/ourwork/science/stateofnature/index.aspx](http://www.rspb.org.uk/ourwork/science/stateofnature/index.aspx)

<sup>397</sup> Hart K, Baldock D, Tucker G, Allen B, Calatrava J, Black H, Newman S, Baulcomb C, McCracken D, Gantolier S (2011) Costing the Environmental Needs Related to Rural Land Management, Report

environmentally beneficial land management on agricultural and forested land in the EU, rising to €43bn per year when supportive costs (such as advice provision) are factored in. The CAP's Rural Development pillar represents the single largest fund available in the EU for conservation measures but receives just c€12bn per year. It is also important to note that not all of this funding is used to support more sustainable and wildlife-friendly land management. In the current CAP, Member States are required to spend at least 25% of the RD budget on 'environmental measures' however some schemes are little more than additional income support (such as the Less Favoured Area payment) or have been poorly designed by the Member State<sup>398</sup> and so deliver minimal environmental benefit (the issue of limited expertise and capacity within the Commission is also at fault here as they have responsibility for scheme approval). It is clear therefore that considerably less is being spent on protecting and enhancing the natural environment than is required: The disjunction between the level of funding required and the level of funding allocated is mirrored in a UK context where the total cost of meeting the UK's future environmental land management requirements, not including provision of advice for farmers, was estimated to be in the region of three times the existing annual agri-environment budget<sup>399</sup>. In stark contrast, Pillar I of the CAP receives the lion's share of the CAP budget, some 75%, despite having no clear policy objective and numerous studies calling its efficacy and value for money into question<sup>400</sup>. More worrying yet is the role of Pillar I payments in subsidising a fundamentally unsustainable approach to land management in many cases as payment rates are often (including in parts of the UK) still linked to historic production levels, resulting in the highest support payments going to those who produced the most (and generally intensified the most) in the reference period. Even in England, which is one of the few regions within the EU to move to a flat rate approach to Pillar payments, lowland farmers receive a higher per hectare payment than those in Severely Disadvantaged Areas, despite the latter often delivering higher levels of environmental public goods. The cross compliance conditions attached to Pillar I payments also leave much to be desired with the European Court of Auditors stating that the system's scope is poorly defined and can be expected to deliver only limited results at farm level<sup>401</sup>.

- **Failure to properly implement Environmental Impact Assessment (Agriculture)**

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Prepared for DG Environment, Contract No ENV.F.1/ETU/2010/0019r. Institute for European Environmental Policy, London

<sup>398</sup> European Court of Auditors (2011) Special report no. 7: Is agri-environment support well designed and managed?

<sup>399</sup> Cao, Y., Elliott, J., McCracken, D., Rowe K., Whitehead, J., and Wilson, L. (2009) Estimating the Scale of Future Environmental Land Management Requirements for the UK, Report prepared by ADAS UL Ltd and Scottish Agricultural College for the Land Use Policy Group: London.

<sup>400</sup> Baldock et al (2010) The Single Payment Scheme after 2013: New approach, new targets. Study for the European Parliament - Directorate General for Internal Policies Policy Department B: Structural and Cohesion Policies, Agriculture and Rural Development; Tangermann, S (2011) Direct Payments in the CAP post 2013. Study for the European Parliament - Directorate General for Internal Policies Policy Department B: Structural and Cohesion Policies, Agriculture and Rural Development;

<sup>401</sup> European Court of Auditors (2008) Is cross compliance an effective policy? Special report no. 8

## **Regulations.**

There is clear evidence that EIA (Ag) Regulations are failing to protect the remaining resource of semi-natural grasslands in the UK - habitats which support many priority species and provide essential services for society such as carbon storage and water quality benefits. For example, in England, the RSPB has supported a campaign highlighting a failure in the implementation of the Regulations in respect of the effects of agriculture on uncultivated land and semi-natural areas in England.<sup>402</sup> The 2 hectare threshold for the regulations is inappropriate as it excludes a significant proportion of England's semi-natural habitats. The National Ecosystem Assessment highlighted that many ecosystem services are higher in semi-natural than agriculturally improved grasslands but that the average patch size of semi-natural grassland, particularly in the lowlands, is now small - in England, a survey of 483 non-statutory grassland sites, found the mean site area was 2.7 ha. Data on the site size of UK BAP priority lowland grassland types from the Natural England inventory shows that a high proportion of sites are less than 5 ha in size and many are below the 2 ha EIA threshold.

In Scotland, EIA (Agriculture) regulations are very weakly enforced, even compared to other parts of the UK. Whilst having a much larger share of semi-natural grasslands than other parts of the UK, the number of screenings is very low; the EIA public register lists only 30 screening decisions across the whole of Scotland for the period 2002-2010. This contrasts with 248 screenings in Wales since 2002 and 394 in England since 2006 alone. In order to address such weak implementation, the EU needs to offer much greater scrutiny of implementation and impose sanctions where implementation is inadequate.

- **CFP and perverse fishing subsidies**

Rather than generating a more sustainable fishing sector, the EFF (2007-2013) has worked significantly to its detriment. Less than one-quarter of the fund has been directed at fleet capacity reduction, instead available funds have been used to help vessel owners overcome economic problems at the expense of rebuilding fish stocks. In addition to poorly managed aid for vessel modernisation and fleet adjustment, nearly 40 percent of the EFF was committed to expanding port infrastructure, processing, and aquaculture by October 2010, representing an incoherent and contradictory set of measures that together significantly increased economic returns to enterprises and thus encouraged increased production irrespective of environmental carrying capacity<sup>403</sup>. Given shared EU fishing waters and fish stocks, the overall perversity of EFF spend by Member States would have disadvantaged the UK sector, notwithstanding how the UK

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<sup>402</sup>For example, signing a letter to the Secretary of State for Environment, Food and Rural Affairs along with other members of Wildlife and Countryside Link. This correspondence cumulated in a complaint by Grasslands Trust to the European Commission - CHAP(2010)01550 - UNITEDKINGDOM

<sup>403</sup> WWF 2011: Reforming EU fisheries subsidies: a joint NGO discussion paper and technical resource [http://awsassets.panda.org/downloads/lr\\_reform\\_fisheries\\_subsidies.pdf](http://awsassets.panda.org/downloads/lr_reform_fisheries_subsidies.pdf)

implemented its own EFF Operational Programme. The CFP Reform has taken a step forward in this area, but at the date of writing there are worrying signs that the new European Maritime and Fisheries Fund will direct money once again to unsustainable practices.

### Where should decisions be made?

2. 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?)

This question seems to suggest that EU level decisions are only made through binding EU legislation, and that national level decisions can only be made where no EU legislation exists. In reality, much EU legislation, particularly in the field of the Environment, is in the form of Directives, which leave much of the decision-making to Member State level. Directives are only one of many forms that the EU has at its disposal for exercising its competences. There is much scope, even within binding legislative instruments like Directives, for national authorities to make decisions with a view to better serving the national interest.

A key justification for taking decisions at EU level is to ensure a level playing field in competition terms. This is one of the main drivers of legislation and policy in the environment field, with a view to avoiding a “race to the bottom” through deregulation, or a protectionist “race to the top”.

It is in the UK’s interest that the level playing field of the single market is maintained. Common environmental legislation across the EU allows UK companies to compete on the same terms with those of other member states, subject to the same level of regulation. Were decisions to be left to national or regional levels, it is more likely that the environment would suffer through a race to the bottom, rather than benefit from additional protection. Recent experience with the attempted sell-off of publicly owned forests in England strongly suggests that any attempt to remove protection for the environment wholesale in an attempt to gain a short-term competitive advantage would not be publicly acceptable in the UK.

Were responsibility for the environment to be made at an international level, decision-making would in all likelihood be bound by international law, rather than the supranational institutions of the EU. In this case enforcement would be much weaker, and the incentive for member states to “free ride” rather than fulfilling their obligations much greater.

For example the EU’s failure to achieve the International Biodiversity Target in 2010 under the Convention on Biological Diversity incurred no penalty. Nor did the failure to meet the OSPAR 2010 target for an ecologically coherent network of Marine Protected Areas. The non-binding nature of international environmental obligations is a very weak incentive to

halt the ongoing depletion of natural resources. The RSPB research paper referenced in relation to question 1 shows that outside the EU, where the Birds Directive does not apply and conservation efforts are based on national initiatives or international obligations, Annex I species did no better than birds that were not on Annex I. Following implementation of the Birds Directive, Annex I species did better inside the EU than outside the EU.

A further justification for decisions on the environment specifically being taken at EU level is to ensure access to transboundary natural resources that are essential to the UK economy.

- **Common Fisheries Policy (CFP)**

The EU's Common Fisheries Policy grants the UK access to the waters and markets of other Member States, and regulates allocation to fish stocks which move freely across the boundaries of Member States' respective territorial waters. The UK fishing industry would be unable to deliver the quantity and variety of fish products demanded by UK customers without access to these water and markets. Any move to 'repatriate UK fish stocks' while itself a misnomer (since the stocks are trans-boundary in nature) would require the UK to strike bilateral agreements with all the relevant Member States (as the EU currently does with Norway), which would present significant difficulties and require a major investment of time and resources, without the benefit of the reciprocal access (to fishing opportunities) and trade concessions the CFP currently confers.<sup>404</sup> The total present value to the UK economy of maintaining access to healthy EU fish stocks is in the range of £11–19 billion, depending on future prices and stock levels.<sup>405</sup>

It is clear that strong, enforceable, binding international agreements on climate change or land-use would be the panacea to global environmental challenges. But the UNFCCC negotiations demonstrate that such agreements are extremely difficult to achieve. The lack of international agreements does not in any way justify a lack of continental action. As mentioned above there are clear benefits to implementable, enforceable continent-wide approaches which can be tied to specific sanctions if implementation fails. Furthermore, continental approaches act as a precursor for international deals, not a replacement for them.

ii. currently made at another level were instead made at EU level?

In terms of climate change, it is evident that a globally binding deal would be preferable to EU level laws. However, this is evidently not a quick fix, and in our view the EU's climate action is absolutely critical to driving progress on reducing greenhouse gas emissions. The same is true, for example, when it comes to land use legislation; in the absence of a global deal on land use it is critical that the EU acts to mitigate the impacts of land use change due to, for example, the EU demand for biofuels. A third example relates to maritime safety and avoiding oil pollution incidents. Again a global deal on international shipping through the

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<sup>404</sup> [www.cer.org.uk/sites/default/files/publications/attachments/pdf/2011/policybrief\\_fish-846.pdf](http://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2011/policybrief_fish-846.pdf)

<sup>405</sup> [www.eurocbc.org/netbenefits.pdf](http://www.eurocbc.org/netbenefits.pdf)



IMO is desirable; however, due to lack of progress, the EU went ahead and instigated its own improvements to maritime safety – the so called Erika I, II and III Packages.<sup>406</sup>

The EU working together as a bloc is often critical to securing any progress which does get made.

- **Shark finning:** In June 2013, the EU agreed to tighten an existing ban on shark finning which will forbid the practice by all vessels in EU waters and by all EU-registered vessels anywhere in the world, a move which puts pressure to do likewise on countries where shark finning is commonplace. This closes a loophole in EU rules by which fishermen with special permits were still allowed to remove fins from shark carcasses at sea.
- There are also opportunities to link EU policies with other global actors, for example through linking the EU ETS to that of California or others. Similarly, the possibility of linking the EU's legislation with other countries – for example the Voluntary Partnership Agreements under the FLEGT regime. Whilst these do not necessarily demonstrate best practice, they present a method by which EU environmental action can have impacts beyond the Union's borders.

### Internal market and economic growth

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

Environmental standards are key for the proper functioning of the single market in purely economic terms as they help set a level playing field across the EU, and prevent any one member state deriving an unfair short-term competitive advantage by destroying its environment. EU environmental standards achieve this by establishing minimum standards for environmental protection that apply across all EU Member States. This also serves to provide certainty for businesses operating across the EU, that the rules applicable to them are the same in all Member States. Businesses that wish to trade within any EU Member State must comply with these rules whether they are based in the EU or outside.

Aside from the functioning of the internal market, it is also important to recognise the role played by EU environmental standards in supporting the EU economy more broadly. There is a growing body of evidence regarding the importance of the natural environment in relation to the valuable goods and services it provides.<sup>407</sup> The ground-breaking 2011 UK National Ecosystems Assessment clearly highlighted the wide variety of significant benefits provided by the natural environment in terms of economic prosperity, human health and well-being; the risks posed to the delivery of these benefits through inadequate protection

<sup>406</sup> [www.ec.europa.eu/transport/modes/maritime/safety/third\\_maritime\\_safety\\_package\\_en.htm](http://www.ec.europa.eu/transport/modes/maritime/safety/third_maritime_safety_package_en.htm)

<sup>407</sup> For example, see: Millennium Ecosystem Assessment (Program). (2005). *Ecosystems and Human Well-Being: Our Human Planet: Summary for Decision Makers* (Vol. 5). Millennium Ecosystem Assessment (Ed.). Island Press.



and management; and, the importance of regulation in safeguarding and enhancing the delivery of key services.<sup>408</sup> Research has clearly demonstrated the major role played by Europe's Natura 2000 network in safeguarding the natural capital upon which Europe's prosperity and well-being ultimately depends, providing a wide range of important benefits to society and the economy via the flow of ecosystem services.<sup>409</sup> As an EU-wide network, Natura 2000 represents an important shared resource capable of providing multiple benefits to society and to Europe's economy.<sup>410</sup> Ecosystem services deliver benefits over multiple spatial and temporal scales; many are trans-boundary in nature. In addition, the complex ecological processes underpinning the delivery of these services also do not respect national boundaries. Protecting supra-national "public goods" must be a shared responsibility; without EU environmental standards that simply would not be possible.

The UK NEA has also highlighted that the UK is increasingly drawing on the services of overseas ecosystems to support its own economic growth. Approximately one third of the biomass used by the UK now comes from overseas, the majority from the EU and the adjacent EU countries (approximately 60% of the overseas land requirement to supply imported biomass falls within the UK's EU partners and the adjacent European countries). The UK's obvious dependence on the primary productivity of these overseas ecosystems makes it economically imperative that we take steps to ensure the long-term productivity/functionality of these systems. As part of the EU, the UK is able to take such steps by participating in policy development to protect the European landscape.<sup>411</sup>

Environmental standards can also help create new markets for environmental products or services, as well as promoting improved levels of environmental protection globally among countries wishing to trade with the EU. Within a Member State, such standards are also important as they should play a role in preventing environmental damage taking place in one sector (for example agriculture) which, by damaging the natural environment, has a negative impact on another sector (such a tourism). The Europe 2020 Strategy aims to create a smart, sustainable and inclusive European economy. As one of the three pillars of sustainable development, environmental protection is therefore a key element of the current political objectives of the single market.

### **Case studies**

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<sup>408</sup> UK NEA (2011). The UK National Ecosystem Assessment. Synthesis of the Key Findings. UNEP-WCMC, Cambridge.

<sup>409</sup> [www.ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018\\_LR\\_Final1.pdf](http://www.ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018_LR_Final1.pdf)

<sup>410</sup> Kettunen, M. et al. (2011). Assessment of the Natura 2000 co-financing arrangements of the EU financing instrument. A project for the European Commission – final report. Institute for European Environmental Policy (IEEP), Brussels, Belgium.

<sup>411</sup> UK NEA (2011). The UK National Ecosystem Assessment. Synthesis of the Key Findings. UNEP-WCMC, Cambridge.

- **Economic benefits of Natura 2000**

The DEFRA study on “Benefits of Sites of Special Scientific Interest WC0768”<sup>412</sup> identifies the range of valuable ecosystem services that the UK’s network of Sites of Special Scientific Interest (SSSIs) provides, and gives estimates for the monetary value of the benefits derived from protecting biodiversity. These estimates significantly exceed the costs of delivering them, and illustrates the importance of valuing the benefits of nature’s services. The report found that the ecosystem services provided by SSSIs were valued at eight times the cost of protecting these sites. The report also highlights that SSSI’s protected by higher level designations under EU law enhance the conservation benefits and ecosystem services that these sites deliver. Natura 2000 designation offers both higher levels of protection from land use change, and additional access to EU funding for SSSIs.

- **Marine Strategy Framework Directive**

The marine environment knows no boundaries and improvements across EU waters support UK marine objectives. Collective action to improve the marine environment reduces the burden on the UK and delivers better end results compared with having to do it alone for the UK’s seas, especially where impacts originate outside the UK’s jurisdiction.

- **Consistency of implementation is crucial for business certainty**

The consistent implementation of a common set of rules across the EU is a key element of the single market. There is strong evidence that UK business is just as reliant on this as the business sector in other EU Member States. According to the findings of the Davidson Review<sup>413</sup> on the “Implementation of EU Legislation” from 2006

“many businesses that operate across Europe said that differential implementation across Member States, thereby undermining the single market, matters more than whether there is over-implementation in a particular country;”

See also the responses under question 4.

4. 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?

In RSPB’s view the suggestion made by this question that protecting the environment runs contrary to supporting economic interests is a false assertion. Not only have we found that protecting the environment can be entirely consistent with economic interests, and that

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<sup>412</sup><http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=1&ProjectID=17005>

<sup>413</sup> [www.bis.gov.uk/files/file44583.pdf](http://www.bis.gov.uk/files/file44583.pdf)

businesses that “play ball” with environmental legislation experience little or no impact on their activities, but long-term economic sustainability is intricately bound to long-term environmental sustainability.

Environmental regulations play a central role in protecting the environment and the natural capital upon which our long-run prosperity ultimately depends. Yet, such regulations are often perceived solely as a burden on business and the wider economy, despite their proven benefits. However, we know that such perceptions are an unreliable indicator of the true regulatory “burden”; evidence suggests that there may be a considerable disparity between perceptions of regulatory quality and actual measurable results i.e. there may be a gap between business perceptions of regulation and “objective reality”.<sup>414</sup>

The Davidson Review<sup>415</sup> on the “Implementation of EU Legislation” from 2006 put to rest claims of over-implementation of EU legislation and found that;

- many allegations of over-implementation of European legislation are misplaced as they either relate to concerns about the EU measure itself or wrongly assume that certain UK legislation originated from the EU;
- it can sometimes be beneficial for the UK economy to set or maintain regulatory standards which exceed the minimum requirements of European legislation;
- evidence to support assertions that the UK implements and enforces more rigorously than other Member States is often lacking. Furthermore, the review heard similar concerns about their governments from business representatives in other European countries. Unlike in the UK, very few other EU governments currently have explicit policies or procedures to guard specifically against over-implementation – the UK is regarded by some as a leader in this field; and
- the OECD and World Bank consistently report that the UK has one of the most favourable regulatory environments for doing business in the EU.

Environmental legislation also underpins economic performance. The Aldersgate Group state that “...there is no inherent contradiction between regulating for high environmental standards at the same time as maintaining economic competitiveness and stimulating wealth creation. Quite the reverse: no economic policy which sacrifices environmental quality can succeed in the long term. We have now entered an era where continued economic growth depends more and more on the efficient use of increasingly scarce resources, and on the continued ability of the biosphere to deal with the pollution we create.”<sup>416</sup>. In its follow-on report, “Green Foundations 2009 The path to a vibrant

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<sup>414</sup> OECD (2012). Measuring Regulatory Performance: A Practitioner's Guide to Perception Surveys. Paris, OECD

<sup>415</sup> [www.bis.gov.uk/files/file44583.pdf](http://www.bis.gov.uk/files/file44583.pdf)

<sup>416</sup> Aldersgate Group (2006). [Green Foundations: Better Regulation and a Healthy Environment for Growth and Jobs](#).

economy, competitive advantage and sustainable prosperity”<sup>417</sup> the Aldersgate Group concluded that:

- applying the principles of ‘Better Regulation’ as defined by the Better Regulation Task Force, can mean that policy implementation beneficially goes beyond minimum standards;
- high standards of environmental care are vital to the long-term health of the UK economy and future competitiveness
- pressures to remove regulation simply because it is not convenient for business in the shorter-term must be resisted
- The business community is increasingly demanding more regulation to remove uncertainty in the markets and enable them to exploit potential opportunities.

In its report “Pricing the Priceless. The business case for action on biodiversity”<sup>418</sup> The Aldersgate Group further emphasized that Regulation is a key driver to support new markets which would otherwise not exist or develop too slowly, and that the UK must be an early mover in areas where it has competitive advantages to maximise economic opportunities.

Of course, poorly designed regulations can and do impose real costs on businesses and the economy. Therefore, minimizing any unnecessary regulatory costs at the same time as maintaining or improving regulatory outcomes is an eminently sensible approach to environmental regulation. However, without clear evidence regarding the supposed negative impact of environmental regulation in relation to the economy, it is difficult to assess the extent to which existing EU legislation currently “provides the right balance”. However, we note the considerable body of evidence that exists showing that protecting the natural environment goes hand in hand with sustained socio-economic progress. In fact, there is a growing body of evidence suggesting that, in the long-run, environmental regulation is good for business by opening up new market opportunities and driving cost-reducing innovation.<sup>419</sup>

In terms of the relationship between environmental regulation and economic growth, there is no strong evidence to support the assertion that regulation is a brake on economic growth. A recent literature review noted that “the *empirical evidence appears to be mixed and the outcome depends on the regulatory design and type of regulation.*”<sup>420</sup> An earlier government review found that, although there is some evidence of near-term trade-offs between environmental regulation and growth “*these effects have typically been found to be small or even insignificant*”. The review noted that “*...empirical analyses have found environmental regulation to have a minor adverse impact, if any, on productivity...no survey has found large negative effects of environmental regulation on overall productivity, either in the short or in the long run.*”<sup>421</sup>

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<sup>417</sup> [www.aldersgategroup.org.uk/asset/download/117/green\\_foundations\\_2009.pdf](http://www.aldersgategroup.org.uk/asset/download/117/green_foundations_2009.pdf)

<sup>418</sup> [www.aldersgategroup.org.uk/asset/download/472/Business%20and%20Biodiversity.pdf](http://www.aldersgategroup.org.uk/asset/download/472/Business%20and%20Biodiversity.pdf)

<sup>419</sup> Rayment, M., E. Pirgmaier, et al. (2009). The economic benefits of environmental policy - Final Report., Institute for Environmental Studies.

<sup>420</sup> Frontier Economics (2012). [The impact of regulation on growth](#). A report prepared for the Department of Business, Innovation, and Skills.

<sup>421</sup> Defra (2010). [Economic Growth and the Environment](#). Defra Evidence and Analysis Series

It is also important to recognise that the UK economy does not exist in a vacuum. The resource base for many economic activities comes from natural resources and these activities are therefore wholly dependent on a functioning natural environment.

According to the UK Government's Natural Capital Committee (NCC), "*there is no inherent incompatibility between preserving and enhancing natural capital and economic growth*". In their first report, the committee clearly point out that "*the amount and quality of our natural capital in part determines future prospects for growth and wellbeing*".<sup>422</sup> There is increasing recognition amongst national and international policymakers that *natural capital is critical to our long-term prosperity, yet it is frequently treated as having little if any value*.<sup>423</sup> The evidence that exists indicates that, at least in the UK, our natural capital assets are in decline and that the rate at which we are consuming these assets is unprecedented. UK and EU policymakers need to do much more to incorporate the value of natural capital into decision-making across all sectors of society.<sup>424</sup>

The UK's National Ecosystem Assessment<sup>425</sup> has demonstrated that the UK has a substantial ecological 'footprint' overseas. The UK landmass itself cannot provide the entire ecosystem provisioning services required to support the national economy and we are not self-sufficient in meeting our food, fibre, water (embedded in products) and energy needs. The annual biomass flow from agriculture, forestry and fisheries through the UK economy is 150 million tonnes, based on domestic production of approximately 100 million tonnes, imports of 50 million tonnes and exports of 20 million tonnes. Therefore, approximately one-third of the biomass used by the UK is sourced from overseas. Approximately 66% of the UK's annual water demand is met by overseas sources through embedded (virtual) water, three-quarters of which is due to production of agricultural biomass.

The overseas total land requirement in 2008 was approximately 14 million hectares, compared with a domestic productive area within the UK of approximately 20 million hectares, and was predominantly related to the food chain. National food requirement will thus be a key future driver of future UK biomass demand. This dependence on overseas ecosystems, particularly in respect of this primary productivity, makes the protection of the long-term functionality of these overseas ecosystems an economic imperative for the UK.

The environment also delivers significant economic benefits to the UK through ecosystem services, while environmental degradation and climate change can create significant economic costs that dwarf any short-term economic benefits. The NEA found that the contribution that ecosystem services make to the national economy in terms of a sustained flow of income is very substantial. The continued maintenance of this natural capital stock is critically important for the future prospects of a thriving 'green' economy. The sustainable development goal will not be achievable without a more efficient and effective management of ecosystems encompassing economic appraisal principles and practice. Examples of such

<sup>422</sup>NCC (2013). [The State of Natural Capital](#): Towards a framework for measurement and valuation.

<sup>423</sup> [www.globeinternational.info/images/natural-capital-study/GLOBE-Natural-Capital-Legislation-Study.pdf](http://www.globeinternational.info/images/natural-capital-study/GLOBE-Natural-Capital-Legislation-Study.pdf)

<sup>424</sup>NCC (2013). [The State of Natural Capital](#): Towards a framework for measurement and valuation.

<sup>425</sup> <http://uknea.unep-wcmc.org/>

services to the UK economy include;

- The value of UK fish landings is about £600 million per annum (p.a.), while that of aquaculture (fish and shellfish farming) is around £350 million p.a.
- Biodiversity pollination services are estimated at £430 million p.a.
- Willingness to pay (WTP) estimates of the non-use (existence) value of terrestrial biodiversity range from £540 million to £1,262 million p.a. and for marine biodiversity, estimates of around £1,700 million p.a. have been reported. However, as noted below, there is debate regarding such estimates. Legacy values are around £90 million p.a.
- Timber values are just under £100 million p.a.
- The water quality benefits of inland wetlands may be as high as £1,500 million p.a., while planned river quality improvements may generate values up to £1,100 million p.a. However, climate change-induced losses of water availability are valued at £350 million to £490 million p.a..
- The costs associated with changing agricultural land use to reduce nutrient loadings into rivers are substantially smaller than the benefits which consequent reductions in diffuse water pollution would bring (however, the former costs are concentrated within rural communities, while benefits are distributed across a mainly urban society).
- The amenity value of all wetland types, including coastal, is around £1.3 billion p.a.
- Renewable fuels currently meet 3% of UK energy demand and 7% of electricity generation.
- Marine-based biotic raw materials are worth £95 million p.a.
- The UK aggregates industry is worth £4,800 million p.a., of which more than £100 million comes from the marine environment
- The environment generates substantial educational benefits each year.
- The total value of net carbon sequestered currently by UK woodlands is estimated at £680 million p.a.
- There are also substantial costs arising from activities which deplete ecosystem services. For example, considering the previous result regarding carbon sequestration by woodlands, this is completely negated by GHG emissions from UK agriculture, which are currently around £4,300 million p.a. Similarly, the average annual cost of flooding is about £1,400 million, although this can rise as high as £3,200 million in extreme years.

Environmental protection has therefore a beneficial (though often undervalued) economic impact. In addition, EU environmental legislation has helped create and boost the “green economy” through the creation of new roles and sectors, including new environmental professionals, and new renewable energy businesses. For example, Scottish expertise in assessing the environmental impacts of onshore windfarms and developing sites in a sustainable manner, is already being exported overseas (e.g. via the EU-funded GPWIND



project<sup>426</sup>).

As an aside, we note the findings of the NCC that “...when thinking about natural capital, wild species and habitats require *special treatment* that reflects their irreplaceability.”<sup>427</sup> EU legislation on the environment needs to recognise that meeting our targets in relation to the protection of biodiversity is about a lot more than just pure economics; many people believe that the nature has its own intrinsic value that cannot be traded off against purely economic values. A 2010 Eurobarometer poll found that EU citizens (including in the UK) see the conservation of biodiversity first and foremost as moral obligation rather than as a means of protecting our own well-being and quality of life.<sup>428</sup> The number of members of the public who are members of environmental organisations is further evidence that the UK public agree. The results of the 2009 Survey of public attitudes and behaviours towards the environment<sup>429</sup> found that the economy, unemployment and the environment/ pollution are the most often mentioned by people, without prompting, as the ‘most important issues the Government should be dealing with’.

### Case studies

- **EU Birds and Habitats Directives – No barrier to business**

The EU Habitats and Birds Directives have been providing vital protection for Europe’s rarest and most threatened habitats and species for over 30 years<sup>430</sup>. The RSPB’s experience of working with the Nature Directives is considerable and focuses on engaging positively to facilitate constructive outcomes, drawing on the understanding and expertise that experience has created. Key to working with the Nature Directives is a thorough understanding of the decision-making process and the requirements of each stage. Greater understanding of the process can help ensure a positive approach is taken, increase trust, avoid misunderstandings, minimise delay and reduce costs.

A Defra review of the implementation of the Directives found 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.”<sup>431</sup> Evidence submitted by Wildlife and Countryside Link showed that, of the thousands of land use consultations received by Natural England each year, less than 0.5% result in an objection under the Habitats Regulations.<sup>432</sup> Given the small area subject to designation and the small proportion of land use applications

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<sup>426</sup> [www.project-gpwind.eu/](http://www.project-gpwind.eu/)

<sup>427</sup> NCC (2013). [The State of Natural Capital](#): Towards a framework for measurement and valuation.

<sup>428</sup> Eurobarometer (2010). Attitudes of Europeans towards the issue of biodiversity

Analytical report Wave 2 [www.ec.europa.eu/public\\_opinion/flash/fl\\_290\\_en.pdf](http://www.ec.europa.eu/public_opinion/flash/fl_290_en.pdf)

<sup>429</sup> <http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/090923stats-release-pubatt.pdf>

<sup>430</sup> Donald, P. F., Sanderson, F. J., Burfield, I. J., Bierman, S. M., Gregory, R. D., & Waliczky, Z. (2007). International conservation policy delivers benefits for birds in Europe. *Science*, 317(5839), 810-813.

<sup>431</sup> HM Government (2012). Report of the Habitats and Wild Birds Directives Implementation Review.

<sup>432</sup> Wildlife and Countryside Link Submission to the Defra Review of the Implementation of the Habitats and Wild Birds Directives

affected, it is extremely difficult to make the case for this handful of objections being a “ridiculous cost” to business (as has been suggested). A study examining the implementation of the EU Birds and Habitats Directives in the UK did not find any evidence supporting the contention of ‘gold plating’ in the implementation of the EU Birds and Habitats Directives in the UK.<sup>433</sup> Listed below are examples of infrastructure plans and projects working successfully with the Habitats and Birds Directives

### **Immingham Outer Harbour, Humber Estuary (Habs Regs Case Study 29)**

Immingham Outer Harbour is a case that progressed smoothly through the consenting process because Associated British Ports (ABP) fully engaged with the Habitats Regulations process at an early stage. The port is now operating, and the habitat compensation necessary to offset unavoidable damage associated with its construction has been provided.

The port company proposed extending the Humber International Terminal to create a new roll-on, roll-off ferry terminal, which would have caused direct loss of 22 hectares of intertidal mud within an area proposed as an extension to what is now the Humber Estuary Special Protection Area (SPA) and Special Area of Conservation (SAC). In discussion with the Environment Agency, English Nature, Lincolnshire Wildlife Trust and the RSPB, the port accepted that there would be an adverse effect on the integrity of the site, and entered into a legal agreement with the conservation organisations to provide adequate compensation to maintain the integrity of the network.

In parallel to the due process, conservation organisations worked with ABP to identify potential sites for compensation and negotiate with land owners and put forward planning applications for the compensation sites. ABP also produced the necessary information to inform the Government’s consideration of alternative solutions, and imperative reasons of overriding public interest. This allowed the nature conservation bodies to withdraw their objections to the scheme and so avoid an unnecessary and costly public inquiry.

### **Thames Basin Heaths Special Protection Area Delivery Framework**

The Delivery Framework for the Thames Basin Heaths (TBH) SPA is a ground-breaking strategic planning solution to support sustainable development. The Delivery Framework was initiated in 2005 when the TBH SPA was classified under the EU Birds Directive as a key area for heathland birds of European importance, and it allows housing development to be delivered while safeguarding the breeding populations of nightjars, woodlarks and Dartford warblers.

The TBH SPA is a complex site of 13 separate heathland SSSIs covering 8,275 ha across western Surrey, eastern Berkshire and north Hampshire. The important bird populations are vulnerable to impacts from informal recreation and domestic pets. The

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<sup>433</sup> Roger K.A. Morris, The application of the Habitats Directive in the UK: Compliance or gold plating?, Land Use Policy, Volume 28, Issue 1, January 2011, Pages 361-369.



challenge was to devise a workable approach that would deliver new housing close to the SPA but avoid additional pressure on the site. The solution combines the provision of areas to divert recreation away from the SPA and improved management of recreational use of the open access heaths. Critically, the Delivery Framework reduces the need for Habitats Regulations Assessment (HRA) for residential developments which meet the defined standards, across 11 local planning authorities.

The Delivery Framework was first proposed by Natural England's predecessor, English Nature, and developed in partnership with local authorities, housing developers and wildlife organisations including The Wildlife Trusts and the RSPB. The framework was subject to formal examination in public with all 11 affected local authorities and a wide range of stakeholders, and was later adopted into local plans. The result has been welcomed by all sectors and the model is now being deployed elsewhere in England where similar challenges arise.

### **Sustainable Catchment Management Programme (SCaMP)(Habs Regs Case Study 43)**

The Sustainable Catchment Management Programme (SCaMP) was devised to ensure the sustainable environmental management of 20,000 ha of water catchment land under United Utilities' ownership in the Peak District and the Forest of Bowland. One of the main drivers was restoration of land with SSSI and SPA status supporting priority habitats such as blanket bog and heather moorland, and home to species such as the hen harrier, curlew and stonechat. Over recent decades, industrial pollution, drainage of the moorland peat, wildfires and agricultural practices have all had a negative environmental impact, affecting the wildlife value of the site. This has contributed to increased discolouration and pollution of water drawn from the catchment, which has to be removed through treatment processes before it is suitable for drinking.

A partnership between United Utilities, the RSPB and local farmers has developed an integrated approach to managing the land which complies with the Habitats Regulations, enhances biodiversity and improves the quality of the water abstracted for drinking, as well as providing an enhanced source of income for tenant farmers. In time healthy peat vegetation will absorb and store vast amounts of carbon and help mitigate the impact of climate change. Bryan Homan, Head of Catchment Operations at United Utilities has said: "SCaMP is an innovative long-term catchment management scheme that unites both private and public funding. It is showing early signs of success at improving raw water quality whilst providing a multitude of community and environmental benefits."

### **Breckland Local Development Framework (Habs Regs Case Study 8)**

The Breckland LDF will deliver extensive housing development (5,000 homes) at Thetford, which lies close to large numbers of breeding stone-curlew. The Breckland SPA holds approximately two thirds of the UK population of this species. Stone-curlew are known to be susceptible to disturbance by people.

Extensive and thorough scientific investigation fed into the Habitats Regulations Assessment of the Core Strategy. This led to the Core Strategy introducing 1500m buffer

zones for those parts of the SPA holding breeding stone-curlew within which development must accord with detailed policies or demonstrate that it will not have an adverse effect upon the SPA.

The use of innovative buffer zones with attendant policy criteria has enabled the Council to identify areas where development is, or is not, appropriate. Generally, development within existing settlements is likely to be acceptable (this enabled neighbouring Forest Heath District Council to propose 1,000 houses at Brandon which lies entirely within the buffers), whilst development that extends the urban area or is located in open countryside is unlikely to be accepted.

The appropriate assessment and the plan's response to it are an exemplar of how effective, evidence-led, spatial planning should be undertaken: the Council has avoided harming the SPA and has also managed to secure its entire, ambitious, housing supply for the plan period without needing to rely upon windfall sites.

### **Havant Local Plan (Habs Regs Case Study 22)**

Grassland at Broadmarsh in Havant is a key feeding area for brent geese from the adjacent Chichester and Langstone Harbour SPA/Ramsar site. The initial draft Havant Local Plan proposed Broadmarsh as a zone for employment development. Allocation of this land for employment would have destroyed this food resource with no guarantee that suitable alternative feeding grounds could be provided to the sub-population of birds affected.

The RSPB has been a long-term advocate of the benefits of such integration of nature conservation considerations into strategic planning and the use of strategic assessment techniques. At the time the Havant Local Plan was drafted, the UK did not accept that the Habitats Regulations applied to such land-use plans. This placed local planning authorities in difficult position in respect of how to assess and test the potential impacts of local plan allocations.

The RSPB put forward a strong case at the public inquiry that the employment allocation should be deleted because loss of the feeding grounds would have a damaging effect on the SPA/Ramsar site and that because of this there was no certainty the employment proposal would proceed. The case was not made that there were no alternative solutions.

If the Habitats Regulations had been applied at an early stage in the drafting process of the local plan, the selection of unsustainable locations for development could have been avoided.

### **Bristol Deep Sea Container Terminal (Habs Regs Case Study 9)**

This case study concerns a proposed major new container terminal on the Severn estuary, involving land claim and creation of a new breakwater. The project was expected to have direct and indirect impacts on intertidal habitats within the Severn Estuary SPA, SAC and Ramsar site. The main impact would have been accretion of

sediment on 80ha intertidal mud immediately upstream, of which 60ha lies within the SPA and is an important winter feeding area for c.3,000 waterbirds.

The Company embraced the Habitats Regulations positively and worked closely with regulators and the RSPB to identify key impacts, and agree mitigation and compensation and monitoring, set out in a detailed legal agreement.

Scientific studies concluded that changes to sedimentation were likely to have an adverse effect on the integrity of SPA and SAC habitats (a total of 80ha) which could not be mitigated. A comprehensive legal agreement was negotiated covering mitigation, compensation and monitoring requirements. The Port agreed to provide 120ha of intertidal habitats to be fully functioning in advance of the predicted damage i.e. created at least two winters before the damage would be triggered by construction.

The RSPB, Natural England and Countryside Council for Wales withdrew their objections on completion of the legal agreement. Withdrawal of objections meant that there was no need for a public inquiry to take place, and the Company eventually received its consent 15 months later in March 2010.

This case further developed the UK approach to habitat compensation delivery by explicitly requiring it to be fully functional before damage occurred – in line with UK and EU policy guidance.

The Company and the RSPB are now working together to design the intertidal habitat compensation project at Steart, North Somerset to meet the requirements of the legal consent.

#### **Frodsham wind farm (Habs Regs Case Study 20)**

This case study concerns the construction and operation a 20 turbine wind farm located on the Frodsham Canal Deposit Grounds, Cheshire immediately abutting the Mersey Estuary SPA. RSPB and Natural England were concerned about displacement of wintering wildfowl and wading birds from the Mersey Estuary SPA.

The proposed development was subject to Environmental Impact Assessment (EIA), reported in an Environmental Statement (ES).

Following a site visit, it was discovered that the SPA land within 500m of four of the closest turbines to the SPA was unsuitable habitat that did not support vulnerable species and was unlikely to in the future.

The turbine at the confluence of the Weaver and Manchester Ship Canal was removed from the scheme following extensive discussions and site visits with Natural England and the RSPB, as well as other local ecological interest groups as it was close to important bird habitat in the SPA. This enabled the RSPB and Natural England to withdraw objections.

Other changes to the scheme include a revised Habitat Creation and Management Plan.

Through consultation with Natural England and the RSPB, land within the site will be maintained as a high tide roosting area to mitigate potential ornithological impacts. This will complement the original proposed habitat creation area.

However the local council maintained an objection on unrelated grounds and consequently the proposal was considered at public inquiry in late 2011.

This case represents good practice for terrestrial wind farm development with constructive engagement by Peel Energy and the nature conservation bodies. Proposed mitigation removed the nature conservation objections to the scheme and also provided additional conservation enhancement.

- **Spatial Planning**

There is strong evidence that where businesses and government have engaged with the processes established by the Nature Directives, and when a strategic approach to spatial planning is followed, potentially costly delays are avoided, and a more sustainable outcome is often delivered.

Strategic (spatial) planning is vital to ensuring the effective and democratic shaping of land use and our communities, delivering the right types of development in the right places. The RSPB believes that sound strategic planning should be able to allocate the use of space to avoid important wildlife sites being impacted upon by development, while enabling societal objectives for economic and social development to be met. Done well, strategic planning can provide regulatory certainty and avoid site-specific conflicts at a late stage in the development process (e.g. once a planning application has been submitted), when financial and legal resources have been committed and there is less room for manoeuvre, in terms of where to locate a specific development proposal.

- **New environmental sectors**

Green Alliance's December 2012 report 'Green Economy: A UK Success Story ([www.issuu.com/greenallianceuk/docs/green\\_economy\\_a\\_uk\\_success\\_story/2](http://www.issuu.com/greenallianceuk/docs/green_economy_a_uk_success_story/2)) indicates that the UK's low carbon and green economy has already created almost as many jobs as the financial services sector, and twice as many as the automotive sector. The CBI states that in 2010-11 over a third of economic growth in the UK is likely to have come from green business. In 2010-11 the UK exported low carbon and environmental goods and services to 52 countries and with a value of £11.8 bn.

The UK's economic interest in growing export markets for low carbon and environmental goods and services is clear. By raising environmental protection standards, and creating a level playing field, for investors, EU policies have been instrumental in the growth of UK economic activity in these dynamic sectors. As such EU measures to protect the environment and the UK economic interest are closely aligned.

## **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

In RSPB's view much of the EU's current environmental legislation is focussed on results. Evidence from research conducted by the RSPB demonstrates that EU Nature Conservation legislation is making a significant difference to the prospects of protected habitats and species in the EU. Similarly evidence on the reductions in levels of water and air pollution suggest that EU legislation is delivering demonstrable beneficial results to the environment, to the economy, and to society, not least through increased life expectancy.

#### Case studies

- **Birds Directive**

As per our response to Question 1, a ground-breaking paper published in *Science*<sup>434</sup>, has shown that the Birds Directive - a law protecting birds across the European Union - has successfully protected those species considered to be at most risk and in need of most urgent protection and has made a significant difference in protecting many of Europe's birds from further decline. The study shows that there is strong scientific evidence to suggest that the Birds Directive makes a significant difference to the conservation of birds in the EU. Key outcomes delivered as a result of this legislation include;

a) The most threatened species are progressing better

Before being given special protection on Annex I of the Directive, this group of the EU's most threatened species were doing significantly worse than non-Annex I species. However, once these species were put on Annex I, and received the targeted conservation help associated with Annex I (e.g. they can be the focus of EU Species Action Plans, can receive specific EU LIFE funding etc.), these species did better than non-Annex I birds.

b) Birds Directive more successful than non-EU conservation measures

Outside the EU, where the Birds Directive does not apply, Annex I species did no better than birds that were not on Annex I. Following implementation of the Birds Directive, Annex I species did better inside the EU than outside the EU.

c) EU protected areas are directly helping European birds

On average, the more land is designated as an EU-protected area (in particular as a 'Special Protection Area' identified by the Birds Directive), the more likely bird populations are to improve. Annex I species respond nearly twice as well as the average

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<sup>434</sup> Donald, P. F., Sanderson, F. J., Burfield, I. J., Bierman, S. M., Gregory, R. D., & Waliczky, Z. (2007).

due to specialised conservation measures targeted at them.

- **Renewables Directive**

The Renewables Directive is clearly focused on outcomes/results in terms of the share of renewable energy in Member States' final energy consumption. It is less well focused on outcomes in terms of climate change, and in promoting wider environmental goals.

Promoting renewable energy is essential in the transition to a low carbon energy system, and the UK has an important role to play in ensuring the EU sets ambitious and binding targets on renewables for the post 2020 period. However greater safeguards are needed to ensure that only genuinely low-carbon and environmentally beneficial renewables are promoted and enjoy subsidies. The post-2020 framework must exclude support for bioenergy where this does not reduce emissions (or will increase emissions in the short term), and introduce safeguards to ensure renewables expansion is not at the expense of biodiversity protection.

- **Marine Strategy Framework Directive**

The MSFD is outcome focussed in terms of achieving Good Environmental Status across the EU. However, if Member State Governments, including the UK, define Good Environmental Status as the status quo, then the UK will not reap the benefits of the legislation but will still be required to spend money on implementation and monitoring. Setting unambitious targets for GES would represent a potentially wasted investment. However, if UK does aim to make improvements and sets ambitious GES targets, then the investment will generate both environmental benefits and wider economic and social through sustainable ecosystem services.

ii. based on an assessment of risk and scientific evidence?

In RSPB's experience much of the EU's environmental legislation is very closely based on the assessment of risk and scientific evidence. Key to this is a precautionary approach to decision-making. Where evidence is lacking, this ensures a high level of protection for the environment. RSPB is itself involved in a number of pan-European projects designed to provide scientific support for EU legislation and policy.

#### **Case studies**

- **EU climate and energy policy**

The direction of travel in EU climate and energy policy towards renewables and reduced emissions, is well-founded in scientific evidence, though the current levels of

ambition are almost certainly insufficient. The evidence, including economic analysis such as that in the UK's Stern Review<sup>435</sup>, indicates that unchecked climate change would be an economic and environmental disaster, that there is still time to avert the worst impacts if urgent action is taken to cut emissions, and that the benefits of doing so greatly outweigh the costs. EU renewables policy, however, does not take sufficient account of the risks to biodiversity and climate of heavy reliance on bioenergy to meet renewables targets.

- **Habitats Directive Article 6 process**

The Birds and Habitats Directives serve as a 'litmus test' for sustainable development, as was highlighted by the UK Sustainable Development Commission<sup>436</sup>. In our experience, sustainable developments, submitted by developers who engage constructively, and are proactive in identifying and addressing environmental impacts, pass the tests set out in the Directives. Ill-conceived developments do not. The Immingham Outer Harbour case study referred to under question 4, compared to the Dibden case study below, serve as good examples of how the tests set out in the Directives help to ensure that developments are properly thought through from a sustainability perspective. As per the Wildlife and Countryside Link submission to the Defra Review of the Implementation of the Habitats and Wild Birds Directives<sup>437</sup>;

"The Habitats Directive regime for the protection of Natura 2000 sites and European Protected Species (EPS) provides a practical framework for sustainable development. It applies a set of tests to all activities and developments to ensure that all those which do not adversely affect sites and species of European importance may continue, and that those which cannot be progressed without such effects are only permitted if and when strict tests are passed (to ensure that such damage is unavoidable, is warranted by the importance of the development or activity and can be compensated for). Too often presented as a barrier to socio-economic activity, the Directives instead provide a key test for sustainable development."

The following case studies provide examples of how the Habitats Directive has been delivering sustainable development in the UK.

#### **Immingham Outer Harbour, Humber Estuary (Habs Regs Case Study 29)**

Immingham Outer Harbour is a case that progressed smoothly through the consenting process because Associated British Ports (ABP) fully engaged with the Habitats Regulations process at an early stage. The port is now operating, and the habitat compensation necessary to offset unavoidable damage associated with its construction has been provided.

The port company proposed extending the Humber International Terminal to create a

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<sup>435</sup> [http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/sternreview\\_index.htm](http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/sternreview_index.htm)

<sup>436</sup> [www.sd-commission.org.uk/data/files/publications/Tidal Power in the UK Oct07.pdf](http://www.sd-commission.org.uk/data/files/publications/Tidal_Power_in_the_UK_Oct07.pdf)

<sup>437</sup> [www.wcl.org.uk/docs/link\\_response\\_to\\_nature\\_directives\\_060212.pdf](http://www.wcl.org.uk/docs/link_response_to_nature_directives_060212.pdf)

new roll-on, roll-off ferry terminal, which would have caused direct loss of 22 hectares of intertidal mud within an area proposed as an extension to what is now the Humber Estuary Special Protection Area (SPA) and Special Area of Conservation (SAC). In discussion with the Environment Agency, English Nature, Lincolnshire Wildlife Trust and the RSPB, the port accepted that there would be an adverse effect on the integrity of the site, and entered into a legal agreement with the conservation organisations to provide adequate compensation to maintain the integrity of the network.

In parallel to the due process, conservation organisations worked with ABP to identify potential sites for compensation and negotiate with land owners and put forward planning applications for the compensation sites. ABP also produced the necessary information to inform the Government's consideration of alternative solutions, and imperative reasons of overriding public interest. This allowed the nature conservation bodies to withdraw their objections to the scheme and so avoid an unnecessary and costly public inquiry.

### **Breckland Local Development Framework (Habs Regs Case Study 8)**

The Breckland LDF will deliver extensive housing development (5,000 homes) at Thetford, which lies close to large numbers of breeding stone-curlew. The Breckland SPA holds approximately two thirds of the UK population of this species. Stone-curlew are known to be susceptible to disturbance by people.

Extensive and thorough scientific investigation fed into the Habitats Regulations Assessment of the Core Strategy. This led to the Core Strategy introducing 1500m buffer zones for those parts of the SPA holding breeding stone-curlew within which development must accord with detailed policies or demonstrate that it will not have an adverse effect upon the SPA.

The use of innovative buffer zones with attendant policy criteria has enabled the Council to identify areas where development is, or is not, appropriate. Generally, development within existing settlements is likely to be acceptable (this enabled neighbouring Forest Heath District Council to propose 1,000 houses at Brandon which lies entirely within the buffers), whilst development that extends the urban area or is located in open countryside is unlikely to be accepted.

The appropriate assessment and the plan's response to it are an exemplar of how effective, evidence-led, spatial planning should be undertaken: the Council has avoided harming the SPA and has also managed to secure its entire, ambitious, housing supply for the plan period without needing to rely upon windfall sites.

### **Bristol Deep Sea Container Terminal (Habs Regs Case Study 9)**

This case study concerns a proposed major new container terminal on the Severn estuary, involving land claim and creation of a new breakwater. The project was expected to have direct and indirect impacts on intertidal habitats within the Severn Estuary SPA, SAC and Ramsar site. The main impact would have been accretion of sediment on 80ha intertidal mud immediately upstream, of which 60ha lies within the



SPA and is an important winter feeding area for c.3,000 waterbirds.

The Company embraced the Habitats Regulations positively and worked closely with regulators and the RSPB to identify key impacts, and agree mitigation and compensation and monitoring, set out in a detailed legal agreement.

Scientific studies concluded that changes to sedimentation were likely to have an adverse effect on the integrity of SPA and SAC habitats (a total of 80ha) which could not be mitigated. A comprehensive legal agreement was negotiated covering mitigation, compensation and monitoring requirements. The Port agreed to provide 120ha of intertidal habitats to be fully functioning in advance of the predicted damage i.e. created at least two winters before the damage would be triggered by construction.

The RSPB, Natural England and Countryside Council for Wales withdrew their objections on completion of the legal agreement. Withdrawal of objections meant that there was no need for a public inquiry to take place, and the Company eventually received its consent 15 months later in March 2010.

This case further developed the UK approach to habitat compensation delivery by explicitly requiring it to be fully functional before damage occurred – in line with UK and EU policy guidance. The Company and the RSPB are now working together to design the intertidal habitat compensation project at Steart, North Somerset to meet the requirements of the legal consent.

- **Pesticide approvals (neonicotinoids): A successful application of the precautionary principle, but hindered by flaws in the risk assessment process**

A range of neonicotinoid pesticides have been in commercial use within the EU since the 1990s, and were re-approved during the review process ending in 2009. However, independent research undertaken throughout the same period found significant negative impacts on honey bees and some other pollinator species from neonicotinoid chemicals<sup>438</sup>.

In response to concerns that the current EU risk assessment process for new pesticides was poorly suited to identify these hazards, the European Commission asked the European Food Safety Authority (EFSA) to assess the risks posed to bees by neonicotinoids currently in commercial use in the EU.

EFSA published its report on clothianidin, imidacloprid and thiamethoxam in January 2013<sup>439</sup> and identified unacceptable levels of risk to honeybees from some uses of these pesticides, as well as critical data gaps preventing a full risk assessment for other species and uses.

The European Commission responded by proposing a 2-year moratorium on the uses

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<sup>438</sup> Van der Sluijs *et al* (2013) Neonicotinoids, bee disorders and the sustainability of pollinator Services. [www.dx.doi.org/10.1016/j.cosust.2013.05.007](http://www.dx.doi.org/10.1016/j.cosust.2013.05.007)

<sup>439</sup> [www.efsa.europa.eu/en/press/news/130116.htm](http://www.efsa.europa.eu/en/press/news/130116.htm)

identified as high risk – in line with the requirement of Regulation 1107/2009 which states that the precautionary principle should be applied. This proposal has now been passed, despite being voted against by some Member States including the UK, and will come into force in December 2013<sup>440</sup>. EFSA is also reviewing the risk assessment process for bees; however the revised risk assessment will not be applied retrospectively to chemicals already on the market.

This case study illustrates both how EU legislation is based on scientific assessment of risk; and a recent failure of EU procedures to deliver the required level of environmental protection. The failure seems to have arisen because the risk assessment process had not been updated to take account of new types of agrochemicals; and because of a lack of consideration of independent scientific evidence (as opposed to the data submitted by the agrochemicals companies applying for approval of their products). This case study also illustrates how evidence-based EU legislation can improve the standards of environmental protection in Member States beyond what would be delivered by their own approaches. The UK was one of the countries to oppose Commission's proposal for a moratorium despite a clear conclusion from EFSA of actual environmental risk.

- **Marine Strategy Framework Directive**

The process set out under the Marine Strategy Framework Directive for achieving an improvement in the condition of the marine environment is based on setting targets for Good Environmental Status and developing indicators for assessing achievement of GES against those targets. While this process is set within a context of ensuring cost effectiveness (as under the Water Framework Directive), in RSPB's view there is insufficient assessment of the of the costs of inaction as required under the MSFD (i.e. the costs of the continued loss of biodiversity and hence lost ecosystem services / benefits) compared to the costs of action to halt the loss biodiversity and the costs of maintaining or improving marine ecosystem condition and resilience.

## Doing things differently

6. 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?)

In the RSPB's view, the EU's current competence for the environment places a significant onus on the Member States to deliver the measures on the ground that will guarantee a healthy and biodiverse environment for future generations. In some areas of EU legislation this has not resulted in the environmental outcomes that the EU has committed itself to.

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<sup>440</sup> COMMISSION IMPLEMENTING REGULATION (EU) No 485/2013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:139:0012:0026:EN:PDF>

There is evidence that a proactive and bold approach to the implementation of EU environmental law benefits business by giving certainty and opening up new areas of business. There is also evidence that doing the minimum necessary to comply with EU legislation is not necessarily in the best interests of the UK.

For example the Birds Directive and Habitats Directive have been transposed in to English law through a number of legal instruments over the last 32 years.

Effective implementation depends first and foremost on clear and robust transposition designed to deliver the purposes of the Nature Directives, helping to create certainty and confidence in all users. In this regard, the UK Government (like most Member States) has been only partially successful and has frequently had to respond to criticisms of its transposition through piecemeal amendments.

This need for ad hoc amendment has itself been a cause of ongoing uncertainty for all those who interact with the legislation as it has resulted in irregular “moving of goalposts”, perhaps most significantly in respect of European Protected Species where the law has been subject to frequent amendments in recent years. Much of the uncertainty that has arisen in decision-making systems results from inadequate Government transposition and implementation of the legislation and a lack of clear guidance for both Statutory Nature Conservation Bodies (SNCBs) and developers to assist their understanding of the legislative requirements.

As a result, transposition in respect of the protection of Natura 2000 sites and European Protected Species now follows or draws heavily on the wording of the Nature Directives. The RSPB would argue there is no evidence of gold plating in the transposition of these provisions.

However, considerable reliance for “transposition” continues to be placed by the Government on policy guidance rather than appropriate, explicit and proportionate legislative provision. The RSPB would argue that this stands in the way of securing the outcomes intended by the legislation, and leaves the Government unnecessarily vulnerable to infraction e.g. protection of areas identified as compensatory measures under Article 6(4) of the Habitats Directive.

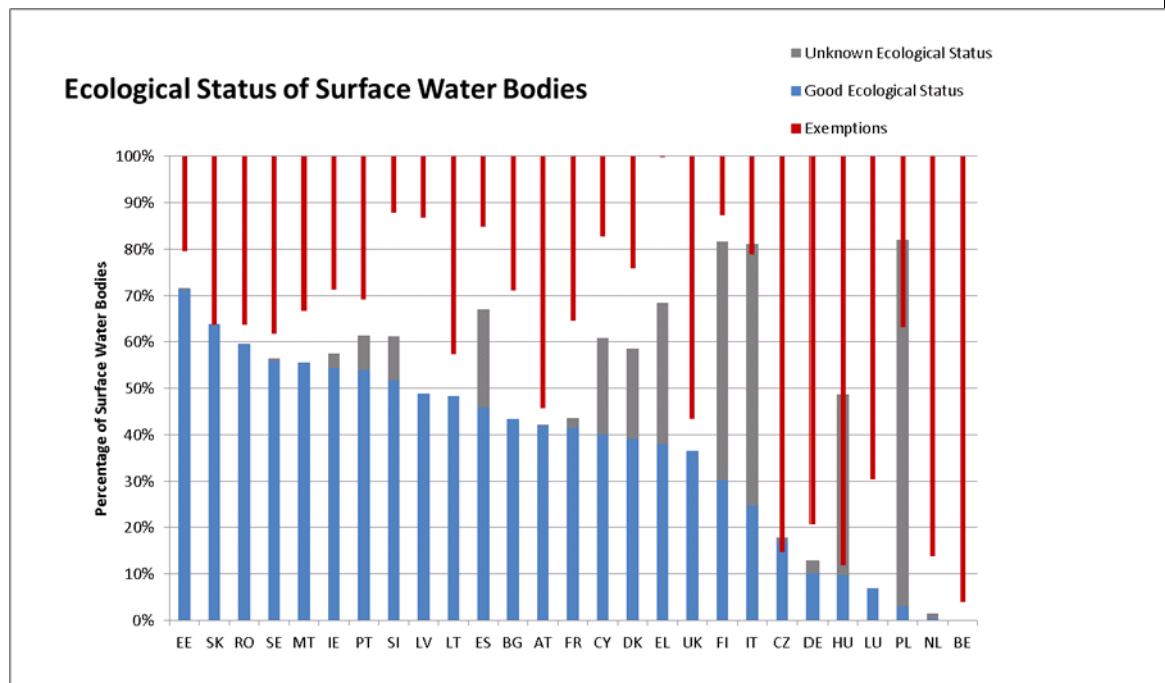
Clear gaps in transposition remain. This creates ongoing uncertainty surrounding possible future enforced changes to the legal framework and, critically, results in the Government being unable to realise the potential of the Nature Directives to support its objectives in respect of the natural environment. This is especially true in respect of halting the loss of and then restoring biodiversity, in particular the need to put in place a robust framework for the delivery of landscape scale conservation.

#### **Case studies**

- **Water Framework Directive**

The WFD places significant control into the hands of Member States in the use of science and economics in defining issues that need to be tackled and applying

derogations where improvements cannot be made for a range of reasons. Unfortunately that flexibility has led to a broad range of interpretation across the EU with UK towards the bottom of expected improvements by 2015 according to EU reporting (see below).



So while conceptually an approach that is sensitive to local conditions and needs is attractive we must be mindful that this makes the legislation open to abuse and potentially weaken the desired outcome.

- **CAP and environmental integration: issues of policy design, implementation and enforcement.**

Integrating environmental legislation (and basic good practice which may not be covered by legislation) into the CAP has been partial and so far, much less effective than should reasonably have been expected. The following points are a non-exhaustive list of issues that are likely to have contributed to this failure.

- 1) The flexibility afforded to Member States in CAP implementation has resulted in an extremely variable level of environmental delivery (in both Pillars) across the EU. In several cases, the UK (or regions within it) has demonstrated clear environmental leadership, for example in the early days of agri-environment development and subsequently in relation to the quality of English schemes<sup>441</sup>. A CAP framework which allows sub-optimal approaches to implementation is clearly a failure of policy development, representing not just a poor use of public money but an abject failure to address the multiple environmental challenges the EU faces. There is therefore a strong argument for significantly tightening up the legislative

<sup>441</sup> European Court of Auditors (2011) Special report no. 7: Is agri-environment support well designed and managed?

framework to 'design out' poorly performing schemes. The UK, as a 'leader' in key areas, such as agri-environment, could play an instrumental role in this policy improvement.

2) The inadequate level and quality of inspections. The RSPB has long standing concerns over cross compliance inspections. Only 1% of CAP payment recipients are subject to an inspection, a startlingly low proportion given the sums of public money involved. There is therefore a high risk of 'moral hazard' (i.e. farmers and land managers choosing ignoring certain elements of cross compliance as the likelihood of being caught is low). This issue is compounded by inspections tending to take place over the summer months, a point in the year when many cross compliance requirements cannot be checked. Therefore, as the European Court of Auditors noted in its 2011 review, "*the number of checks actually carried out for the obligations concerned was low, and, in some cases, reduced to zero*". Enforcement of environmental protection regulations is also currently inadequate and provides insufficient incentives for compliance. For example in relation to cross-compliance and wildlife persecution, in 2009 BirdLife International<sup>442</sup> reported that in the UK over the previous 3 years, only 1 case of payment reduction was associated with non-compliance with the Birds Directive, despite 22 cases of confirmed persecution of birds of prey in 2008 alone<sup>443</sup>.

- **Environmental integration and co-decision: A need to improve accountability, transparency and guard against vested interests.** The recent involvement of the European Parliament in CAP decision-making has added political elements to the reform process which have had detrimental effects to the quality of the legislation. Specifically:

1) We strongly believe that for a dossier of this significance, and which encompasses much more than agricultural production, the Environment Committee should have had shared the responsibility with the Agriculture Committee.

2) For many EP votes, it is impossible to know which way an MEP voted as 'roll-call' votes (where individual voting records are kept) only apply to a small proportion of votes. This lack of transparency can make it difficult to hold MEPs to account.

- **Holton Heath/Purbeck Local Plan (Habs Regs Case Study 26)**

A draft Development Plan included an allocation for a proposed new settlement of 1,350 new homes and associated transport improvements, within 50m of the Dorset Heathland SPA. This housing allocation was rolled forward from previous development plans, where it had been deemed necessary to fund a road bypass that had since been abandoned as it was considered too damaging to SPA and SAC interests.

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<sup>442</sup> Birdlife International. Through the green smokescreen: How is CAP cross-compliance delivering for biodiversity?

<sup>443</sup> European Court of Auditors (2008) Is cross compliance an effective policy? Special report no. 8

At the time (1996 – 2002) there was no requirement in UK law to apply Habitats Regulations to development plans.

A joint case opposing the development was presented at a lengthy public inquiry in 2002 by English Nature, the RSPB and Dorset Wildlife Trust, on the grounds that increased urban pressure from people (especially risk of arson and recreational disturbance) and domestic pets were likely to have a significant impact on the features of the Dorset Heathland SPA, including woodlark, Dartford warbler and nightjar. In addition, other urban effects on the botanical interests of the SACs were likely.

The housing allocation was subsequently rejected due to the adverse effects on the integrity of the adjacent SPA and SACs.

The damaging allocation had been rolled forward because there was no requirement in law to question it under the Habitats Regulations. As a consequence, the local authority had been allowed to place too much reliance on this single allocation to deliver a large proportion of its housing supply.

All development plans are now subject to a ‘Appropriate Assessment’, in order to assess whether the allocation would be likely to be consented or not at the planning application stage. Clear and proper transposition of the Nature Directives from the beginning would have created greater certainty in decision-making and avoided this situation.

- **A bold and proactive approach to implementation of marine conservation policy can deliver benefits for business**

The Sea Bed User and Developer Group is an informal grouping of industry sectors whose participants have a common interest in sustainable development within the UK’s marine environment. The Group is funded by The Crown Estate to align seabed user groups across the UK to work positively with Government to prepare shared understanding and approaches to marine management. Organisations involved include sectors whose members require marine licenses for construction and operation include British Ports Association, United Kingdom Major Ports Association, British Marine Aggregates Producers Association, British Marine Federation, Oil & Gas UK, Renewable Energy Association, Renewable UK, Subsea Cables UK and Carbon Capture and Storage Association.

In October 2012 this group published a joint statement<sup>444</sup> on marine conservation that highlighted the commitment of the members of this group to deliver conservation and sustainability in the marine environment. The statement further highlighted that to enable this Government must act to ensure that:

- a fully representative and ecologically well managed coherent network of UK

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<sup>444</sup> [www.wildlifetrusts.org/sites/default/files/joint\\_sudg\\_engo\\_statement.pdf](http://www.wildlifetrusts.org/sites/default/files/joint_sudg_engo_statement.pdf)

MPAs, which allows appropriate development, is designated as soon as possible

- clear and practical guidance is available to assist all those involved in the approvals process
- information we have about the marine environment is increasingly used to develop risk based and proportionate approaches to meeting the needs of industry and the environment
- there is sufficient capacity within regulators and agencies to ensure that marine licences can be delivered without unnecessary delays
- sites have clear conservation objectives and management measures so that site monitoring and enforcement is effective and that the evidence produced is used to assist potential new developments.

The statement makes it clear that the existing situation with regards to marine conservation is responsible for delays in making informed decisions for both environmental protection and marine developments. Delivery from Government is needed to ensure both better protection for the marine environment and speedy and clear guidance to give certainty for business and ensure that development can and does take place.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

In RSPB's view, while EU environmental legislation and policy covers many areas, there are still some notable gaps. At the same time there are deficiencies in the mechanisms intended to support implementation of this acquis. Addressing these gaps and deficiencies could help generate significant environmental and economic benefits for the UK, through enhancing environmental quality, reducing the costs of environmental damage, and delivering greater certainty for business.

#### **Case studies**

- **Invasive Non-Native Species**

Invasive non-native species (INNS) are one of the main drivers of biodiversity loss, and responsible for significant economic costs. In the EU the annual cost of INNS was calculated to be at least €12 billion annually in 2009, and this is likely to have increased. INNS do not respect national borders, and are most effectively tackled at source. This means that that they are a problem the UK cannot tackle on its own, and a coordinated international response is essential. EU legislative proposals are being drafted by the Commission, and as the UK finds itself in a generally more advanced position on this issue than many other member states, this is a clear opportunity for the UK to export its expertise and standards, and so gain environmentally and economically by bringing

other Member States at least up to the UK's level.

- **EU Soils Framework Directive**

Soil is not only important as a growing medium, it also provides vital carbon storage (particularly peat soils), water filtration and purification services as well as housing a formidable, and currently poorly understood, range of biodiversity. However, many soils are poorly managed and face significant degradation through agricultural activity, diffuse pollution and soil sealing. Securing the appropriate management of soils, which prevents degradation and contributes to improved soil health (and other objectives such as those associated with the Water Framework Directive) is clearly a beneficial outcome that the UK government should be working towards. However, the UK has to date firmly rejected all moves towards the adoption of an EU Soils Directive citing concerns over regulatory burden and subsidiarity. Currently, there is very little statutory protection for soils in the UK and in England the primary approach for protection of agricultural soils is through the cross compliance systems. However, this coverage is partial (applying only to land in receipt of CAP payments) and, as highlighted above, there are serious concerns over the scope and quality of the existing cross compliance system. As with other areas of regulation, a pan EU framework for soil management would reduce the disparities in soil management currently in place and would, if implemented well, contribute significantly to other environmental objectives that the UK is signatory to.

- **A CAP which is guided by the 'public money for public goods' principle**

Successive governments in the UK (of different hues) have long maintained support for a Common Agricultural Policy that is guided by the public money for public goods principle. In line with this position, the UK has led the field in the development of agri-environment schemes, has opted to transfer significant funds from Pillar I into Pillar II and has implemented cross compliance requirements with more ambition than many other EU Member States. Whilst some important steps have been taken in the last 20 years to improve the public good delivery of the CAP, the policy is a long way from securing public goods in return for every element of its considerable budget. Therefore, further EU action to improve the environmental performance of the CAP would be clearly beneficial, not only for the natural environment within and outside the UK, but also for its own long term political aspirations for the policy. Continuing to play a leadership role will help drive the policy in this direction.

ii. Less action on the environment/climate change?

We are in the grip of a climate and biodiversity crisis, the likely impacts of which on humankind dwarf those of the current economic crisis in scale and duration. In RSPB's view there is no case for less action being taken on the environment. As a major economic and political force there is a very strong case for the EU taking more action and encouraging



other countries to do the same. In RSPB's view the EU must not only step up its actions on the environment within its territory, but also substantially increase environmental actions beyond its borders to reflect the massive ecological footprint of the EU on the global environment. The scale of the EU gives it the ability to face up to global challenges in a meaningful fashion. Given the scale of the crisis facing biodiversity and the climate, it is vital that there are international organisations capable of taking meaningful and implementable decisions on behalf of large parts of the world.

### Case studies

- **Nitrates Directive**

UK obsession with “no gold plating” often leads domestic implementation to focus on the letter of the law and not the objectives of the law, even where they are clear. This can bring uncertainty for industry, which in turn drives up costs of implementation. A good example would be the Nitrates Directive which is quite clearly focussed on preventing pollution of drinking water and eutrophication of aquatic habitats.

More than once the UK has come close to infraction over the designation of Nitrate Vulnerable Zones and the measures within them which farmers need to take. As a result farmers have faced great uncertainty as to whether they are inside or outside of changing Nitrate Vulnerable Zone boundaries and what measures they are meant to take. In livestock systems farmers have faced uncertainty over major investment decisions around slurry storage capacity. The constant shifting of goalposts and talking down of the Nitrate problem has led the Directive to be held in poor regard with a significant number of farmers not-complying and showing no intention of complying according to the NFU's 2011 Dairy NVZ survey<sup>445</sup> which concluded:

- While the majority of farmers know their NVZ status and the impact of the regulation, a quarter of respondents do not know what the new regulations are and had not assessed their impact on farm.
- 45% of the farmers surveyed do not have enough slurry storage to comply with the five month storage requirement.
- 46% of the farmers surveyed are farming at over the 170 kg nitrogen /ha farm limit yet very few farmers applied for the grassland derogation in 2010 and 2011, citing the conditions being too laborious or the farm being ineligible.
- A fifth of farmers surveyed will not invest to comply with the regulation and a significant proportion plan to invest less than £25,000.

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

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<sup>445</sup> <http://www.nfu-cymru.org.uk/News/NVZ-Dairy-Briefing/>

*“... if you want to achieve any environmental improvement you have to regulate ... Our members, from their own commercial experience ... say that [voluntary agreements] do not usually work. What has achieved environmental quality improvements over the last 20 or 30 years... is regulation and its effective enforcement.” –*

*Adrian Wilkes, Environmental Industries Commission<sup>446</sup>*

The UK Government’s approach to the implementation of EU legislation is based on the *Guiding Principles for EU Legislation*, finalised in June 2011, that establish how the Government wishes to manage the flow of EU legislation that the UK is legally obliged to implement into UK law. We discuss some of these principles below in relation to the question above.

### **Section 1: Alternatives to Direct Regulation**

One of the key general principles contained within the UK Government’s *Guiding Principles for EU legislation* is that “*wherever possible, the Government will argue for alternatives to regulation at European level*”<sup>447</sup>. Specifically in relation to transposition, one of the five principles states that, when transposing EU law, the UK Government will: “*wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation*”. Yet, a recent Government review of the operation of the transposition principles stated that “*in the majority of cases, it has not been possible to meet our obligation to transpose EU legislation into UK law other than by regulatory means*”.<sup>448</sup> Based on these findings, the review concluded that there was a clear need for the use of alternatives “*to be advocated by UK negotiators during the early influencing stages of EU proposals so that non-legislative options are foreseen as an implementation option.*”

The presumption against the use of regulation contained within these principles is mirrored in the Government’s approach to tackling the perceived regulatory “burden” in the UK more generally, where it has committed to the introduction of regulation “only as a last resort”.<sup>449</sup> Such an approach is not based on sound foundations. There are a range of alternative policy tools available for delivering action on the environment and climate change including direct regulation and market-based approaches. Ultimately, subject to legal requirements, the choice of instrument used to implement EU Directives on the environment and climate change should be determined on the basis of achieving the environmental policy objective at least cost. There is thus no *a priori* reason why one form of

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<sup>446</sup> EAC (2011). Environmental Audit Committee - Minutes of Evidence.

[www.publications.parliament.uk/pa/cm201012/cmselect/cmenvaud/c1025-ii/c102501.htm](http://www.publications.parliament.uk/pa/cm201012/cmselect/cmenvaud/c1025-ii/c102501.htm)

<sup>447</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/185626/bis-13-774-guiding-principles-for-eu-legislation.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185626/bis-13-774-guiding-principles-for-eu-legislation.pdf)

<sup>448</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/137696/bis-13-683-gold-plating-review-the-operation-of-the-transposition-principles-in-the-governments-guiding-principles-for-eu-legislation.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/137696/bis-13-683-gold-plating-review-the-operation-of-the-transposition-principles-in-the-governments-guiding-principles-for-eu-legislation.pdf)

<sup>449</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31617/11-p96a-one-in-one-out-new-regulation.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31617/11-p96a-one-in-one-out-new-regulation.pdf)

intervention should be considered superior to another, unless one is systematically more efficient. Policy instruments all have different strengths and weaknesses and none are sufficiently flexible or resilient to successfully address all environmental problems in all contexts at least cost. Intervention needs to be, first and foremost, fit for purpose.

The RSPB has a number of serious concerns in relation to these principles, particularly in relation to the use of voluntary (self-regulatory or co-regulatory) approaches such as voluntary codes of conduct and negotiated agreements that rely on the private sector “doing the right thing”. Such approaches are becoming increasingly popular in the UK and are often seen as being a more flexible and efficient means of addressing environmental problems than traditional regulatory approaches. However, the evidence to support the relative merits of alternative approaches that rely primarily on voluntary action by the private sector is lacking in many cases.<sup>450</sup> In fact, the evidence suggests that, particularly if used as a substitute for regulation, they may be less effective, potentially delivering fewer environmental improvements beyond “business as usual” and/or resulting in greater environmental damage. The global financial crisis and other related banking scandals (e.g. the LIBOR rate manipulation scandal, the PPI miss-selling scandal) have shown clearly the risks associated with industry self-regulation.

Voluntary agreements should be seen, at best, as a complementary instrument to, not a substitute or replacement for, alternative government regulatory and supervisory measures on the basis that they are unlikely to be effective unless they are backed up by a sound government regulatory and policy framework. They frequently offer little more than “business as usual” improvements; limited evidence exists regarding their environmental effectiveness. There is also limited evidence as to the ability of voluntary approaches to reduce administrative costs compared to alternative approaches. The research indicates that the efficiency of voluntary agreements is generally low, as they seldom incorporate mechanisms to equalise marginal abatement costs across all firms.<sup>451</sup> They frequently fall victim to the problem of free riding<sup>452</sup> (See *Case Study on European Household Appliances Manufacturers and Energy Efficiency Agreements* below):

In May 2013, Defra published the findings of the “Review of Advice, Incentives and Partnership Approaches” that aimed to fulfil the Government’s commitment, as set out in

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<sup>450</sup> It is important to note that the distinction between voluntary and regulatory approaches is not a simple one; far from being distinct approaches, they are essentially centred on two ends of a regulatory continuum. In addition, they are not mutually exclusive; many, forms of voluntary approaches will rely on some degree of government involvement.

<sup>451</sup> OECD (2003) *Voluntary Approaches for Environmental Policy: Effectiveness, Efficiency, and Usage in Policy Mixes*. Paris: OECD.

OECD (1999) *Voluntary Approaches for Environmental Policy: An Assessment*. Paris: OECD.

De Clercq, M. (Ed.). (2002). *Negotiating environmental agreements in Europe: Critical factors for success*. Edward Elgar Publishing.

<sup>452</sup> Delmas, Magli, and A. Keller. 2005. “Free Riding in Voluntary Environmental Programs: The Case of the U.S. EPA WasteWise Program.” *Policy Sciences* 38 (2–3): 91–106.

the 2011 Natural Environment White Paper, to assessing the effectiveness of voluntary approaches, advice and incentive schemes for farmers and land managers.<sup>453</sup> The review sensibly concluded that voluntary (partnership) approaches are not suitable in situations where a high level of compliance is required to meet standards or targets and/or where specific actions are required from participants with limited flexibility on how requirements may be met. Moreover, they work best as a complement to, rather than as a replacement or substitute for, other forms of government intervention such as regulation and market-based incentive mechanisms.<sup>454</sup> Economic theory and evidence supports this view: like all policy instruments, carefully designed voluntary approaches can, at least in theory, be effective in some (but not all) contexts as long as certain conditions are fulfilled.<sup>455</sup> These conditions include strong political commitment (including a credible regulatory threat during both negotiation and implementation) and/or other drivers, meaningful and transparent targets, and robust and explicit independent mechanisms for monitoring and enforcing compliance (and punishing non-compliance via penalties/sanctions). See case studies below relating to the failure of voluntary agreements in the UK and the EU level to achieve their stated objectives.

As our answers to the above questions demonstrate, in contrast to this mixed record on non-legislative approaches, environmental regulations have an excellent track record in terms of achieving their objectives; securing and improving environmental quality and ensuring businesses and the private sector act in a responsible and sustainable manner towards wildlife and natural resources. Examples from above bear repeating here, for instance policies implemented in Europe to tackle air pollution, notably the Air Quality Framework Directive, have been extremely successful in improving air quality through large emissions reductions. An evaluation of air quality policy in the UK between 1990 and 2001 found that there had been major improvements in air quality compared to a counterfactual scenario without such policies, as well as *“extremely large benefits in reducing the health and environmental impacts of air pollution.”* Overall, the benefits exceeded the costs by a substantial margin.<sup>456</sup> Evidence also suggests that environmental protection can promote jobs and growth, stimulating innovation and create new business opportunities. It can help high-growth potential industries to take the lead and benefit from an “early-mover advantage”, particularly by supporting new markets which would otherwise develop more slowly.<sup>457</sup> A study in the EU has concluded that, overall, environmental policy is a net creator of jobs – there are no examples of environmental policy causing concentrated job losses or regional difficulties. The net effects of environmental policies on employment are positive or neutral. The study emphasises the strong link between a good quality environment and the

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<sup>453</sup> [www.official-documents.gov.uk/document/cm80/8082/8082.pdf](http://www.official-documents.gov.uk/document/cm80/8082/8082.pdf)

<sup>454</sup> [www.gov.uk/government/publications/review-of-environmental-advice-incentives-and-partnership-approaches-for-the-farming-sector-in-england](http://www.gov.uk/government/publications/review-of-environmental-advice-incentives-and-partnership-approaches-for-the-farming-sector-in-england)

<sup>455</sup> Segerson, Kathleen. "Voluntary Approaches to Environmental Protection and Resource Management." Annual Review of Resource Economics (2013)

<sup>456</sup> Watkiss, P., et al (2004). An Evaluation of the Air Quality Strategy, AEA Technology Environment, EMRC, the Institute of Occupational Medicine and Metroeconomica. Report to DEFRA.

<sup>457</sup> Aldersgate Group (2011). Pricing the Priceless The business case for action on biodiversity. [www.aldersgategroup.org.uk/asset/download/472/Business%20and%20Biodiversity.pdf](http://www.aldersgategroup.org.uk/asset/download/472/Business%20and%20Biodiversity.pdf)

economy, arguing that environmental policies do not appear likely to cause much disruption to the economy, nor do they have a negative effect on jobs or competitiveness.<sup>458</sup> In the UK, a study on the 'jobs versus the environment' debate found that environmental regulation costs do not have a statistically significant effect on employment and concluded that they could find no evidence of a trade-off between jobs and the environment.<sup>459</sup>

## Section 2: Gold Plating

The Coalition Programme for Government committed to "ending the so-called 'gold-plating' of EU rules". The primary aim of the transposition principles in the Government's "Guiding Principles for EU Legislation" is to prevent 'gold plating' from occurring. However, the evidence regarding the existence of gold plating is decidedly mixed. The UK is widely regarded as having one of the most favourable regulatory environments for doing business in the world.<sup>460</sup> The 2006 Davidson review found little compelling evidence to suggest that EU Directives are being routinely "over-implemented" (i.e. going beyond minimal legal obligations).<sup>461</sup> An important point made by the Davidson review was that "*it is sometimes beneficial for the UK economy to set or maintain regulatory standards which exceed the minimum requirements of European legislation*". The business-led Aldersgate Group makes a similar point: "*it will sometimes be beneficial to go beyond minimum requirements of EU legislation to secure UK environmental aspirations, provide international leadership or to create future competitive advantage for British based firms in the green economy...the regulatory framework must encourage a rapid shift to a sustainable economy rather than being held back by vested interests or the lowest common denominator.*"<sup>462</sup>

In terms of specific examples, another study did not find any evidence supporting the contention of 'gold plating' in the implementation of the EU Birds and Habitats Directives in the UK.<sup>463</sup> The EU Habitats and Birds Directives have been providing vital protection for Europe's rarest and most threatened habitats and species for over 30 years<sup>464</sup>. A Defra review of the implementation of the Directives found 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."<sup>465</sup> Evidence submitted to the review by Wildlife and Countryside Link showed that, of the

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<sup>458</sup> Rayment, M., E. Pirgmaier, et al. (2009). The economic benefits of environmental policy - Final Report., Institute for Environmental Studies.

<sup>459</sup> Cole, M. A. and R. J. R. Elliott (2007). "Do Environmental Regulations Cost Jobs? An Industry-Level Analysis of the UK." The B.E. Journal of Economic Analysis & Policy 7(1).

<sup>460</sup> World Bank/IFC (2012). [Doing Business 2012](#): Comparing Regulation for Domestic Firms in 183 Economies.

<sup>461</sup> [www.bis.gov.uk/files/file44583.pdf](http://www.bis.gov.uk/files/file44583.pdf)

<sup>462</sup> Aldersgate Group (2011) *Dealing with Deficits: Best value regulation to reduce our environmental and financial debts*. [www.aldersgategroup.org.uk/asset/download/262/Dealing%20with%20Deficits.pdf](http://www.aldersgategroup.org.uk/asset/download/262/Dealing%20with%20Deficits.pdf)

<sup>463</sup> Roger K.A. Morris, The application of the Habitats Directive in the UK: Compliance or gold plating?, Land Use Policy, Volume 28, Issue 1, January 2011, Pages 361-369.

<sup>464</sup> Donald, P. F., Sanderson, F. J., Burfield, I. J., Bierman, S. M., Gregory, R. D., & Waliczky, Z. (2007). International conservation policy delivers benefits for birds in Europe. *Science*, 317(5839), 810-813.

<sup>465</sup> HM Government (2012). Report of the Habitats and Wild Birds Directives Implementation Review.

thousands of land use consultations received by Natural England each year, less than 0.5% result in an objection under the Habitats Regulations.<sup>466</sup> Given the small area subject to designation and the small proportion of land use applications affected, it is hard to make the case for this handful of objections being a “ridiculous cost” to business.

It is also important to note that implementation of EU Directives is usually devolved to Country level, but the detail of implementation at Country level is sometimes not communicated to the EC in UK reports on EU law.

As our responses to other questions have shown, there is clear evidence that EU Directives on the environment and climate change have had a strong positive influence on the UK’s environment and have also delivered genuine benefits to the UK’s economy and society. Nevertheless, the UK has missed opportunities to secure environmental outcomes and benefits for the UK’s economy and society through its approach to the implementation of EU environment and climate change policy and legislation.

### **Case studies on voluntary approaches**

- **European Household Appliances Manufacturers and Energy Efficiency Agreements**

In 2007, the EU household appliance industry association (CECED) called for new government mandated energy efficiency standards for large household appliances to be set through binding legislation and not voluntary agreements. Despite the prior success of several industry-led voluntary agreements, the members of called for new government mandated energy efficiency standards for large household appliances to be set through binding legislation and not voluntary agreements, arguing that any further improvements in efficiency needed to be driven by legislation that “applies to all and is enforced on all.”

The move was driven by frustration over the failure of national authorities to enforce European energy labelling laws and the growing share of the market for non-CECED importers. The increased incidence of free riding, coupled with requirements for further improvements in energy efficiency, almost certainly resulted in an agreement that would no longer be profitable for participants, thereby causing the industry to abandon the agreement and call for further improvements through regulatory standards.<sup>467</sup>

- **Voluntary standards for Car CO<sub>2</sub> emissions**

European car manufacturers failed to meet their commitment contained within the 1998 **Voluntary Accord** with the European Commission on the reduction of average CO<sub>2</sub>

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<sup>466</sup> Wildlife and Countryside Link Submission to the Defra Review of the Implementation of the Habitats and Wild Birds Directives

<sup>467</sup> CECED (2007). "European Household Appliance Manufacturers will not Update Voluntary Agreements on Product Energy Efficiency." CECED Press Release.

CECED (2007). Top Executives Discontinue Voluntary Energy Efficiency Agreements for Large Appliances. CECED Press Release.

Ahmed, R., & Segerson, K. (2011). Collective voluntary agreements to eliminate polluting products. *Resource and Energy Economics*, 33(3), 572-588.

emissions of new passenger cars to 140g CO<sub>2</sub>/km<sup>-1</sup> by 2008, forcing the Commission to introduce binding targets in 2009.<sup>468</sup> These, on the other hand, were effective.

- **Campaign for the Farmed Environment**

The **Campaign for the Farmed Environment** is an industry-led voluntary approach to environmental land management, launched in the UK in 2009 as an alternative to new regulatory measures designed to replace the environmental benefits lost after the abolition of mandatory set-aside. The scheme failed to meet two of the three key targets in relation to increasing the areas of un-cropped land and the aim to double the uptake of priority options in Environmental Stewardship;

- The aim to increase the area of uncropped land from a baseline of 159,000ha to 179,000ha was missed, with the final area of 136,100ha 43,000ha below the target area.
- The aim to double the area of priority ELS options from a baseline of 39,671ha to 80,000ha was missed, with the final total for this target being 54,773ha as of December 2012.<sup>469</sup>

- **Sustainable Use Directive (pesticides): a missed opportunity to set UK farming on a more sustainable footing:**

The UK Government's lack of ambition in its implementation of the Sustainable Use Directive is a missed opportunity to set UK farming on a more sustainable, wildlife-friendly footing. Directive 2009/128/EC establishes the framework for the use of pesticides in Member States. It places a strong emphasis on the development of alternative approaches (such as Integrated Pest Management) to reduce dependency on the use of pesticides in EU farming and thus reduce environmental risks from pesticides. However, the UK Government has chosen to do the minimum necessary to implement the letter of this Directive. The UK National Action Plan on Sustainable Use of Pesticides<sup>470</sup> contains no new actions or quantitative targets to reduce the impacts of pesticide use. Following strong representations from stakeholders<sup>471</sup>, the draft Action Plan was amended to include a commitment from government to "consider what more might be done to help and encourage users in this area" (referring to Integrated Pest Management). In the RSPB's view, Integrated Pest Management and organic farming techniques offer the only sustainable solution to the ongoing environmental impacts of pesticides and the growing problem of pest resistance to pesticides.

9. a. 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?

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<sup>468</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0019:EN:NOT>

<sup>469</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207446/landenvmanagem-ent-statsnotice-18jun13.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207446/landenvmanagem-ent-statsnotice-18jun13.pdf)

<sup>470</sup> [www.gov.uk/government/publications/pesticides-uk-national-action-plan](http://www.gov.uk/government/publications/pesticides-uk-national-action-plan)

<sup>471</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/120745/nap-pesticides-sum-resp-20130226.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/120745/nap-pesticides-sum-resp-20130226.pdf)



As a major trading bloc the EU carries a great deal of weight in international negotiations. As a Member State the UK can both influence the EU's position, and bolster its own influence in international negotiations. A lesser role for the EU in international negotiations would be likely to diminish the influence of the UK and other Member States in these negotiations.

As demonstrated by the current government's commitment to an EU-US Trade deal, and indeed other FTAs with South Korea, India and others, it is evident that the ability of the EU to deliver beneficial outcomes when acting en masse is already clear and accepted. As per President Obama's speech to the G8 Summit, "the US / EU relationship is the largest in the world. It makes up nearly half of global GDP. We trade about \$1 trillion in goods and services each year. We invest nearly \$4 trillion in each other's economies. And all that supports around 13 million jobs on both sides of the Atlantic. And this potentially ground-breaking partnership would deepen those ties. It would increase exports, decrease barriers to trade and investment. As part of broader growth strategies in both our economies, it would support hundreds of thousands of jobs on both sides of the ocean."

President Obama had previously stated, ""The UK's participation in the EU is an expression of its influence and its role in the world as well as obviously a very important economic partnership,".

As an EU member state the UK is able to take advantage of the EU's clout in negotiating such agreements. Outside the EU it would not.

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

In the RSPB's view UK's membership of "Team EU at the UNFCCC is very important. Membership of the EU allows its member states to punch well above the weight that they would have as individual states. The EU has long been a very important, influential party to the UNFCCC, and as a major trading bloc has considerable clout with the biggest players, the USA and China. Certainly, amongst developed countries, the EU has been the leader in promoting ambition in the climate process.

The UK has long played a key role in shaping international climate policy within the EU, together with Germany and France. We have often provided overall leadership and expertise on key issues. Within the EU delegation, the member states have successfully resisted a situation where the Commission leads on everything. Currently, for example, there are four lead negotiators with specific roles: Pete Betts (Director International Climate Change, DECC), Nicole Wilke (Germany), Paul Watkinson (France) and Artur Runge-Metzger (Commission). EU issue leads are designated by skills demonstrated rather than by country. UK ministers are very often given key negotiating roles at meetings of the UNFCC Conference of Parties (COP).

It is a feature of the UNFCCC that almost all countries belong to negotiating blocs, even the USA (which is part of an Umbrella Group with Japan, Canada, Australia, Russia and others)



and China (G77 and China, and also the BASIC group with Brazil, S Africa and India). It is interesting to speculate which bloc the UK might join were it not in the EU. One country in such a situation is Norway which is in the Umbrella Group where it has little or no influence and almost nothing in common with the other members. Another country is Switzerland which is in the Environmental Integrity Group (with Mexico, South Korea and others). Switzerland does play a major role in that group but it is not a strong group, unlike the EU.

As a member of the EU the UK's influence is substantially increased compared to its influence as a sole nation.

## Future challenges and opportunities

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

The UK and EU are facing a worsening environmental situation as existing environmental problems such as climate change and environmental degradation continue.

It is not only the climate and biodiversity which are in crisis. The crisis in the global marine environment, and the impact of a world of 10 billion people also require co-ordinated action at an international scale to manage these threats.

We currently have at our disposal many of the tools that could help address these situations, at least within the EU, if implemented fully and effectively. At the same time a number of existing challenges are not adequately addressed by existing policy tools. The work of the RSPB's own scientists, and many others across the world, clearly identify future conservation challenges. This work has revealed that there is no shortage of future challenges that could threaten our environmental and economic security, justifying at the very least the retention of existing policy instruments, and making a strong case for additional policy instruments and approaches.

### Climate Change

The average global temperature is currently rising at an alarming rate. Observations from meteorological stations around the world have recorded an average global increase of about 0.75°C since the 1900s<sup>472</sup>. Each of the last three decades has been warmer than the last, by between 0.15 and 0.2°C on average and all ten of the hottest years have occurred since 1998.<sup>473</sup> To put these temperature rises in context, the average global temperature change between the peak and trough of a major ice age is about 4°C and we are already in a warm period. Without new policies to limit global emissions, global average temperature is projected to be 3°C to 6°C above pre-industrial levels by the end of the century<sup>474</sup>.

<sup>472</sup> [www.metoffice.gov.uk/media/pdf/m/6/evidence.pdf](http://www.metoffice.gov.uk/media/pdf/m/6/evidence.pdf)

<sup>473</sup> Met Office: [www.metoffice.gov.uk/research/climate/climate-monitoring/land-and-atmosphere](http://www.metoffice.gov.uk/research/climate/climate-monitoring/land-and-atmosphere)

<sup>474</sup> OECD (2012) Environmental Outlook to 2050: the consequences of inaction. Key Facts and Figures

This level of warming would be a disaster for people and for wildlife. A Climatic Atlas of European Breeding Birds<sup>475</sup> predicts that on average bird populations in Europe would need to shift 550 km north-east by the end of this century. A study published in Nature estimated that 15–37% of plants and animals will be “committed to extinction” by 2050 as a result of a mid-range warming scenario<sup>476</sup>. Even if greenhouse gas emissions were to cease tomorrow, biodiversity would still have to adapt to warming caused by past emissions. Moreover, biodiversity is already being driven into decline by a range of factors, particularly agriculture, fisheries and forestry practices (and other causes of habitat loss or degradation) and invasive species. This means the “ecosystem services” biodiversity provides to society, such as pollinating food crops, are diminishing.

Actions and political commitments to address climate change continue to fall far short of what is needed. The most recent UNEP “gap report”<sup>477</sup> shows that countries' unconditional pledges to reduce GHG emissions, if fully implemented, will deliver no more than one third of what is needed by 2020 to prevent a dangerous 2° C rise in global mean temperature above pre-industrial levels. A recent World Bank report<sup>478</sup> predicts that even if these pledges are fulfilled there is a 20% likelihood that the globe will be on track for more than a 4°C temperature rise by 2100. This would be a more than fivefold increase compared to the rise in global temperature the world is experiencing today, with extremely severe risks for vital human support systems.

RSPB and our partners in BirdLife Europe agree with the European Commission’s position articulated in the introduction to its Communication on The 2015 International Climate Change Agreement<sup>479</sup> that “only by acting collectively, and with greater urgency and ambition, can we avoid the worst consequences of a rapidly warming planet ... Countries that have begun to pursue low carbon development strategies are demonstrating that significant reductions in greenhouse gas (GHG) emissions can be achieved at affordable cost, and can generate benefits as diverse as new jobs, national energy security, improved urban transportation, lower energy bills (through energy savings and increased efficiency) and improved air quality. Despite a widespread acknowledgement that reducing the use of fossil fuels is in their national interests, many countries however continue to fear negative economic repercussions or lack the tools and means to enable further action, especially in the current economic context. The result is that global ambition remains insufficient.”

Climate change is a current and future challenge that the UK cannot tackle on its own, but that is and will continue to have a significant impact on the UK’s environment, economy and society.

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<sup>475</sup> Huntley, B., Green, R.E., Collingham, Y.C., Willis, S.G. (2008) *A Climatic Atlas of European Breeding Birds*. Lynx Editions, Barcelona, Spain.

<sup>476</sup> Thomas, C.D., Cameron, A., Green, R.E., Bakkenes, M., Beaumont, L.J., Collingham, Y.C., Erasmus, B.F.N., Siqueira, M.F.D., Grainger, A. & Hannah, L. (2004). Extinction risk from climate change. *Nature*, 427(6970): 145–8.

<sup>477</sup> [www.unep.org/publications/ebooks/emissionsgapreport/](http://www.unep.org/publications/ebooks/emissionsgapreport/)

<sup>478</sup> <http://www.worldbank.org/en/news/feature/2012/11/18/Climate-change-report-warns-dramatically-warmer-world-this-century>

<sup>479</sup> [www.ec.europa.eu/clima/policies/international/negotiations/future/docs/com\\_2013\\_167\\_en.pdf](http://www.ec.europa.eu/clima/policies/international/negotiations/future/docs/com_2013_167_en.pdf)

Our coasts are under increased threat due sea-level rise and increased risk of storm-surges. Sea-defence works may exacerbate coastal squeeze, and result in the loss of intertidal habitats, important for wintering and passage wildfowl and waders, and also for other ecosystem service provision such as fish nurseries. What is clear is that in the medium term change is inevitable.

Concerted international action is needed, and the UK's ability to influence the international decision-making process around climate change is (as per our answer to 9b) significantly enhanced as an EU Member State.

### **Case studies**

- There are a number of relevant case studies above, for example relating to the need for legislation in the area of Invasive Non-Native Species.
- **RSPB climate adaptation projects (Habs Regs Case Study: 46)**

RSPB's Titchwell reserve is home to three of the country's rarest breeding birds – the bearded tit, marsh harrier and bittern. The nature reserve has been under threat from the effects of coastal change, the impact of sea level rise and increasing storm events. Titchwell is part of the North Norfolk Coast SSSI/SPA/Ramsar Site, and the North Norfolk Coast SAC. Any course of action, including doing nothing, would result in an adverse impact upon one of the European sites.

The option chosen was that which protected the larger part of the affected SPA interest, while offsetting the deterioration of the SAC interest. The managed realignment component of the project would impact a high tide roost for waders and wildfowl from both the Wash and the North Norfolk Coast SPA and Ramsar site, and breeding and wintering avocet.

The works, while helping to manage various components of the SPA and SAC, were also likely to have a significant affect on others, specifically some of the designated features of the North Norfolk Coast SPA. Therefore it was necessary for the RSPB as developer to provide the information for an Appropriate Assessment.

Information was provided in the Environmental Statement to inform the AA, including details of mitigation and compensation measures considered necessary in respect of affected designated features at the site (for example, the brackish marsh). Despite comprehensive mitigation measures, residual adverse effects remained and compensation measures were required.

The RSPB provided information to demonstrate that other relevant requirements of the Habitats Regulations were met, including the consideration of less damaging alternative solutions and imperative reasons of overriding public interest (IROPI) linked to the long-term sustainable conservation of the SPA and SAC features.

The RSPB ensured that appropriate compensatory measures were secured and committed to make them fully functional before any damage occurred as a consequence

of the proposals at the Titchwell Reserve. Most of the compensatory habitat, comprising suitable habitat for 52 pairs of breeding avocet, was consented and created on the RSPB's Freiston Shore and Frampton Marsh reserves prior to the Titchwell proposal being submitted for planning permission.

Minor works on site included provision of additional island habitat within the reserve, and the re-profiling of the islands in the freshwater marsh. This provided suitable habitat for the wintering wader roost and was also designed to accommodate a minimum 10 pairs of breeding avocets. Therefore, it mitigated the impact of the loss of the high tide wader roost and partially mitigated the impact of the loss of the islands used by nesting avocets. All these works were completed in spring 2009 (i.e. before any damage took place at Titchwell).

This case demonstrates that with careful planning it is possible to undertake works within a protected site which minimise damage, while at the same time ensuring mitigation and compensatory measures are implemented before damage occurs.

Ongoing climate change, resulting in further rises in sea-level, mean that similar works will be essential along vulnerable parts of the UK's coastline to protect our environment and wildlife, and ensure that the economic and social benefits it delivers can be secured into the future.

- **Renewable energy deployment**

In its follow-on report, "Green Foundations 2009 The path to a vibrant economy, competitive advantage and sustainable prosperity"<sup>480</sup> as referred to above, the Aldersgate Group concluded that:

- The business community is increasingly demanding more regulation to remove uncertainty in the markets and enable them to exploit potential opportunities.

The lack of a complete network of protected sites in the marine environment is a significant brake on the renewable energy industry, as well as on the conservation of economically and ecologically important marine biological resources. The lack of a site network or data on the distribution of biodiversity in the marine environment must be addressed so that renewables investments can be made with confidence, and marine biodiversity objectives achieved.

A recent report on the value of potential marine protected sites<sup>481</sup> has further highlighted that the assessed monetary benefits for anglers and divers alone are likely to outweigh best estimates of the cost of designation.

- **Unapproved release of Genetically Modified Organisms (GMOs).**

UK government's policy on GMOs stresses the need to assess new GM technologies for

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<sup>480</sup> [www.aldersgategroup.org.uk/asset/download/117/green\\_foundations\\_2009.pdf](http://www.aldersgategroup.org.uk/asset/download/117/green_foundations_2009.pdf)

<sup>481</sup> <http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx>

environmental and human safety on a case-by-case basis, taking full account of the scientific evidence. The importance of segregating GM and non-GM products throughout the food chain is also emphasised to protect the consumer's right to choose<sup>482</sup>. As noted in the call for evidence, there is currently very limited cultivation of GM crops within the EU, although animal feed from GM crops is imported into the EU in significant amounts. It is possible that in future more GM crops will be approved for authorisation within the EU, or that decision-making will become more devolved to Member States. In the meantime, GM crop cultivation continues to increase outside the EU<sup>483</sup>. There is therefore an increasing likelihood that GM material will enter the UK which has not been approved according to the UK's own environmental risk assessment standards. The recent discovery of an unauthorised variety of GM wheat growing in the US<sup>484</sup> (eight years after field trials ended) has raised questions over what other genetic contamination may have occurred, and fears that unapproved material may have entered the EU in animal feed. Ongoing disputes over how the possible presence of GM pollen in honey should be handled in law also serve to highlight the extreme difficulty of stopping GM material from moving outside the context within which it was originally approved. If the UK is to remain true to its policy of rigorous environmental assessment of all GM material before release into the environment, it will become necessary to have strict protocols in place to control the movement of such material into the UK.

- **Lack of assessment of the cumulative impact of new technologies.**

Whilst individual technologies, such as new pesticides, are evaluated before commercial release, this assessment takes place in a vacuum i.e. with no assessment of the cumulative impact on the natural environment of multiple technologies. This must be addressed to ensure a full picture of the environmental impact of new developments is known before their commercial release in order to allow an informed decision on approval.

- **CAP reform outcome: reversing the trajectory of previous reforms.**

Across the EU, governments and many farming stakeholders have entrenched their support for maintaining current levels of agricultural support whilst resisting any new environmental conditionality, often using spurious arguments around food security as justification<sup>485</sup> (i.e. that CAP payments are necessary to maintain food production in the

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<sup>482</sup> [www.gov.uk/government/policies/making-the-food-and-farming-industry-more-competitive-while-protecting-the-environment/supporting-pages/genetic-modification](http://www.gov.uk/government/policies/making-the-food-and-farming-industry-more-competitive-while-protecting-the-environment/supporting-pages/genetic-modification)

<sup>483</sup> ISAAA Brief 44-2012: Global Status of Commercialized Biotech/GM Crops: 2012. [www.isaaa.org/resources/publications/briefs/44/executivesummary/default.asp](http://www.isaaa.org/resources/publications/briefs/44/executivesummary/default.asp)

<sup>484</sup>

[www.monsanto.com/gmwheat/Pages/default.aspx?utm\\_campaign=HomeCallout &utm\\_source=Mon santodotcom\\_HomeCallout&utm\\_medium=Callout &utm\\_content=GMWheat](http://www.monsanto.com/gmwheat/Pages/default.aspx?utm_campaign=HomeCallout&utm_source=Mon santodotcom_HomeCallout&utm_medium=Callout&utm_content=GMWheat)

<sup>485</sup> Baldock et al (2010) The Single Payment Scheme after 2013: New approach, new targets. Study for the European Parliament - Directorate General for Internal Policies Policy Department B: Structural and Cohesion Policies, Agriculture and Rural Development

EU despite evidence to the contrary<sup>486</sup>). It is too early to say whether this round of reform heralds the end of a trajectory of 'green' reform, started in 2002 with the McSharry reforms, however, given the likelihood of continued (and possibly worsening) market instability and impacts arising from climate change there is a clear risk that entrenched 'business as usual' positions which reject the public money for public goods principle may increase.

- **Horizon scan of global conservation issues for 2013**

RSPB has co-authored a paper presenting the findings of an annual horizon-scanning exercise, which aims to identify topics that increasingly may affect conservation of biological diversity.<sup>487</sup> Topics identified ranged from the rapid growth of concentrated solar power, to the rapid rise in demand for coconut water, partly driven by demand in Europe.

The paper notes in particular that, "another common feature of emerging issues relating to a new material or technology, is that there is usually an exponential increase in use associated with new products or services that flood commercial markets around the world. This preliminary phase is often followed by the emergence of concerns that there may be associated unexpected, new, health, and safety concerns that require investigation. Consequently, a phase of environment and human health risk assessments and evaluations are initiated, which again follow an exponential trajectory. As they yield new information and knowledge, a third phase begins in which regulations and new standards are developed and deployed, and monitoring programmes are initiated to ensure compliance. This series of phases was described in greater detail by Linkov and Satterstrom [66]. They estimated that the time interval between the first phase of a new technology or material being introduced in new products and services, to the third phase of the introduction of effective regulation and monitoring, is on the order of 10–15 years. Owen et al. [67] pointed out that, during this interval, the ecosystems and their component organisms are largely unprotected and human health is left vulnerable to adverse effects."

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<sup>486</sup> Tangermann, S (2011) Direct Payments in the CAP post 2013. Study for the European Parliament - Directorate General for Internal Policies Policy Department B: Structural and Cohesion Policies, Agriculture and Rural Development; Nowicki, P., V. Goba, A. Knierim, H. van Meijl, M. Banse, B. Delbaere, J. Helming, P. Hunke, K. Jansson, T. Jansson, L. Jones-Walters, V. Mikos, C. Sattler, N. Schlaefke, I. Terluin and D. Verhoog (2009) *Scenar 2020-II – Update of Analysis of Prospects in the Scenar 2020 Study* – Contract No. 30–CE-0200286/00-21. European Commission, Directorate-General Agriculture and Rural Development, Brussels.

<sup>487</sup> A horizon scan of global conservation issues for 2013

William J. Sutherland, Sarah Bardsley, Mick Clout, Michael H. Depledge, Lynn V. Dicks, Liz Fellman, Erica Fleishman, David W. Gibbons, Brandon Keim, Fiona Lickorish, Ceri Margerison, Kathryn A. Monk, Kenneth Norris, Lloyd S. Peck, Stephanie V. Prior, Jörn P.W. Scharlemann, Mark D. Spalding, Andrew R. Watkinson

Trends in Ecology & Evolution - 1 January 2013 (Vol. 28, Issue 1, pp. 16-22)

[www.cell.com/trends/ecology-evolution/abstract/S0169-5347\(12\)00295-9](http://www.cell.com/trends/ecology-evolution/abstract/S0169-5347(12)00295-9)

b. 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?

Given the extent to which a healthy environment underpins and is a pre-requisite for a thriving economy and healthy society, there can be no doubt that action is needed to address future environmental challenges at all levels. There is clear evidence that action by the EU to tackle existing environmental challenges has been effective at delivering some environmental, economic and social benefits. The specific case studies outlined in this response detail areas where EU action has been beneficial, and where it has been negative for the environment. However, we do not see a convincing case overall that the balance between action taken at the levels outlined is wrong. Indeed, given the scale of the biodiversity and climate crises in particular, if anything we would see a strong case for firmer action at a continental scale, to support and precipitate binding international agreements.

- **The integration of public good delivery into the Common Agricultural Policy.**

Although the integration of environmental legislation and incentives to support more environmental public good delivery have not progressed as swiftly as the RSPB would have liked, there is a strong rationale for intervention at the EU level. As IEEP<sup>488</sup> argue, *“Since all citizens gain from pure public goods, it can be argued that the highest level of government should have a role in determining (though not necessarily implementing) the expenditure”* There is a strong consensus among the research and academic community that CAP support cannot only be best justified on public good terms but is actually required in order to reward environmental public good delivery, as this is something the conventional commodity market does not do adequately.

- **Marine Strategy Framework Directive**

Implementation of this Directive will be more effective in future if an ambitious “Good Environmental Status” (GES) target is set by Member States. This must be coupled with an appropriate set of sub-targets, suitable indicators must be developed, and adequate monitoring and enforcement carried out. Setting the maintenance of the current degraded status of the marine environment as the overall objective, and relying on existing conservation and monitoring measures to achieve and determine progress will not be effective in reducing the impacts of the EU on its marine waters and protecting biodiversity.

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

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<sup>488</sup> Medarova-Bergstrom, K., Volkery, A. and Baldock, D. (2012) *Criteria for maximising the European added value of EU budget: the case of climate change*, IEEP, Brussels



As per the response above, in RSPB's view, the choice of level at which to address these future challenges must be based on environmental benefits/costs primarily, and on economic, political and convenience benefits/costs only as secondary considerations. The EU has a mixed track record of tackling environmental challenges. There are examples where EU action has delivered world class results, and where the EU has failed to take effective action, but there is no evidence that tackling these challenges at a different level would have produced a better environmental outcome. Indeed, there is significant evidence (also outlined above) that action taken at levels other than the EU has been less effective.

#### **Case studies;**

- Several responses above highlight the benefits that have accrued to the UK from effective EU level responses to the biodiversity crisis, to air pollution, to water pollution, flood risks, and other current environmental challenges.

- **Climate Change:**

In spite of the flaws in the EU's climate policy (carbon leakage, the low carbon price, the incentivisation of bioenergy which does not deliver carbon reductions), the EU's ability to take legislative action on climate change has set the tone for global action. In the face of a crisis of the scale of climate change someone had to take action, and the EU's decision to do that and capacity to follow it through with implementation may yet prove critical to delivering a global response.

#### **Anything else?**

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

RSPB's response to the Habitats Regulations Review is appended to this response, as we feel it provides additional evidence demonstrating the beneficial impact of the EU Habitats Directive on UK biodiversity and sustainable development.

#### **Appended documents**

Submission 1 to Habitats Regulations Review -

[www.rspb.org.uk/Images/rspb1stsubmissiontodefrahrrintroductionandkeycontext\\_tcm9-305618.pdf](http://www.rspb.org.uk/Images/rspb1stsubmissiontodefrahrrintroductionandkeycontext_tcm9-305618.pdf)

Submission 2 to Habitats Regulations Review -

[www.rspb.org.uk/Images/rspb2ndsubmissiontodefrahrrcasestudycommentaryandanalysis\\_tcm9-305620.pdf](http://www.rspb.org.uk/Images/rspb2ndsubmissiontodefrahrrcasestudycommentaryandanalysis_tcm9-305620.pdf)



## **Royal Yachting Association**

**Q1** The EU COM approach to rolling out the Water Framework Directive (WFD, Directive 2000/60/EC) and the Marine Strategy Framework Directive (MSFD, Directive 2008/56/EC) have to date, in our view, been advantageous for the UK. Primarily this benefit has been brought about by the less prescriptive approach of these Directives and the allowance for Member States (MS) to control implementation. The UK has taken a largely pragmatic and logical approach to implementing these directives and this has led to excellent stakeholder relations and support for the proposed actions needed to fulfil the requirements of these pieces of legislation. Whilst we understand that final decisions have yet to be made in relation to both directives (in terms of whether the UK is fully discharging its obligations) we are encouraged by the UK's approach in general and the flexibility that EU COM has allowed for thus far. For example, the field of underwater noise is one which is presently poorly understood and for which very little data exists. The UK's proposed approach to tackling this as a descriptor under MSFD therefore is to avoid the use of quantitative targets until such time that a robust baseline can be established. In other matters, such as fish populations, the UK has chosen to set more quantitative targets where robust data exists for comparison. The EU COM approach to this has therefore been advantageous; a more prescriptive approach would surely lead to onerous and possibly disproportionate burdens being placed on UK business with economic implications.

**Q2** The Habitats and Birds Directives (92/43/EEC & 2009/147/EC respectively) which provide for the Natura 200 network of special areas of conservation and establish the rules for the protection of wild birds have in our view introduced some disadvantages for UK businesses. Neither Directive allows for the consideration of socio-economic impacts of site designation nor the costs associated with obtaining development consent in these locations. Whilst the RYA is cognisant of the ecological benefits of the Natura 2000 network it is our view that some consideration of the economic impact of such designations, particularly during fiscally challenging times, would be advantageous for the UK. Notwithstanding the above we are aware from our colleagues in industry that the UK Government has on occasion been guilty of 'Gold Plating' the requirements of the EU Habitats Directive in relation to the

matters of mitigation and compensation. It is not unusual for the compensation package required by the UK's Statutory Nature Conservation Bodies (SNCBs) to comply with the Habitats Directive to comprise a significant proportion of the total cost of the development. The absence of socio-economic consideration of such requirements is likely to be a contributory factor in such circumstances.

Q3- Q14 AND Q15, Q17 None

**Q15** EU COM are in the process of drawing up new legislation relating to Invasive Alien Species (IAS) which is likely to introduce measures for minimising the introduction and spread of such flora and fauna. Whilst the RYA understands the intended outcomes of introducing such legislation we have concerns about the effectiveness as its success depends on member state buy-in. The UK is already more advanced than other MS in managing IAS and our fear is that the forthcoming directive from EU COM will not be fully implemented by other MS leading to problems with compliance for UK businesses. For example, Defra's 'Check, Clean, Dry' campaign has been successful in minimising the spread in killer shrimp around the freshwater systems of England and Wales however as similar campaigns are not run in other EU MS, visiting watersports enthusiast present risks of re-introduction and further spread. Recreational boaters have already experienced restrictions on their activities as a result of IAS being identified that were only relaxed once certain precautionary measures were implemented. It would seem unreasonable if further restrictions were placed on UK economic activities as a result of non-compliance by other EU MS. Another potential issue for the UK in the future relates to the membership of the EU. European wide legislation is developed with input from all MS and the ambitions and requirements tend to be related to what can be achieved across the EU. This is important to preserve a level playing field in terms of trade and competitive advantage. If countries with lower environmental standards join the EU there is a risk that the aspirations of future legislation will be reduced leading to detrimental impacts on the environment. Whilst the introduction of EU legislation does not preclude the development of UK domestic legislation it is our view that the potential for lower environmental standards is something the UK should be alert to in the future.

**Q18** On occasion the EU COM has been known to use its competence in environmental matters to engage on issues in which it would otherwise have no jurisdiction. For example, the revised International Convention for the Prevention of Pollution From Ships 1973 as modified (MARPOL) Annex VI entered into force on 1 July 2010. Regulation 13 of MARPOL Annex VI introduces three Tiers of mono-nitrogen oxides (NOx) emission standards from ships. The Tier III standards provide for 80 per cent reduction of NOx emissions by 1 January 2016. The UK, with the support of the International Council of Marine Industry Associations (ICOMIA) and the Superyacht Builders Association (SYBAs) were set to submit a paper to the International Maritime Organisation's (IMO) Marine Environment Protection Committee (MEPC) which detailed a proposal that the deadline for

implementing the Tier III NOx emission standard in yachts of less than 500gt should be postponed by three years. However, following the document being provided on a 'for information' basis to EU COM (at the regular pre-MEPC meeting of EU members), the Commission indicated that they had competency in this matter and instructed the UK not to submit this paper and confirmed that it would expect all EU member states to remove their support for it. EU COM's decision took all those involved completely by surprise, as everyone had understood that competency sat at a national level in this instance and the Commission had not expressed a different view until now.

## **RWE**

### **General Comments**

It is our view that where environmental legislation is required to address matters of global or international significance, it is appropriate that these are addressed at the global or at least European level.

This has three distinct advantages:

- It ensures a consistent approach across European Member States which in turn, facilitates the internal market.
- It provides an appropriate solution for trans-boundary environmental issues.
- It allows the UK to participate as a member of a larger group with greater influence in negotiations to achieve international agreement, for example, on climate change measures.

However, where the environmental impact is primarily of local rather than international or global significance and different approaches are required to reflect local environmental circumstances in individual Member States, it is more appropriate that this legislation is formulated and decisions made at a local level. However, even in this case it may be appropriate to set an overarching framework at EU level with detailed implementation agreed at the Member State or regional level.

This approach does however mean that it is difficult to develop hard and fast rules for individual competences. For example, in the area of climate change adaptation, some elements such as international aid and development and trans-boundary issues will benefit from co-ordination at EU level; on the other hand local adaptation

to climate change will often need to take into account national, regional or even local conditions.

While we support the principle of EU competence for environment and climate change, it must be done in a way that allows Member States a degree of flexibility and ensures that environmental targets are delivered in a cost effective way. The current institutional process for reaching agreement on legislation is open to last minute compromises which can lead to perverse outcomes. Although the issue of 'gold-plating' is less of a concern than historically there is a need for continued awareness of where implementation of EU Directives can lead to disproportionate impacts on UK businesses and competitiveness.

**Q1. What evidence is there that the EU Competences in the area of environment and/or climate change has**

**(i) benefitted the UK/your sector?**

Emissions, particularly to air, but also to water, do not respect national boundaries. Similarly mobility of species and protection of wildlife is potentially a transboundary issue. It is therefore appropriate that emissions standards and legislative frameworks are developed on a pan-European basis. This avoids the negotiation of 28 (or more) bilateral agreements between individual EU Member States and separate agreements between Member States and those states outside the EU. It provides appropriate tools for implementation of a sufficient burden sharing; on the 'the polluter pays' principle.

An EU rather than Member State competence can act as a check and balance for member states as it should allow the setting of consistent, ambitious but achievable targets across Europe.

Competence for climate change should rest with the EU. A key benefit of this has been the development of the Emissions Trading Scheme (EU-ETS) as the primary mechanism for delivering climate change goals. This has the merit of facilitating a level playing field across Europe and delivering GHG emissions reductions targets at least cost. The EU-ETS is an efficient European policy in that it is a good fit with the internal energy market in that it passes through the cost of carbon consistently across Europe.

Although the EU ETS is working according to plan, reforms – especially for beyond 2020 – are necessary. The recent decision on backloading is a first step in its reform. Further strengthening of the ETS (and ensuring greater harmonisation) will lead to further advantages for UK electricity consumers and the competitiveness of UK industry in Europe compared with UK stand-alone policies. It is our view that the ETS should remain the primary mechanism for achieving GHG emissions reduction targets. Failure of the scheme is likely to add additional costs to consumers through fragmentation of policies.

We support further integration of climate change mitigation policies across Europe through additional sectors becoming part of the ETS where appropriate. This is more likely to be achieved if competence for climate change remains at the EU level. Where targets remain at the national level (i.e. in the non-traded sector) it would be more appropriate for some legislation to remain at the national level. However, even here there are benefits from legislation at EU level which sets common standards for appliances and energy efficiency of buildings across the EU.

While taxation is a competence that should clearly remain at Member State level there could be benefits from a European wide carbon price on all emissions (i.e. including emissions currently outside the EUETS).

The UK is a leading voice in setting carbon reduction targets across Europe. If the competence for climate change was repatriated to Member States it is likely that the UK would set more challenging targets than many other Member States which would lead to higher costs for consumers in the UK than elsewhere in Europe while failing to address or influence the rest of Europe. The result would be to put UK industry at a competitive disadvantage.

While climate change mitigation should be addressed at an EU level, we are supportive of the approach to adaptation where guidance is set at an EU level but a local response to adaptation that takes account of national or regional conditions is delivered through national legislation. However, even here there can be particular issues such as International aid and development where the response needs to be developed at EU level.

There is also merit in supporting research and development at the European level. We noted in our recent response to the Commission's consultation that Carbon Capture and Storage (CCS) is an important means to lower CO<sub>2</sub> emissions from fossil fuel generation and large scale emitters. A European approach that ensures sufficient demonstration plant in Europe and which builds public confidence in the CCS value chain is therefore required.

## **(ii) disadvantaged the UK/your sector**

While we support the principle of EU competence for environment and climate change, it must be done in a way that allows Member States a degree of flexibility. The main disadvantage that we have seen as a consequence of competence for environment at the EU level is in the way that some EU Directives have been agreed and the subsequent process of transposition into UK legislation. This may have been partly driven by differences between UK and European legal systems (i.e. literal rather than purposive approach to interpretation) but is also a consequence of the process for reaching agreement on European legislation. The process for drafting European legislation sometimes appears to be less rigorous than for UK legislation and does not always fully consider potential impacts in sufficient detail. The tripartite process is open to last minute compromises to reach agreement which can lead to perverse or inconsistent outcomes.

More transparency would be helpful on the modelling used to support impact assessments undertaken as part of the process of developing legislation. In particular results of modelling should be available sufficiently early and in enough detail to allow thorough review by stakeholders.

The development of EU standards takes considerable time and effort. There is a danger that they may not be appropriate by the time they are introduced. Re-

negotiation often proves difficult or impossible. It does however provide a safeguard in that investors can anticipate a relatively stable investment climate.

Individuals (and MPs) do not always recognise the cost involved with environmental legislation such as tightening emissions limits. This often sets industry and other stakeholders against each other as industry requires time to implement new measures whereas other stakeholders want immediate action. This tension can become more acute where power is perceived to have been exercised at a distance from those affected.

Key examples of negative impacts from introduction of legislation include:

LCPD implementation (Directive 2001/80/EC)

- A measure based on concentration of emissions that was designed to prevent the operation of a high load factor oil-fired plant in Italy has led to the closure of some very low load factor oil-fired generation used to maintain security of supply in the UK where, based on likely running regimes, total emissions would be negligible. This situation could have been avoided if there was a level playing field for all peaking plant.

IED implementation (Directive 2010/75/EU)

- The original BREF set BAT references for plant that was advisory. The next iteration will be mandatory and reduces the scope to take into account the local circumstances of member states. This again has the potential to undermine security of supply in Member States in the transition towards a low carbon economy.

Habitats Directive (Directive 2011/92/EU)

In the UK, problems have arisen with the application of the Habitats Directive because it does not contain any 'cut off' provision where the risk to European protected species is trivial. In some cases such as the great crested newt and pipistrelle bat the protected species requirements of the Habitats Directive are disproportionate given the widespread distribution of these species in the UK. This precautionary principle has proved to be costly to developers of new clean generation. It would be better to have an approach that targets locally endangered species rather than this blanket approach.

In addition, the provisions of the Habitats Directive are frequently used by opponents of developments as a device to attempt to frustrate or delay projects. This is particularly true of protected species provisions. Vexatious use of the Habitats Directive provision is made easier by the absence of both an exception provision where the risk to individual of the protected species concerned and a 'reasonableness' test for mitigation measures.

The phrase 'Appropriate Assessment' in the Habitats Directive has come to have a very specific meaning in the UK which results in very detailed and onerous requirements. It would be useful if there was some consistency on this across Europe. There is also an overlap between Environmental Impact Assessment (Directive 2011/92/EU) and Appropriate Assessment under the Habitats Directive which results in a duplication of effort. The terminology of the two should be brought into line and any overlap, ambiguity and inconsistencies removed so that where both apply, one assessment of the impacts on European sites and European protected species will suffice.

Delays of several months can be caused to development projects by the presence of European protected species. In addition to the delay to the planning permission or other consent process which may be caused by the need for the planning authority (or other competent authority) to demonstrate its compliance with Habitats Regulations. The absence of any 'cut off' provisions for low risk situations means that the statutory conservation bodies take an 'absolutist' position on preventing harm to any individual of a European protected species even in situations where expert ecological opinion is that the chance of harming any individual of the species is low.



A related issue is if a site is designated as a Natura 2000 site e.g. SAC or SPA, then all species from that site get protection whether or not they are a protected species and even if they are regarded as a prey or pest species within that site. This can lead to pressure from statutory and non-statutory bodies to avoid harm and maintain populations of non-important or even non-desirable species on these sites. This can be extended to having to consider the potential impacts of a project on these species even at some distance from the Natura 2000 site itself.

### Waste Framework Directive (2008/98/EC)

The Waste Framework Directive (2008/98/EC) has disadvantaged the electricity sector through its approach to the definition of waste. Pulverised Fuel Ash (PFA) is the fine ash produced when pulverised coal is burnt in a power plant. It has been safely and successfully used in the construction industry for over 50 years, but is defined and regulated as a waste in the UK under the Waste Framework Directive (2008/98/EC). As a result, sales of PFA have reduced in recent years and primary aggregates are increasingly being used in its place. The environmental outcome is negative: more virgin aggregate has to be quarried, and more PFA is being landfilled. Poor drafting of waste legislation has led to a large number of cases being taken to the European Court. The resultant body of case law, parts of which are conflicting, has become more significant in the classification of waste than the original legislation. This is a highly inefficient means of establishing environmental regulation and causes Regulators to adopt an overly-legalistic and negative approach to implementation instead of a purposive approach that could lead to better environmental outcomes. In addition to problems with ash, there has been regulatory confusion around the status of some biomass fuels which has prevented them from being co-fired in coal-burning power stations because those plants do not comply with the Waste Incineration Directive (2000/76/EC, now incorporated into the IED).

Articles 5 (By products) and Article 6 (End of waste) of the rWFD 2008/98/EC provide mechanisms whereby materials that have traditionally been regarded as waste, and therefore subject to EU waste legislation, can achieve by product or non-waste status and can therefore be supplied and utilised in the same way as a primary manufactured product. In the UK the competent authorities with regard to waste issues are the Environment Agency (England), Scottish Environmental

Protection Agency (SEPA), Natural Resources Wales and Northern Ireland Environment Agency (NIEA) and it is these agencies that need to be liaised with if the status of a material as a waste or non-waste is in question. These authorities have developed and continue to develop mechanisms and processes to enable a decision to be made on whether a material meets the Art 5 or 6 criteria. However, how the provisions of Art 5 and 6 are being applied in other EU member states is not clear and there is no central EU mechanism for collating and disseminating such information. This is an issue that should be addressed so that all EU member states can monitor and assess application of Arts 5 and 6 to ensure that businesses, industries and markets are not being disadvantaged. It may be appropriate for such work to be undertaken by an organisation such as the European Environment Agency or IMPEL (EU Network for the Implementation and Enforcement of Environmental Law).

## **2. 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 would be required, if any, in the absence of EU legislation?**

There is a need to ensure appropriate details of legislation are set at each of the national, regional and international level. In some areas it may be better to have only very broad legislation at EU level with more detailed implementation, for example, at UK level. In other cases it might be necessary to have a harmonised detailed regulation on EU level to ensure a European wide level playing field. If not, varying obligations for environmental protection could lead to market distortions.

Ideally decisions on climate change should be made at the International level through appropriate caps and flexible mechanisms such as emissions trading. Even if international agreement is impossible in the short to medium term, decisions at an EU level are more appropriate than at a national level. Duplication of policies and targets (at national and regional level) should be avoided as this will result in additional costs.

In contrast to climate change, planning has local rather than global significance. Historically a very different approach to planning has been taken in the UK and Ireland compared to the rest of Europe. National legislation processes operate in different ways and it would not be appropriate for them to be harmonised. Therefore EIA and Habitats Directives have to deal with different planning rules across different Member States.

Developers often find themselves facing situations of double jeopardy as the result of the transposition of Directives into UK law where the application of Directives to a particular project is challenged by opponents of the project which results in proceedings before the European Court of Justice or infraction proceedings by the European Commission against the UK, often years after the planning or regulatory decision concerned. Despite the care taken by the UK in transposing Directives fully into UK law, there is no guarantee that European authorities such as the ECJ will endorse the interpretation of the relevant Directive represented by the UK transposing legislation.

Ambiguity in the wording of Directives (such as the EIA directive, Habitats directive and IPPC Directive) has resulted in cases where decisions made by planning and permitting regulatory bodies have been referred to the European Commission and/or the European Court of Justice some considerable time after the original decision has been made and implemented.

The temptation to include imprecise or inaccurate language in Directives in order to achieve political compromise at the European level should be avoided. This will ensure that transposition into national law can be relied upon.

## **(ii) currently made at another level were instead made at EU level?**

A key part of delivering climate change targets is around decisions that are made on levels of renewables or other forms of low carbon generation. While European targets have been set at the EU level, we have seen that different approaches and levels of national renewables support mechanisms have undermined confidence in the ability of the ETS to deliver investment in low carbon energy. There may be a

role for EU to set limits on the amount of low carbon generation that can be supported through such additional support mechanisms particularly where these lead to additional costs for consumers.

During the current Energy Bill debate in the UK, the introduction of a UK 2030 target for carbon intensity of the generation sector has been considered. In addition the Energy Bill will introduce an emissions performance standard for the power sector. Both these policy measures will undermine measures at EU level and are not necessary.

Similarly, the UK has unilaterally introduced a Carbon Floor Price support mechanism. It is our view that this is a revenue raising tax which simply provides funds to Treasury and will not provide the stability that investors require to invest in new large scale low carbon technologies. At the same time its introduction can have a significant impact on UK competitiveness without delivering any additional reduction of CO<sub>2</sub>-emissions.

### **3. To what extent to you consider EU environmental standards necessary for the proper functioning of the internal market?**

Where the issue to be addressed is one of international or European concern, common standards are an essential part of setting a level playing field. Furthermore it is important that implementation of standards takes account of local circumstances as outlined in our response to question 1(ii).

Properly structured, market based mechanisms that are agreed at the EU level, such as the EU ETS, supported by consistent implementation, monitoring and enforcement, can be the most cost-effective means of delivering targets and ensure a level playing field for companies across the EU. This will have benefits for consumers and UK industry alike.

#### **4. 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?**

In general there is an increased recognition of the need to strike the right balance between protecting the environment and protecting and growing Member States economies but there are a number of areas where there are concerns regarding the UK implementation of some EU legislation particularly in going further than EU requirements. It must be acknowledged that the UK is now less prone to 'gold plating' than it has been in the past. In contrast, there are cases where EU has adopted the UK best practice where it has been seen to have tangible benefits. A good example of this is the UK approach to environmental permitting.

There is a recognised risk that EU legislation may embody what is considered (by central policy makers) to be the solution to a given environmental problem or risk facing the EU. In practice this may result in penalties for Member State economies and it may be the case that actors in other economic sectors can make better decisions on cost-effectiveness of measures. It may also introduce risks to security of energy supply and have undesirable impacts of affordability for the citizens of Member States.

With regard to climate change where the UK only contributes around 2% of global emissions it is important that any action beyond that which is considered to be cost effective is taken at either EU or global level. The UK would have little influence if acting by itself. If the aim is to protect the environment then competences for climate change must be at EU level.

#### **5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

##### **(i) focused on outcomes (results)**

EU legislation relating to environment and climate change does have some examples which are focused on outcomes, most notably NECD's emission ceilings and the EU-ETS via its cap on GHG emissions.

EU climate change legislation must be based on a sound assessment of risk based on scientific evidence. There must be transparency of evidence and around how this is translated into setting targets. Any proposed action should also be justified by a rigorous cost benefit analysis. This is necessary regardless of whether targets are set at International, EU or national level. However the further down the line from international to national levels of target setting the harder it is to maintain this link with risk and scientific evidence as the evidence base weakens.

In the area of water and marine for example, our view is that the balance of competences is set at the right level. A European-wide approach is appropriate providing that there is some flexibility of implementation to accommodate the circumstances of individual member states.

## **(ii) based on an assessment of risk and scientific evidence?**

In some cases we are concerned that EU legislation does not reflect an appropriate assessment of risk or take into account the limitations of scientific evidence. For example although the Regulation 1100/2007 establishing measures for the recovery of the stock of European eel contains some flexibility in implementation, it requires Member States to take measures to ensure that eel escapement from Eel Management Plan areas is 40% of levels that would have occurred in the absence of anthropogenic influences. The eel lifecycle includes a long migration to and from spawning areas in the Sargasso. Factors other than the numbers leaving EU waters will influence the numbers returning. For example, the condition of the returning adult silver eel will influence migration success. The Regulation seeks to control escapement rates of adult eel but significant life stages occur outside EC waters. Current eel population models do not include the ocean phase of the lifecycle of the eel and therefore can not fully predict the benefits of proposed measures. It is therefore difficult to undertake a robust cost benefit analysis of the measures taken to increase eel populations.

The UK implementation of the Regulations (Eel Regulation 2009) has included a requirement for a specific technical solution, namely screening at water intakes, that is not in the original (110/2007). Also by electing to define multiple eel management plan areas closely aligned with WtFD RBD, the UK has elected to apply the 40%

adult eel escapement target on a regional basis, rather than to a broader geographic unit, possibly the UK as whole. This constitutes 'gold-plating'.

**6. 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?**

One of the downsides of a EU legislative approach is the tendency that compromise in the negotiating process results in a 'lowest common denominator' approach.

This can be overcome if a pragmatic approach is taken. For example it is appropriate that some occupational health standards are consistent across the EU. However others, such as environmental noise should be dealt with more locally as part of the system of development of the planning process.

Similarly, common frameworks and definitions are required for Waste substances in order that there is long term clarity across Europe but management and permitting must take local circumstances into consideration

**7. How far do you think the UK might benefit from the EU taking:**

**(i) more action on environment/climate change/**

The UK would benefit from more action at EU level on climate change policy if this delivered more cost effective ways to meet targets.

The UK would benefit by including additional sectors in the ETS where appropriate and by not adding additional policies that duplicate or undermine action already taken at EU level. A key example of this is the introduction of the carbon floor price,

outlined in 2 (i) above, which does not lead to further reductions in emissions of greenhouse gases or drive low carbon investment but merely results in additional costs to consumers and income for Treasury.

**(ii) less action on the environment/climate change?**

There should be less action where impacts are localised. Please see our response to question 6b for examples.

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

The approach needed depends on the context of the Directive. There are some areas of legislation where implementation needs to be the same in all Member States.

The implementation of Directives needs to take account of local circumstances but at the same time needs to find some way to avoid challenge of UK implementation through European courts as this adds uncertainty for investors.

The UK should encourage uniformity of approach at EU level on implementation of EU Directives where appropriate. This could be through more regulations agreed at an EU level. For emissions trading for example it is important to ensure a rigorous consistency of approach in terms of monitoring, reporting and verification between Member States and this has been achieved through publication of regulations and guidance.

The UK should continue to resist the temptation to 'gold plate' EU legislation during the transposition process. This makes little contribution to furthering environmental goals while at the same time, it disadvantages UK industry.



**9. (a) 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?**

In our view the UK is well served by the being a member of EU when negotiating and entering agreements internationally or with third countries. The UK is capable of setting the international agenda within the EU and influencing the overall EU position. Once this position is established, it is then of greater significance as the EU has more influence than the UK would have on its own

**(b) How important is it for the UK to be part of 'Team EU' at the UNFCCC?**

The UK has more influence on UNFCCC and other countries by working through the EU than it would have on its own. Any move away from the EU is likely to have a detrimental impact on our ability to influence at the global level – we are likely to be seen as a less significant and hence influential player.

**10. (a) What future challenges or opportunities might we face on environmental protection and climate change?**

Mitigating the anticipated climate change impacts will require concerted global effort. This is likely to include a wide range of measures including emissions management, energy efficiency, low carbon generation and the electrification of other sectors. This can best be addressed by establishing European-wide frameworks and legislation.

The key challenges will be to meet the aspirations for target while at the same time growing the economy and ensuring value for money. It is important that the UK has a strong and influential voice in this debate.

**(b) 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?**

In order to meet the challenges we face, it is important that the correct balance is maintained. It is likely this will be a mix of actions at EU and UK level. This requires flexibility in how legislation is both set and implemented. It is important that actions are co-ordinated and that unilateral action at the UK level does not undermine EU mechanisms.

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

Addressing environmental issues at the EU level is in the UK's interest. If the UK wishes to follow a pathway towards improved environmental performance, measures that encourage a consistent approach across the EU will prevent the undermining of UK competitiveness. Widespread implementation of measures across Europe will result in economies of scale in the development and application of new technologies. Investor confidence will be improved by adopting common measures which will help deliver security of supply. In addition the fact that policies have been agreed at EU level provides confidence to investors around predictability and certainty whereas policies agreed at UK level only may be more subject to intervention by future Governments.

However, the danger is that these advantages are undermined by political mistrust between Member States which leads to self interest and unilateral national interventions.

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

The rapid expansion of the EU and the admittance of new Member States has made it more difficult in recent years to reach consensus on environmental and climate change policies. The legislative process and machinery has failed to keep pace with developments and the situation has been exaggerated by the Eurozone crisis.

It is important therefore that Member States work harder still to reach agreement rather than reverting to national intervention.

## **Sandbag Climate Campaign**

### **Executive Summary**

- Through the EU, the UK has greater influence on global climate negotiations, owing to the combined economic power, population and emissions of the European Community.
- Tackling climate change at an EU level ensures the UK's ambition on emissions reductions are closely matched by 27 other countries, minimizing regional competitiveness distortions
- With London as the trading hub for the EU ETS, the scheme has been uniquely beneficial to the UK economy
- A third of British growth is now in the 'green' sector: environmental regulation, at a UK and EU level, can be very beneficial to the UK economy
- The UK should ensure that EU climate targets and carbon budgets do not hinder national climate ambition or hold back the national carbon budgets set under the UK Climate Change Act. The UK government should protect and exercise its right to cancel any allowances issued to it under the EU Emissions Trading Scheme, or the EU Effort Sharing Decision which exceed its desired national budgets.

### **Introduction**

Sandbag Climate Campaign is a non-governmental organisation (NGO) that campaigns for effective carbon budgets and carbon markets, with a special focus on the EU emissions trading scheme (ETS). Our view is that if emissions trading can be implemented correctly, it has the potential to help affordably deliver the deep cuts in carbon emissions the world so badly needs to prevent the worst impacts of climate change.

Sandbag welcomes the opportunity to respond to this call for evidence. Whilst Sandbag does not have a formal position on the UK's membership of the EU, we acknowledge the pivotal role EU legislation has played in driving climate ambition across Europe and creating the framework for a pan-European carbon market.

Given Sandbag's focus on carbon markets, our response to this consultation is given through the prism of the UK's relationship with the EU ETS and with closely related climate legislation.

## **Call For Evidence - Questions**

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

### **ADVANTAGES:**

- As climate change is a transboundary issue, global in its causes and effects, it is intrinsically difficult to address through unilateral policies at national level. The ideal route to prevent dangerous climate change is through a fair and environmentally adequate international climate agreement, however, the political complexities of forging such a deal mean a truly global response may yet be some time away. As the UK works towards reaching such an agreement, it should seek to control emissions at the next most manageable level, by incorporating the greatest number of actors (through country groupings such as the EU), and incorporating the greatest volume of emissions (including the largest polluters such as China and the USA). By influencing climate change policy in those regions and countries that pollute the most, the UK will be more effective in reducing global emissions.

### **The EU Emissions Trading Scheme**

- The UK piloted an emissions trading scheme in 2002 which acted as a forerunner to the current EU ETS. The UK remains one of the leading proponents of emissions trading and recently Secretary of State Ed Davey reaffirmed the UK's support for a "strong EU ETS".
- The flexibilities provided by the ETS as well as its least-cost approach has allowed for a neat political compromise which has enabled a pan European carbon price to be introduced. This has reduced the need for the potentially distorting effects of multiple unilateral policies that might place unnecessary burdens on companies operating across different European countries.
- Being part of an EU-wide approach to tackle climate change magnifies the UK's efforts and enhances its political power, as coordinated action by a large block of countries carries more weight than the UK acting alone. Internationally the UK has been able to use the EU's pioneering ETS as a means of promoting its own climate outreach activities. For example, the FCO has ongoing projects building capacity and sharing knowledge on emissions trading in a number of countries, including China and South Korea.
- The UK benefitted uniquely by the introduction of emissions trading in that it has become the centre of the EU carbon market. The City of London's financial knowhow has meant it was well placed to offer specialised financial services

relating to emissions trading. The UK is the largest trader of EU allowances, as well as carbon credits originating from the UN Kyoto Protocol projects. The UK's leading position has been widely recognised, including by Climate Change and Energy Minister, Greg Barker who said, "*The UK is really leading the way...reaffirming London's position as a global hub for the market. Not only does this help incentivise significant emission reductions and behaviour change amongst businesses, but it also generates millions of pounds in revenue each year for the Treasury, at little or no cost to the taxpayer. This is a win-win, which makes both environmental and economic sense.*"

- Participation in the EU ETS as well as environmental regulations and targets agreed at EU level have helped the UK forge ahead in developing a meaningful and vibrant green economy, offering sustainable goods and services. With a third of UK growth in 'green' businesses in 2011/12, the UK's largest business group, the Confederation of British Industry (CBI), supports the principles of green growth. The CBI reports that UK green businesses are exporting successfully, and have amassed a £5bn trade surplus in green goods and services. Exports are facilitated by close connections across Europe, and standardised regulation. Lastly, the ETS has created a level playing field for carbon pricing and been positive for EU business. Rather than 28 different carbon-pricing policies and strategies, companies only need deal with one, reducing regulatory costs and trade barriers.

## **DISADVANTAGES:**

- **UK climate ambition hitched to burden sharing arrangements at EU level**  
One disadvantage is that the UK's climate ambition risks becoming anchored to the targets and carbon budgets set for it under burden sharing arrangements in EU legislation. If the EU awards the UK more carbon allowances under the ETS and the Effort Sharing Decision than are prescribed by national carbon budgets set under the Climate Change Act, this represents a serious threat to the environmental integrity of the national budgets. To preserve the environmental integrity of these national budgets the UK must exercise its prerogative to cancel any EU allowances issued to it which exceed the budgets it has set itself under national law.

Cancellation of excess EU allowances in this way, allows the UK to go beyond its European Community commitments without the need to "gold plate" EU regulation. Cancellation does not add to the regulatory burden, but simply reduces the number of carbon allowances the UK releases into the market. In effect, this course of action allows the UK to unilaterally increase the ambition of EU wide carbon budgets.

We emphasize that where Europe award's the UK more allowances than the UK awards itself this should not be taken as evidence that the UK is more ambitious than Europe, but only that the UK's *obligations* at EU level are weaker than those it has elected to set for itself. We note, that the burden sharing methodologies in European legislation are at times more preferential to the UK than the burden sharing methodologies applied under the Climate Change Act.

- **EU carbon price failing to drive low carbon investment in UK power sector**  
A related problem has obliged the Treasury to introduce the Carbon Floor Price. As the EU carbon price has faltered through the excess volumes of allowances in the system, the political will across Europe to reverse this trend during a time of recession has been slow and faltering. To stabilise the receipts from the EU ETS, and to bolster the signal to decarbonise the electricity sector, Treasury introduced a unilateral carbon price, currently set at £16 (€18.50). This price is in stark contrast to the current EU carbon price of €4.50 and threatens to undermine the UK's competitiveness in Europe. What is more, the carbon floor price does nothing to strengthen the environmental ambition of the scheme, as under a fixed EU emissions cap savings made in the UK are simply traded away to other Member States and thus perversely reduce the compliance cost for the UK's European competitors.

**2 Considering specific examples, how might the national interest be better served if decisions:**

- 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?)**
  - currently made at another level were instead made at EU level?**
- Given the global challenge of climate change, action to reduce emissions is best co-ordinated at the EU level or, where possible, at the global level. Sandbag believes that emissions are generally best reduced through flexible and market-based mechanisms to drive carbon abatement at least cost. We have proposed a *Sovereign Emissions Rights Framework* which sets out an equitable and flexible framework for avoiding 2 degrees of post-industrial warming.<sup>489</sup>
  - If the UK acted alone this would bring no guarantee that others would follow suit, potentially lead to fragmentation of the global debate, and leave it open to the free rider problem, where some countries exploit the emissions space that should rightfully belong to others. It could also reduce the strength of the UK's voice in climate negotiations. Most individual nations have limited diplomatic power to leverage more global ambition. The exceptions to this rule are economically powerful, high-emitting nations like the U.S.A and China. The EU helps to put the UK on a level playing field with these nations.
  - The transfer of power from domestic government to the EU with regards to taxation is a vexatious issue, but there are distinct benefits to a harmonised tax on energy across the EU, preventing competitive differences, preventing tax competition (avoiding a 'race to the bottom', as seen in other areas, notably with capital gains tax), and ensuring all energy costs accurately reflect externalities. Taxation changes at EU level require unanimity, and so there are difficulties in reaching agreement on legislation including the Energy Tax Directive.

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

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<sup>489</sup> [www.sandbag.org.uk/site\\_media/pdfs/reports/The\\_Sovereign\\_Emissions\\_Rights\\_Framework.pdf](http://www.sandbag.org.uk/site_media/pdfs/reports/The_Sovereign_Emissions_Rights_Framework.pdf)

- Common EU environmental standards enable free trade between countries because no single good (such a leaded car) is banned in one country but allowed in another. More importantly, perhaps, is the ability for common standards to drive innovation, giving industry a clear signal that there will be a market for green goods and services. The EU has a strong success story to tell regarding both energy efficiency standards for appliances and with car emissions standards. Both are cross-cutting initiatives which no one country would have the market power to do alone, and which have saved European consumers billions of pounds and cut carbon significantly.
- Consistency in environmental standards across the EU gives peace of mind that no one Member State is at an economic advantage. This in turn should allow the EU to take on more ambitious environment and climate targets, beyond what any one Member State would feel comfortable implementing unilaterally.
- With a focus on the EU ETS, standards for EU allowances as well as international offsets (from both Clean Development (CDM) and Joint Implementation (JI) projects) must be tightly controlled. If these offsets do not represent one tonne of avoided CO<sub>2</sub>, the basis of the trading scheme would be severely undermined. The EU has already acted to ban offsets originating from industrial gas projects over concerns around their “environmental integrity, value-for-money and geographical distribution”. Significant EU oversight and incorporation of EU legislation in UK law would remain a necessity even under a major renegotiation of competencies.

#### **4 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?**

- Some EU legislation is positive in principle but negative in practice due to pork barrel politics from member states. The amount of “hot air” in the EU ETS is an example of highly successful industry lobbying.
- Exaggerated competitiveness fears have seriously compromised the effectiveness of the EU ETS, and have led to an unnecessary transfer of assets from the government to industry. This can be observed in the excess ETS allowances that were awarded to industry in Phase 2 of the scheme (2008-2012), and also in the excessively wide number of sectors defined as at risk of carbon leakage, and thereby entitled to additional free allowances in Phase 3 (2013-2020). To date, there is little evidence that the ETS has harmed UK and EU manufacturing industries. On the contrary, selling spare EU allowances during the recession helped many companies to stay afloat during the financial crisis. Our latest ETS report *Drifting Towards Disaster* explores this issue in more detail.<sup>490</sup>

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<sup>490</sup> [www.sandbag.org.uk/site\\_media/pdfs/reports/Drifting\\_Towards\\_Disaster.pdf](http://www.sandbag.org.uk/site_media/pdfs/reports/Drifting_Towards_Disaster.pdf)

## **5 Considering specific examples, how far do you consider EU legislation relating to the environment and climate change to be:**

### **i. focused on outcomes (results)?**

### **ii. based on an assessment of risk and scientific evidence?**

- Framework EU environment and climate legislation is outcome focused. A prime example of such an approach can be seen in the EU Climate and Energy Package which set out three targets to be met by 2020, i.e. a 20% reduction in emissions base on 1990 levels, increase renewables share of energy consumption to 20%, and a 20% improvement in the EU's energy efficiency.
- These outcome based targets aim to transition Europe to a low carbon economy and pull its weight in the global effort to avoid dangerous climate change. But these targets also represent Europe's current efforts to strike a balance between fulfilling its climate responsibilities without carrying free-riders. Both parts of this equation are value judgements, made by individual countries before Member States bargain and debate their positions into a common European position.
- In our view, Europe's internal targets are not yet based on an appropriate effort sharing model of how the emissions space should be divided. In our report *The Sovereign Emissions Rights Framework*, we propose that Europe's emissions should not exceed 9% of the total global volume emitted between 1990 and 2050, corresponding to its population in 1990 when the dangers of anthropogenic climate change were internationally acknowledged. We also propose that Europe should aim to keep the risks of passing 2 degrees of global warming well below 33%. This would require adhering to a global budget of around 2,274 Gt over 1990-2050 of which 1,024 Gt has already been exhausted. Europe's equitable share of this 2 degree budget would therefore be 204 Gt over 1990-2050, of which 116 Gt has already been exhausted.<sup>491</sup>

## **6 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?)**

- The transboundary challenge of environmental and climate issue means that the burden of addressing these problems must be shared. However, there is a danger that a growing divergence in national interests could undermine the EU ability to act collectively. While excessive focus on national circumstances could undermine the legislative process, the EU could work more effectively to ensure divergent national interests are taken into account and Member States with genuine concerns and difficulties are factored into policy decisions, thus allowing all Member States to support a progressive position. This has already been incorporated into the EU ETS Directive with richer Member States receiving fewer allowances than countries with weaker economies.

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<sup>491</sup> [www.sandbag.org.uk/site\\_media/pdfs/reports/The\\_Sovereign\\_Emissions\\_Rights\\_Framework.pdf](http://www.sandbag.org.uk/site_media/pdfs/reports/The_Sovereign_Emissions_Rights_Framework.pdf)



- If the political will to reform the ETS cannot be found in the near terms greater consideration should be given to alternative forms of regulation, including emissions performance standards for emitters and mandatory CCS requirements.

## **7 How far do you think the UK might benefit from the EU taking:**

**i. more action on the environment/climate change?**

**ii. less action on the environment/climate change?**

- More action from the EU would increase the chances of environmental and climate change policies being successful and effective:
  - in the UK, because a level European playing field would benefit UK businesses and reduce opposition to environmental regulation;
  - globally, because the EU is powerful enough to steer international decisions on climate change.

The transboundary nature of many environmental issues, from invasive species to climate change, means that the UK has only a limited ability to deal unilaterally with them, as demonstrated by previous efforts to reduce acid rain and ozone destruction. Furthermore, through greater EU action the UK can magnify its position by working with and actively shaping the position of a larger, more influential negotiating bloc. Politically, greater EU ambition would also help the UK, for example with UK policies such as the Carbon Price Floor, as it would reduce the political risk of the UK moving ahead alone and damaging the competitiveness of domestic industry.

- Less EU action on the environment and climate change would simply serve to exacerbate the difference between the UK's legally binding commitments to reduce greenhouse gases and the level of ambition in the rest of Europe, increasing competitiveness distortions. It would also increase the risk of dangerous global warming, threatening the UK with greater climate impacts.

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

- The EU and Member States must conduct consultations before introducing legislation, but still, the majority of people are unaware or uninvolved in contributing to the shape of legislation and how it is implemented. Those who do participate tend to be the usual suspects, often with known and entrenched positions. To encourage ownership of the legal system within which individuals and organisations operate, there must be improvements in consultation and education after the EU legislative process, to better negotiate the flexibilities of transposition into UK law.
- Polls across Europe repeatedly show a majority believe governments need to do more to tackle climate change, even amongst respondents who are unsure of the climate science, and yet in recent years parliamentarians have been more hesitant about taking action, or indeed, championing the decisions they do make. An improved education process is needed, whereby representatives have greater contact with interested communities, the implementation of legislation is

explained and discussed at public meetings and exhibitions, and the effects of new laws are more clearly set out after the fact.

- 9 a. 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?**
- b. How important is it for the UK to be part of "Team EU" at the UNFCCC?**
- The EU is able to negotiate more effectively as a political bloc due to its increased economic clout. The EU has in the past set the international agenda and made headway even when other countries remain intransigent. For example, the EU was pivotal in ensuring the design and survival of the Kyoto Protocol, and maintained the momentum behind the UN climate negotiations at a time when others were unwilling to participate in the process.
  - The EU represents some 500 million citizens who collectively make up - measured in terms of the goods and services it produces (GDP) - the world's largest economy. The chances of successfully agreeing an ambitious legally binding international climate agreement are greatly increased if the EU negotiates as a block where its political, economic and civil society leverage is greater than the sum of its parts. Furthermore, the UK can use the EU's negotiating clout to magnify its position.
  - The influence of the EU is clearly demonstrated by the large numbers of less-economically developed nations that often seek to team up with the EU at climate negotiations, allowing their voice a greater chance to be heard. It is better that the UK be at the heart of deciding the EU ambition before conferences, rather than seeking to negotiate a space to be heard amongst the largest economies and emitters.
  - The EU is made up of 28 Member States and it can be difficult to present a coherent EU position, in particular when position differs nationally. There are also difficulties (and some benefits) from leading Member States wanting to carve out their own distinctive positions and diplomatic relations (for example the UK-USA 'special relationship'). The EU taking on a greater role internationally without aligning the position of its Member States effectively could exacerbate the conflict between the EU and national governments in negotiating agreements.
- 10 a. What future challenges or opportunities might we face on environmental protection and climate change?**
- b. Going forward what do you see as the right balance between action taken at international, EU, UK and industry level to address these challenges and opportunities?**
- c. What would be the costs and benefits to the UK of addressing these future challenges at an EU level?**
- Environmental and climate protection look to face a number of challenges in the future, notably because the stresses inflicted by an increasing global population are set to increase demand for natural resources. For the EU one considerable stumbling block could be reduced political ambition around tackling climate change due, primarily, to the current economic situation. This is not to say that

there are no politicians championing progressive legislation on the environment and climate but the recent difficulties in securing the “back-loading” of allowances in the EU ETS has highlighted a split in the European Parliament. One reason for this division is that economic concerns have raised the profile of national concerns, with some politicians and Member States reluctant to move forward on ‘big picture’ environmental and climate legislation in fear it might have a negative effect in their own countries through increased business charges, or boosted energy prices. Diverging interests have started to appear, with Member States becoming increasingly becoming polarized in their views of the solutions to their needs and challenges. For example, the long-term vision of the UK and Poland highlights the gulf between some Member State positions. The cost of acting to avert climate change has challenged action, and despite the economic assessment of Lord Stern and others who argue prevention is cheaper now than emergency adaptation later, the cost of transitioning towards a low-carbon economy is set to remain a contentious issue.

- An international agreement on climate change is still the most effective way to tackle climate change. Despite setbacks, increased bottom-up action, particularly from China and the USA, is setting the ground for a possible breakthrough at the international level. The upcoming COP 21 in Paris will be a pivotal moment in the future of the drive in tackling climate change, and the level of EU ambition could set the tone for the conference.
- A major opportunity for growth in the UK increasingly comes from sustainable business. Effective regulation and incentives at an EU level can boost this potential, and build a future-proofed UK economy, and a competitive advantage over countries who move more slowly on tackling climate change.
- The first part of The Fifth Assessment Report (AR5) from the Intergovernmental Panel on Climate Change (IPCC) is due to be published in Autumn 2013 and is anticipated to highlight the increasing threat and current effects of climate change. Acting to avert these worst effects of climate change offers incalculable benefits, but these include a functioning economy, biosphere and civilisation.
- In 2012 the EU spent USD\$500 billion on importing oil. Reducing this figure, which dwarfs the national debt of Greece, would be hugely beneficial to the European economy, reduce energy costs for citizens, offer geopolitical benefits, and insulate Europe against further commodity price shocks. Action on steering economies away from fossil fuels is most effectively taken at the highest level, for example an EU-wide Fuel Quality Directive not only prevents the most polluting fuels reaching Europe, but calls into question their initial extraction, influence that the UK would be unable to exert unilaterally.
- The UK should ensure that ambitious action on climate change is actively pursued at all possible levels. The transboundary nature of environmental and climate problems means that the most effective level to address the problems would be at an international level. This should, however, not detract from seeking action at EU, and regional levels. Addressing climate change at these different levels offers different opportunities and potential gains. Furthermore, successes at one level can have a complementary effect of putting pressure on another. For example, despite the current lack of international climate agreements the bottom up move in countries implement climate policies and carbon market, such as

Australia, Korea and China, has changed the dynamic of the international debate. We note, however, that commitments made at international level and European should always act as a floor rather than a ceiling to UK effort, and that Britain should always reserve the option of going further, e.g. through cancellation of carbon allowances issued under burden-sharing agreements at UN or EU levels.

- Costs for the UK fall under the difficulty of unilateral action within the EU ETS; greater ambition in the UK only opens up extra pollution space elsewhere in the EU, if sustainability efforts are not explicitly linked with the removal of carbon permits. Otherwise, the main benefit offered to the UK by action at a European level is more substantial carbon cuts when compared with the global scale of the problem, and through magnified EU influence beyond the Urals and across the Atlantic.
- Policy at EU level also offers greater security to green investors, with a wider available market, and less likelihood of policy reversal through temporary domestic pressure. For instance, as an escalator, the UK Carbon Price Floor may suffer similar difficulties to domestic tax escalators on fuel and alcohol, as government's pursue short-term electoral gain. The dispersed nature of EU parliamentarians and the structure of EU governance offers longer-term certainty to decisions reached with 28 state consensus.

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

- The EU ETS, for all its problems, remains the world's largest market in climate change pollutants, offering the current ability to control and reduce half of Europe's emissions. Through scope expansion, and through linking with new schemes (Australia, the Western Climate Initiative, China), it could become more powerful still. In the event of a substantial renegotiation (or referendum) on competencies, Sandbag would expect a large number of EU environmental directives would need to remain incorporated in UK law to enable cooperation and continuing exports which met EU standards, but the UK would have the option to make more ambitious (or less challenging) emissions cuts, but in isolation. By remaining a key player in deciding EU climate policy, the UK greatly magnifies its global influence toward fighting climate change.

**Scotch Whisky Association**

The Scotch Whisky Association (SWA) welcomes the opportunity to provide input to the UK government's Balance of Competences review.

The SWA is the industry's officially recognised representative body, responsible for protecting and promoting Scotch Whisky both at home and abroad. The

Association's members export to over 200 markets worldwide; in 2012 industry exports were worth £4.27 billion, representing nearly 25% of all UK food and drink exports. (With member companies also owning the import and sales teams in many overseas markets, the real value to the industry and UK plc is far higher.)

In 2012 sales of Scotch Whisky within the then 27 EU Member States totalled more than half a billion bottles, or about 40% of the industry's volumes. The EU is vital to the industry's long term sustainability, both as an internal market and as a strong voice in international trade negotiations.

The trade environment within the EU internal market, in which one set of common rules applies, is immeasurably simpler than the alternative in which 28 different regulatory regimes would operate. The EU rules, agreed with considerable and very helpful input from UK officials and MEPs, impact on almost every facet of trade in Scotch Whisky. These include: spirits definitions; protection of 'geographical indications' (such as Scotch Whisky); labelling; taxation; a standardised range of bottle sizes; holding and movement of excisable products; and other regulatory issues that impact production facilities such as energy, health and safety and environmental issues.

While the internal market is not perfect, the existing arrangements permit the UK Government to help shape the rules which govern it; they also greatly facilitate the resolution of problems arising from the inappropriate application of EU rules. Securing and maintaining an optimal trading environment requires a strong UK presence when legislation is being prepared or amended.

The influence of the EU extends well beyond the single market. The Commission, again with considerable input from UK officials, has been a strong and effective supporter of the industry's wider interests in international trade negotiations whether at the multilateral, regional or bilateral level. It has also successfully secured the removal of tax and other discrimination against Scotch Whisky in third countries using the World Trade Organisation's dispute settlement mechanism. As the world's foremost internationally traded spirit drink, Scotch Whisky derives enormous benefit from the EU's expertise and negotiating muscle in the areas of trade policy and market access globally.

Consequently, the SWA is a strong supporter of maintaining the UK's active involvement within the EU. In the fields of internal market regulatory harmonisation and international trade policy, we see no issues which require subsidiarity or to be repatriated to national level.

## **SPECIFIC QUESTIONS**

### **Advantages of EU Competence in environment and climate change**

Scotch Whisky brands rely on a pristine local environment and high quality raw materials. It has therefore always been in the industry's interests to act in a sustainable manner and in a way that protects the environment from which our raw materials are drawn.

Environmental laws and regulations touch on almost every aspect of making and distributing Scotch Whisky. Distilleries must apply for, and comply with permits from the regulators regarding abstractions and emissions to and from the environment. Our members must comply with waste management laws, product packaging rules and record keeping systems. Like all responsible businesses, the Scotch Whisky industry aims to comply with these rules and indeed through our stretching Industry Environmental Strategy, launched in 2009, we aim to go even further – beyond compliance.

Most environmental and climate change matters are subject to EU competence. This has been important to the Scotch Whisky industry and we would not advocate any repatriation of competences to the UK. Scotch Whisky competes in a global environment and is exposed to international competition for example, with Cognac and tequila. In the UK, Scotch competes with other domestically produced beverages such as beer and cider. It is important, therefore, that the cost of production of Scotch remains competitive with production costs of competitor beverage categories. A level regulatory playing field is important to ensuring competitive fairness and we believe that EU competence in the areas of environment and climate change has served UK manufacturing well to date and should continue to do so.

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

Where the UK has gone beyond EU requirements on the environment and energy, there has been competitive distortion. Whilst we support the aims of the UK's Climate Change Agreements (CCAs), we have a long-held concern with regards to the competitive distortion caused in the beverage sector by the application of the rules.

The rules of the current CCAs prevent the Scotch Whisky industry's large-scale stand-alone packaging sites from joining the scheme. As a result distillers pay an additional £0.5m each year in Climate Change Levy payments - £4.5m over the course of the first round of Climate Change Agreements. Other UK food and drink producers which operate integrated production, including packaging, facilities are eligible to join a CCA and thus receive the rebate from the Climate Change Levy

throughout their entire operation. This anomaly has created a competitive distortion within the food and drink industry. Other bottled foodstuffs such as ketchup, beer, domestic spirits from an integrated distillery/bottling plant and fizzy soft drinks will have qualified for CCA relief and not be exposed to the additional costs our Members have been exposed to. Imported spirits too will have been made with no exposure to the climate change tax.

This distortion has resulted entirely as a result of the UK's own energy rules and indeed has been compounded by the application of the UK's CRC Energy Efficiency Scheme which has been linked to the CCA exemptions. The competitive distortion is set to widen in Phase 2 of the CRC scheme when the CCA exemptions are removed. Where competence for energy and climate change schemes sits at an EU level – for instance in the case of the EU Emissions Trading System, we can be better assured of a level playing field. It is not in the interests of the UK balance of trade for the Scotch Whisky industry to be put at a competitive disadvantage due to charges not faced by our global competitors.

It is for these reasons we do not agree with the suggestion that the UK might reserve competence for environmental matters save matters of cross-border concern (such as air pollution and global warming). It is important for globally traded products such as Scotch that the local manufacturing environment remains competitive with the production of other global spirits.

### **Doing things differently**

The fair and consistent application of EU-wide environmental and climate change rules is critical for distillers and the functioning of the internal market. 'Regulatory competition' whereby manufacturers of goods seek manufacturing locations where a 'light touch', or lax approach to environmental compliance is expected should be unacceptable. It is important that the UK Government continues to work through the IMPEL and European Environment Agency networks to ensure environment and climate laws are applied fairly across member States. The provision of guidance on interpretation of EU legislation issued from Europe is helpful in order to prevent differential interpretations and implementation of EU legislation by Member States.

We are supportive of the current emphasis by the European Commission on 'fitness checks' of existing laws to avoid new or additional legislation to be developed. This focus on more effective implementation and enforcement of existing measures should help ensure the UK plays on a more level playing field.

In many areas of EU competence, it is important that absolutely consistent standards are required with identical and prescriptive rules set for all involved. This is not the case for environment law because the environment varies greatly across the European Union. Rigid application of environmental standards is less appropriate. For example a 'one-size fits all' approach to water use would be inappropriate in a European context where some parts of Europe are water-stressed such as in southern Europe and others, such as Scotland, have plentiful supplies. For that reason we believe that environmental rules should be outcome-based rather than set prescriptive standards. A common approach to identifying appropriate outcomes is, however, imperative.

## **Conclusions**

The existing arrangements covering environment and climate change rules – where competence is at EU level - work well for the UK and its manufacturing base. The UK's environment benefits enormously from the UK's leadership in environmental protection and climate change matters while our producers are able to operate in a competitive manufacturing environment. The Association therefore sees no advantages in altering the current balance of competences in this area.

## **Scottish Government**

1. The Scottish Government welcomes the opportunity to contribute to this call for evidence. We were approached by the Department of Environment, Food & Rural Affairs (Defra) prior to the launch of the call and have engaged throughout the process. Defra has also consulted key Scottish stakeholders such as Scottish Power, the Environment Exchange, the Scotch Whisky Association and the Scotia Gas Network at a Scottish Government event in Edinburgh on 4 July, 2013.

### ***Scotland and the environmental acquis***

2. Overall, the environmental acquis works well for Scotland, with a strong role for the European Commission in supporting individual Member States to enhance and protect the environment. The Commission's work to develop the 7<sup>th</sup> Environmental Action Programme was warmly welcomed by the Scottish Government, as it recognises that environmental policy must be seen in the wider context of the government's role - not as a silo. In particular, the Scottish Government welcomes the positive connections between the environment and economic growth opportunities as part of the 2020 agenda. We recognise that the European Commission and Council have a strong leadership role to play and that work in the climate change and waste arenas are clear examples of where Europe adds value to



supporting our collective international efforts. The resource efficiency agenda is also an example of where the Commission's role in supporting the single market can have wider benefits in other policy areas, such as environmental issues.

3. Subsidiarity and ensuring that decisions are taken at the right level is a key enabler of effective policy development and delivery. The European Commission has a strong role to play in those areas that impact on the effectiveness of the single market. In addition, where activities and actions can have trans-boundary impacts, the Commission plays a part in augmenting the legislation and policy within the competence of individual member states. In some areas, the European Union has an important global leadership role. Clarity and consistency and consistent application around where these demarcation lines lie is important.

4. For example, the Scottish Government believes that the requirements of the Environmental Noise Directive (END) to undertake strategic mapping of environmental noise and develop action plans every 5 years should be highlighted in the context of the balance of competencies review. END requirements are now embedded in domestic policy and awareness of the impacts of environmental noise has increased. The question remains therefore, in line with the subsidiarity principle, whether the benefits of noise mapping and action planning would be achieved without EU drivers to enable more effective policy development and delivery, or whether the drivers need to be amended to allow for local flexibility.

### ***Further development of the environmental acquis***

5. On a number of occasions, we have heard the suggestion that the way forward for Europe, particularly to support consistent delivery across member states, is that more EU legislation should be introduced by regulation rather than directive. Whilst we support the development and maintenance of a level playing field, we question the 'one size fits all' approach that regulation would impose. As the EU has expanded – as of this Presidency to 28 member states – the 'one size fits all' approach is very challenging, and in some quarters challengeable in supporting effective and equitable implementation. In last year's Water Blueprint, we welcomed, in the context of the water stress issues, the recognition that a 'one size fits all' approach is not possible or appropriate. Given the significant differences across member states, we would like to explore greater opportunities for differential implementation approaches based on risk assessment. This is an approach already recognised in the Water Framework Directive. Whilst this is a challenging concept, given the importance of consistent delivery within the EU, we note that there are

examples, e.g. around animal health, where EU legislation permits this within evidence based risk assessment.

6. We also recognise the importance of ensuring that EU environmental law is enforced at all administrative levels and that a level playing field in the internal market is guaranteed. Natural resources are the basis of our economic prosperity, and Scotland's business benefit from the proper management of those resources and the consistency that the internal market brings. We recognise the role of the European Commission in enforcing and ensuring proper implementation of EU legislation under the *acquis*. The Scottish Government welcomes in particular the new 'pilot' approach to dealing with potential infringements to EU legislation that was introduced in 2008 with the aim of providing quicker and fuller answers to questions, and solutions to problems arising in the application of EU laws – particularly those raised by citizens or businesses – requiring confirmation of the factual or legal position in a member state. The Scottish Government believes that this process is in general working well as a means of addressing legitimate citizen concerns on the decision-making process, without recourse to the formal infringement procedures under Article 258 of the Treaty.

7. The 'pilot' system has allowed a more flexible, proportionate approach to ensuring proper enforcement of the EU *acquis*. The Scottish Government also recognises the agreement reached in the recent 7<sup>th</sup> Environment Action Plan to further develop the inspection support capacity at an EU level. We welcome initiatives to reinforce peer review and best practice sharing and joint inspections within member states, at their request. However, we would be particularly concerned if application of this agreement resulted in onerous new EU level inspection burdens being placed upon Scottish businesses that ran contrary to our own better regulation principles. It is important that EU competence remains at the appropriate level under the new EAP, with full respect for subsidiarity principles in enforcement of EU environmental law.

8. The environmental *acquis* has a particularly strong impact on the Scottish planning system. In 2009, the Scottish Government contributed to a research project commissioned by the UK Government Department of Communities and Local Government (DCLG) aimed at developing a tool to assess the impact of EU Directives on UK planning policies. The research, which was undertaken by Ove Arup, drew on a number of case studies including two in Scotland; one on the impact of the Habitats and Wild Birds Directives on planning policy for wind farms in Lewis, and the other on the impact of the Strategic Environmental Assessment (SEA) Directive on the strategic development plan for Edinburgh and South East Scotland (SESplan).

9. The research report, which was published in 2012, sets out a method for assessing the impacts of EU legislation on UK planning policies. It notes that EU

directives can be in significant tension with development objectives. In Scotland, this has probably been most apparent in the tension between EU legislation on habitats and birds and efforts to realise the potential of renewable energy resources. We consider that the findings of this research are relevant to the current review in contributing to thinking on the development of a more systematic assessment of the implications of new EU legislation for national policy and procedures. The Scottish Government has drawn on the method set out in the Ove Arup report in a pilot project which assessed the potential impacts of the review of the Environmental Impact Assessment (EIA) Directive for Scotland. The latter is still proving useful and is now being considered by AMEC, the consultants appointed by DCLG to undertake the UK wide impact assessment of the EIA Directive.

10. Many aspects of the environment acquis also touch closely on agriculture. The Scottish Government will respond fully to the Balance of Competencies review of agriculture during autumn 2014. Our comments here are restricted to those parts of EU agricultural policy which are shaped by the environmental acquis. The new future Common Agricultural Policy which has just been agreed in Europe highlights how a 'one-size fits all approach' becomes harder as the size of Europe increases.

11. This is particularly true for agriculture since its nature varies so much across member states. Here in Scotland, we have mainly extensive type of farming systems which are at a much lower intensity than elsewhere in Europe as a high percentage (85%) of our agricultural land falls under the definition of "areas or natural constraint". Therefore, it is vital that we have the flexibility to cater for this. As part of the new CAP deal, there will be a requirement to green the CAP, but because the measures have to be implementable across all of Europe, they are likely to have very limited benefits in Scotland. It may have been preferable for our Ministers to decide for themselves how best to implement greening with measures more appropriate for Scotland's unique climate and topography and to take account of unique agricultural systems, such as crofting, which tend themselves to "high nature value" farming. In addition, Scotland would have liked to have seen the CAP do more to address climate change than is allowed in the framework set out by Europe.

12. The larger that the EU becomes, the more we would want the option for decisions using the precautionary principle to be taken, if possible, at local level. Two examples of this are that our Ministers would like to be able to decide for themselves whether or not to cultivate GM crops. Scotland is generally more precautionary than the rest of Europe and this is reflected in pesticides policy, where we have tended to be more precautionary than England (e.g. on neonicotinoid insecticides and Fipronil).

13. The Scottish Government believes that as Europe grows larger, this sort of decision where there are public concerns should be devolved to regions although,

clearly, the Scottish Government aspires for Scotland to be an independent EU member state, in our own right.

### ***Further development of the climate acquis***

14. In climate policy, the Scottish Government continues to believe that the EU is the most effective body for achieving cost-effective collective action to reduce emissions and secure the economic benefits of the low carbon economy – the costs of acting together are far lower than the costs of acting alone, and the trans boundary impacts of climate change render unilateral action ineffective. A strong EU climate acquis not only ensures a fair burden in emissions reduction amongst the EU's member states, but it also ensures a strong voice, leading by example, in the global climate negotiations. Scotland is recognised for its ambitious climate change targets (42% reduction in greenhouse gas emissions by 2020 with a 25.7% reduction achieved by 2011) and is an active participant in the UK delegation to the UNFCCC COP, in support of the EU negotiating position in that process. Continued and developing ambition by the EU is vital to achieving the necessary reductions in greenhouse gases that are needed to limit global temperature rises. That is why we fully support EU action on the 2020 climate and energy package, and why we are supporting high climate ambition in the proposed 2030 package. Strong EU legislation and consensus amongst member states strengthens the voice of individual member states in the UN negotiations, and the Scottish Government continues to support the need for a collective EU position to reinforce domestic ambition in these negotiations.

15. Linked to this, we support strong EU action to reform the ETS. The ETS is currently suffering from a very low carbon price due to an overabundance of allowances (due in most part to the financial crisis and subsequent reduction in production but arguably also due to over-generous allocations of free allowances), which has led to negotiations on restructuring the market to reduce the volume of allowances. These negotiations have been difficult and the level of ambition from most member states has been lower than that of the UK and lower still than Scotland. Scotland and the UK as a whole continue to press for more ambition and we support the benefits of an EU-wide ETS in ensuring a level-playing field for Scottish businesses, and as the most cost-efficient means of reducing emissions through collective EU action. Discussion on revised F-Gas Regulations are on-going in Europe, and Scotland continues to engage with the UK Government to ensure the regulations provide effective environmental goals whilst avoiding prohibitive costs on industry.

## ***Scottish Government involvement in influencing the future of the EU environment and climate acquis***

16. Managing effective EU relations is a challenging but valuable exercise. Our final comment is that in addition to reviewing the balance of competences within the EU, we must also use the opportunities to use this exercise to look domestically. Devolved Administration Ministers and officials regularly participate in Councils and working groups. Within the current devolution settlement, we consider that there are greater opportunities that could be taken to the most, and best value of this resource, in support of shared objectives. Having four different administrations analysing EU legislative proposals means that the UK can make a better analysis than some other member states. We would welcome greater emphasis on early upstream engagement from the UK Government to fully consulting and involving the Scottish Government in the development of the UK position on EU legislation as it develops. We have seen successes in areas where we have been able to do this, such as in the current Environmental Impact Assessment Directive negotiations, where the Scottish Government has played an active role in influencing the EU institutions in support of the UK position.

17. As we have previously identified and discussed with the UK Government, there is scope for a greater role, including speaking, that could be undertaken by devolved Ministers to the agreed UK line. There are further opportunities around using our collective network of contacts to pursue engagement with other countries. There are some examples, e.g. around the UNFCCC climate change talks, which we can point to already, where Scottish Ministers have supported and reinforced UK arguments for higher ambition with other member states in Councils and the UNFCCC, particularly in Eastern Europe and in small island states and sub-Saharan Africa. As part of this review, we think there are real opportunities where Scottish Ministers, and other devolved administrations, can be more actively and positively used to support and add value in the pursuit of agreed and shared objectives across the whole of the EU environmental acquis.

## ANNEX A

### EXAMPLES OF EU GOOD PRACTICE

#### Climate change

1. The Scottish Government fully supports EU efforts for high climate ambition within the EU and globally and has adapted a 2020 target of a 42% reduction in greenhouse gas emissions with 25.7% reduction achieved as at 2011. We are leading by example with the world's strongest domestic climate change and renewable electricity targets, and a new electricity generation decarbonisation target for 2030, and will continue to be at the forefront of EU efforts to realise an ambitious global climate agreement in 2015.

#### EIA Directive

2. The Scottish Government has a range of work underway to support the continuous development of efficient and effective EIA practice: in 2011 the Scottish Government's Planning and Architecture Division established an annual EIA forum for planning authorities to encourage and support continuous improvement in EIA practice. The recent Short Life Task Forces examining the permitting of offshore and onshore renewable energy, led by the Minister for Energy, is a further example of measures taken to support more efficient and effective EIA in Scotland. In light of this experience, the Scottish Government set out, as part of EU Sustainable Energy Week 2012, further opportunities for supporting improved implementation in practice, proposals which were well received. The Commission has since published its proposals for substantive legislative change through proposed amendments to the Directive, negotiations for which are currently underway.

#### Biodiversity

3. The *2020 Challenge for Scotland's Biodiversity* is Scotland's response to the *Aichi Targets (2010)* set by the *United Nations Convention on Biological Diversity (2010)* and the *European Union's Biodiversity Strategy for 2020 (2011)*. These call for a step change in efforts to halt the loss of biodiversity and to restore the essential services that a healthy natural environment provides. Investment in the natural assets of Scotland will contribute to sustainable economic growth and support wellbeing and wealth creation.

Scotland's *2020 Challenge* aims to:

- protect and restore biodiversity on land and in our seas, and to support healthier ecosystems;
- connect people with the natural world, for their health and wellbeing and to involve them more in decisions about their environment.;
- maximise the benefits for Scotland of a diverse natural environment and the services it provides, contributing to sustainable economic growth.

4. A key contributor to achieving the aims of the 2020 challenge and the EU Biodiversity Strategy is Scotland's contribution to the EU-wide network of sites designated under the EU Birds and Habitats Directives (entitled "Natura 2000"), which covers some 15% of Scotland's landmass and accounts for more than 50% of the terrestrial UK network.

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

5. The Emissions Trading Scheme (ETS) has recently moved into Phase III, which includes more ambitious auction levels and full participation from aviation operators. Scotland's participation in the scheme as part of the UK member state includes full participation in policy making, with the exception of revenue (on which we are consulted) and the Scottish Environment Protection Agency manages Scottish participants.

6. Continued participation in the ETS is essential if Scotland is to meet its ambitious climate targets. It provides a key driver and incentive for low carbon behaviours and incentives and over 100 Scottish operators participate in the scheme from a variety of sectors. If Scotland were to stop participating in the ETS due to the UK leaving the EU, it would be effectively impossible to meet our 2020 emissions target unless we put in place a UK-wide equivalent scheme. The Scottish Government has been a vocal supporter of structural reform of the ETS and supports the UK position of a preference for the cancellation of allowances, but has supported back-loading in the interests of future reform.

7. A UK domestic trading scheme would not function as effectively as the EU-wide scheme which offers a larger market and ensures that UK operators do not face a disadvantage in comparison to other European nations. The UK also hosts one of only two non-EU-wide auctioning platforms and 90% of the market is based in the UK. Member States receive the revenue raised from auctioning allowances, which has raised over £1bn for the UK since 2008 and, with greater levels of auctioning from 2013, revenues will rise – expected to be about £900m a year from 2017. In

line with UK policy on hypothecation, Scotland does not receive specifically-allocated revenue from the scheme.

## **ODS/F-Gas**

8. Regulation of the gases supports our environmental goals of protecting the Ozone Layer and reducing our greenhouse gas emissions and action at the EU level ensures a level playing field across Europe. Ozone-Depleting Substances are regulated through the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011, replacing previous regulations from 2002 and 2008. These regulations establish the enforcement framework necessary to give full effect to the EU legislation in the UK, including setting out offences. The UK goal is the total phase-out of HCFCs by 2015. EU Regulations were introduced in 2006 and implemented in the UK through the Fluorinated Greenhouse Gases Regulations 2009. A revised F-Gas regulation is currently under discussion in Europe. The regulation of F-Gases has become increasingly important as industry moves away from the use of ODS, F-gases made up 2.5% of total Scottish GHG emissions (c.1.3 Million tonnes CO<sub>2</sub> equivalent). This has increased from 0.32% in the 1995 base year, primarily due to the take up of Hydrofluorocarbons to replace phased-out ozone-depleting substances. F-gases also make up 2.5% of UK greenhouse gas emissions (including international aviation and shipping).

## **Better Environmental Regulation**

9. The primary focus of Scotland's Better Environmental Regulation (BER) programme is to deliver EU requirements proportionately and effectively in Scotland. This approach is consistent with the proposed 7<sup>th</sup> Environment Action Programme focus on better implementation and the current Presidency's priority to promote better environmental governance.

10. Under the BER programme we have also been looking at wider improvements to the implementation of environmental regulation in Scotland, to ensure compliance with EU legislation but in a more proportionate and integrated way. The introduction of an integrated permissioning structure in Scotland will lead to clearer and simpler procedures, helping to save Scottish businesses money every year and contributing to sustainable economic growth and jobs. However, developing this improvement has been made additionally complex due the mismatches between the EU regulations for the separate regimes; for example, the definitions of waste and waste treatment processes in the Waste Framework Directive and Industrial Emissions Directive do not match.



## **Waste & Resource Efficiency**

11. The Scottish Government has simplified and streamlined the energy and resource efficiency advice and support delivery landscape. This has been achieved through the integration of non-domestic energy and material resource efficiency services previously provided by Zero Waste Scotland, Carbon Trust and Energy Saving Trust. The new Resource Efficient Scotland programme, delivered by Zero Waste Scotland, provides a one-stop-shop giving support to businesses, third sector and public sector organisations to reduce overheads through improved energy, material resource and water efficiency, and in doing so it will help cut carbon across public and private sector organisations. This holistic approach to low carbon transition ultimately aims to help more businesses to reduce their emissions, save money and increase their competitiveness. The programme is one of the most comprehensive programmes of its kind in Europe and shows the important contribution that Scotland is taking to delivering the EU resource efficiency agenda, without the need for new EU legislation or targets.

## **Senior European Experts Group**

### Background

The Senior European Experts group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, a former Secretary-General of the European Commission and other former senior officials of the institutions of the EU. A list of members of the group appears in the Annex.

SEE has no party political affiliation. As an independent group, it makes briefing papers on contemporary European and EU topics available to a number of organisations interested in European issues, drawing on the extensive knowledge and experience of its members.

Several members of the group have particular expertise on environment and climate change policy issues, in Government, in UKREP, in the Commission, and in other parts of the Diplomatic Service.

### General Points

Successive British Governments have seen themselves as leaders internationally in driving up environmental standards, and the present Coalition has prided itself on being the “greenest Government ever”. The Government’s policy towards the environment and climate change is summarised in the Coalition Agreement of 2010:

The Government believes that:

we need to protect the environment for future generations, make our economy more environmentally sustainable and improve our quality of life and well-being;

climate change is one of the gravest threats we face, and ... urgent action at home and abroad is required.

Environment policy covers a broad range of issues, including mitigating and adapting to climate change, air and water quality, waste and resource efficiency, bio-diversity and landscape, and managing the release of potentially dangerous substances. Each requires its own policy response, and some are more susceptible to EU-wide and international action than others. There is general acceptance that good environmental policy embraces the integration of environmental considerations into key economic policy and decision making. Indeed, some areas of environmental policy – e.g. waste and resource efficiency policy, “low carbon” growth – serve economic policy goals as much as environmental objectives.

Competence for environment policy (which includes climate change) is shared between the EU and the Member States<sup>492</sup>. The first Environmental Action Plan was adopted in 1973 and there have been specific Treaty provisions on the environment since the Single European Act of 1986. The development of the EU’s environment policy has been driven principally by a realisation that many of the environmental challenges facing its Member States can only be effectively handled by collective action and not by individual countries acting on their own.

EU environment policy is perhaps the area above all others where the principle of subsidiarity<sup>493</sup> can be usefully deployed to assess the balance of competence. This requires that the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action be better achieved at Union level.

On this basis we consider that a strong case can be made, from a UK perspective, for the EU to exercise its competence in the following circumstances:

- where environmental impacts (e.g. pollution) cross boundaries between Member States
- where action below EU level would adversely impact upon the operation of the single market
- where a common EU approach can amplify the UK’s voice in international negotiations
- where the UK wishes to promote high standards (e.g. of bio-diversity) across Europe.

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<sup>492</sup> The Treaties specify that EU policy should “contribute” to the pursuit of environmental objectives. They also permit Member States to maintain or introduce more stringent protective measures, provided these are compatible with the Treaties.

<sup>493</sup> Article 5.3 TEU

In other cases, the arguments for exercising competence at national or regional level may be stronger. However, where the Union acts the principle of proportionality<sup>494</sup> – i.e. the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties – must apply. This indicates that issues such as flexibility to deal with local circumstances and minimising unnecessary burdens on businesses, especially SMEs, needs to be integrated into EU environment policy.

#### Response to Questions

1. What evidence is there that EU competence in the area of environment and/or climate change has:
  - i. benefited the UK / your sector?
  - ii. disadvantaged the UK / your sector?

The main benefits to the UK from EU competence can be categorised as environmental, economic and strategic. In terms of the environment, EU action has helped to establish higher standards of pollution control without fear of this leading to competitive disadvantage vis-à-vis other Member States. It has given the UK cleaner air and water and safeguards from pollution from other Member States (e.g. from polluted water flowing into the North Sea, or from industrial air pollution). The UK's bio-diversity is better protected within an international framework. The UK has also successfully exported its environmental ambitions to the rest of the EU in certain areas – for example by ensuring that cross compliance (applying environmental conditionality to farm subsidies) and agri-environment policy are integrated within the Common Agricultural Policy (CAP). The shortly to be reformed Common Fisheries Policy will contain powers, at UK instigation, to adopt measures to ensure compatibility with key environmental legislation.

In terms of economic benefits, the UK has successfully promoted EU-wide measures to mitigate climate change which, however imperfectly, have both ensured that its own domestic policies are not undermined by competitive pressures from other Member States and created a Europe-wide framework (the Emissions Trading Scheme) to maximise the economic efficiency of climate action across the continent. The UK has been able to take advantage of EU policies, funding and standards to develop its own low carbon technologies including offshore wind, electric vehicles, wave-powered electricity generation and carbon capture and storage.

Strategically, the EU's legislative action and international leadership on climate change – in large measure promoted by the UK – has been essential in encouraging the wider international community to take this crucial issue seriously. Achieving positive steps in this area is proving a challenging task even for the EU; but without

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<sup>494</sup> Article 5.4 TEU

the EU's economic weight to reflect and amplify its efforts, the UK would have had minimal impact either on policy formulation or its implementation once agreed.

As regards disadvantages, whilst evidence is best gathered at the sector-specific level, it appears to us that some of the EU legislation adopted in the 1980s and 1990s (notably but by no means exclusively the Nitrates Directive<sup>495</sup> or the Urban Waste Water Directive<sup>496</sup>) has been overly prescriptive and likely therefore to impose disproportionate economic burdens. Early reviews of such legislation – with a view to aligning it with smart<sup>497</sup> regulation and subsidiarity principles and more recent best practice – would be a highly useful step for the EU institutions to take.

2. 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?

Applying the criteria outlined in the General Points above, the great bulk of environmental and climate change policy is rightly decided at EU level.

Transboundary impacts, effect on the internal market and the need for international action are all elements that apply in most areas of environmental policy. However, there are two circumstances where it could be appropriate for decision making to be made at national or regional level rather than by the EU:

where the environmental/health impacts are essentially local and competition is not significantly distorted. The Bathing Water<sup>498</sup> and Drinking Water<sup>499</sup> Directives may fall into this category. However, given that the EU standards are minimum standards, the national interest would only benefit if it was clear on scientific grounds that these standards are too high and could with advantage be reduced;

where EU legislation is too prescriptive. More recent legislation, such as the Water Framework Directive<sup>500</sup> and the “Effort-sharing” Decision<sup>501</sup> from the 2009 Climate change package, focuses on outcomes and leaves greater discretion to the Member States how to achieve these. This enables Member States and regions to prioritise action and processes best suited to

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<sup>495</sup> 91/676/EEC

<sup>496</sup> 91/271/EEC

<sup>497</sup> “Smart Regulation” is the Commission’s term for what is more widely known in the UK as “Better Regulation”

<sup>498</sup> 2006/7/EC

<sup>499</sup> 98/83/EC

<sup>500</sup> 2000/60/EC

<sup>501</sup> 406/2009/EC. This Decision determines the reductions in greenhouse gas emissions to be delivered by each

Member State from the sectors of the economy not covered by the Emissions Trading Scheme.

themselves to deliver those outcomes. Some earlier legislation – for example the Urban Waste Water Directive – is unduly prescriptive even at the very local level (communities of 2000 people), leaving insufficient discretion to the Member States and regions to determine priorities.

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

The internal market will not function effectively if rules on product standards, including environmental standards, are made at national level. Therefore, where regulation of products is necessary for environmental reasons – whether to safeguard the environment and public health, such as GMOs and chemicals, or to support environmental outcomes, such as fuel quality and vehicle CO<sub>2</sub> emissions – this must be done at EU level if UK exporters are not to be put at a disadvantage.

Equally, EU environmental standards are necessary where member state discretion on standards could lead to significant distortions of competition within the internal market. Thus in relation to production processes where respecting environmental standards is a significant cost – e.g. to mitigate polluting air or water emissions – the absence of common standards could lead to distortions within the market and pressures for a “race to the bottom” in terms of standard setting. There are parallels with the position on animal welfare legislation, which we covered in our evidence on the Animal Health and Welfare and Food Safety chapter, where UK industry claims it has suffered competitive disadvantage from other countries not conforming to the EU standards.

4. 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?

The question of the right balance is as much a matter of judgement as of evidence which in turn depends on one’s perspective – e.g. an environment NGO may see matters differently from an industry representative. From our (overall) perspective, we would make the following observations:

in many respects, economic operators’ main requirement is that legislation is clear, applied fairly by all and capable of practical application: certainty is often more important than the finer details. An example of where this worked well is the CO<sub>2</sub> Emissions from Cars Regulation<sup>502</sup>: the car industry was highly exercised during the negotiations about the timescale for implementation but, once the Directive was adopted, all parts of the industry adapted quickly and indeed met its goals well in advance of the deadlines.

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<sup>502</sup> 443/2009

Significant opportunities were likewise created by the modernisation of waste management following adoption of the Waste Framework Directive; unfortunately, some EU environmental legislation is anything but clear and Member States' differential implementation has made matters worse. The Waste Electrical and Electronic Equipment (WEEE) Directive<sup>503</sup> is a case in point, though the recent recast of the Directive<sup>504</sup> should be an improvement. This touches on the wider question of how to make good, clear legislation in the sometimes politically charged context of co-decision between the Council and the European Parliament;

in many areas, new environmental policies will disadvantage some industries, whilst benefiting others. Policies designed to raise the price of carbon – explicitly favouring low carbon over fossil-based businesses – are a case in point. By the same token however, attempts to assuage the concerns of some economic operators can be highly damaging to others: the excess of free allowances given to “energy intensive” industries in the ETS Directive<sup>505</sup> has damaged the carbon market and inhibited the development of emerging low carbon industries;

sometimes environmental standards have been set at a level that was disproportionately damaging to certain categories of economic operator – for example the Nitrates Directive which imposed major costs on (often small) dairy and pig farms, not least in Northern Ireland;

but others – e.g. the Integrated Pollution Prevention and Control Directive<sup>506</sup> – have been better designed to ensure that the size of business and the environmental risk are taken into account;

the cost to businesses can be kept to a minimum by well-designed and targeted enforcement. We believe the Environment Agency has a generally good record here. More specifically, it will be important that Defra's 2012 review into the implementation of the Habitats and Birds Directives<sup>507</sup>, which had been subject to criticism concerning undue burdens and delays to planning approvals, is effectively followed up;

it is essential that the Commission keeps under close review those measures that are of particular sensitivity to industry, especially SMEs. In this context the Commission's 2012 review of the REACH<sup>508</sup> Regulation found considerable scope to improve processes and reduce the burdens on SMEs, without calling into question the main provisions of the Regulation, which was itself a radical and generally accepted revision of chemicals regulation within

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<sup>503</sup> 2002/96/EC

<sup>504</sup> 2012/19/EU

<sup>505</sup> 2003/87/EC as amended

<sup>506</sup> 2008/1/EC

<sup>507</sup> 92.43/EEC and 2009/147/EC

<sup>508</sup> EC 1907/2006. The Regulation covers the Registration, Evaluation, Authorisation and Restriction of Chemical substances.

the single market. It will be important to ensure the Commission translates these findings into concrete improvements.

Our conclusion is that there is certainly scope for the EU to improve but, overall, we are not aware of compelling evidence that EU environmental legislation is disproportionately burdensome.

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

- i. focused on outcomes (results)?
- ii. based on an assessment of risk and scientific evidence?

The EU has a variable track record. Within the 2009 climate change package for example, two of the measures – ETS and Effort Sharing – focus very clearly on the outcome to be delivered i.e. reductions in greenhouse gas emissions, and result from detailed and transparent analysis by the Commission. By contrast, the provisions in the Renewable Energy<sup>509</sup> and Fuel Quality<sup>510</sup> Directives requiring the use of biofuels in transport appear to be based on incomplete evidence and their effectiveness in reducing GHG emissions is widely questioned, not least because they take insufficient account of their indirect impact in encouraging de-forestation elsewhere to replace land taken out of food production in Europe.

An area of EU policy where the science is systematically ignored is GMO authorisation. The legislation itself<sup>511</sup> – which requires a rigorous environmental and health assessment by the European Food Safety Authority before the authorisation to plant a GMO can be granted – is not defective. However the systematic refusal by a large number of Member States to respect the scientific evidence on a case by case basis is undermining the operation of the legislation. The consequences are that EU farmers are unable to take advantage of genetically modified plants, with negative economic and (sometimes) environmental results, as well as adverse impacts on trade relations and the EU's knowledge base and reputation in the field of bio-technology. It is in the UK's national interest to work with the Commission and sympathetic Member States (and third countries) to secure a more objective and science based policy in this area.

6. 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>509</sup> 2009/28/EC

<sup>510</sup> 2009/30/EC

<sup>511</sup> Directive 2001/18/EC

It is worth noting that - in part reflecting UK encouragement – the current Commission has chosen to legislate far less on environmental matters than its predecessors, focusing more on better implementation of existing legislation and the integration of environmental goals into other EU policies such as agriculture, fisheries, transport, research and cohesion. It has also fostered more thorough consultation of Member States and other stakeholders before firming up proposals. This is very much to be welcomed. In the modern world, effective alternatives to prescriptive environmental legislation – including economic incentives, environmental pricing, developing new eco-standards, promoting “eco-innovation”, spread of best practice techniques etc. – are widely understood and capable of deployment within the EU. As a general principle the Commission should be encouraged to look to these types of instrument as alternatives to new legislation wherever practicable.

In addition, it goes without saying that a rigorous application of smart regulation principles as well as subsidiarity and proportionality in developing new proposals would be likely to lead to better outcomes.

7. How far do you think the UK might benefit from the EU taking:

- i. More action on the environment/climate change?
- ii. Less action on the environment/climate change?

The EU has proved to be a valuable multiplier of UK policy on climate change, both internally and internationally. The UK would not on its own have achieved the leverage the EU has exercised in climate change talks. It has a strong interest in the EU continuing to play a forceful international role in promoting global agreement to combat climate change which, despite having been knocked off the top of the international agenda, is a problem that is not going to go away and the scientific basis for which has not been seriously undermined. In this context there is a case for the Member States to enhance this role by giving the Commission greater leeway to exercise leadership internationally, within guidelines established by the Member States, much as it does in trade negotiations.

In terms of doing less, as indicated above, we consider the Commission should review older environmental legislation against the tests of subsidiarity, proportionality and smart regulation. That should lead to the EU stepping back from unduly intrusive activities, and means going beyond the scope of the Commission’s current “Fitness Check” programme. The Commission could send a powerful signal of its recognition of these principles by withdrawing the proposed Soil Framework Directive<sup>512</sup> which has been blocked in the Council by the UK and some other Member States since 2007

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

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<sup>512</sup> COM(2006) 232



No comment

9. a. 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?

b. How important is it for the UK to be part of “Team EU” at the UNFCCC?

The EU’s international negotiating role on environmental and climate change matters is complex because the issues concerned are frequently matters of shared competence and the Treaties are ambiguous about the respective roles of the Commission and the Member States in these circumstances. The result has been an inter-institutional battle which has weakened the EU’s negotiating position vis-à-vis third countries and exposed its divisions internationally.

This is not in the UK’s interest. Wherever the UK supports the EU negotiating stance (almost invariably in this field) it is in its interest for the Union to be as effective as possible in international negotiations. This, in our view, would require the UK to take a pragmatic approach in allowing the Commission to represent the EU and its Member States on the basis of Council mandates, whilst safeguarding the Government’s legal view on the Treaties and avoiding any transfer of internal competence. Such pragmatism is especially appropriate where the degree of member state competence is relatively minor.

The “Team Europe” arrangement at the United Nations Framework Convention on Climate Change (UNFCCC) is an example of a pragmatic approach. This allows Member States’ resource and expertise to contribute to the overall EU effort. It is clear that within this arrangement, it has been to the UK’s advantage to amplify its influence by playing a leadership role and contributing its (substantial) expertise

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

b. 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?

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

The world will continue to face new environmental challenges, all the more so as the global population and prosperity rise. It is clear for example that addressing climate change mitigation and adaptation, finding better ways to conserve and use increasingly scarce resources including land, minerals and water, and addressing the environmental implications of new technologies (GM, nanotechnology, shale oil and gas for example) will continue to pose major challenges for the foreseeable future.

Equally, these challenges offer opportunities for the UK to take a lead in developing solutions, for example in low carbon technologies, bio-technology and in innovative ways of utilising “waste” materials.

Clear, science based EU legal frameworks and standards would enable UK industry and researchers to innovate and collaborate on these problems with partners across Europe to build technological leadership which could be exercised worldwide. But we do emphasise the term “science based” in this context. The EU has not set a good example on GMO cultivation, as described above.

In terms of regulation, we consider the subsidiarity-based framework identified in our General Points above should apply to any future challenges. So, for example, future legislation on climate change mitigation - which is cross-border, affects the single market and requires a common voice in global negotiations – should clearly be addressed at EU level. Other challenges that are more local in their impacts - such as adapting to cope with changing weather patterns – are more appropriately addressed at the national and regional levels.

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

The section on “General Points” at the start of this paper sets out our general views. We note that the Dutch Government has recently issued a list of points for action following a consultation on “Testing European legislation for subsidiarity and proportionality” which includes a number of comments in relation to EU environment and climate change measures. We believe many of the Dutch arguments and examples are well judged and consistent with the line taken in this paper. We would encourage the Government to consider them carefully in the context of its own Balance of Competences review.

## **Shaw, Thomas Leslie**

**Q1** My understanding is that all climate changes, recent and historic, result from atmospheric changes, whether natural (e.g., resulting from earthquakes) or 'man-made' (affecting the natural climate succession). My 'sector' (ref question) is 'water', within my profession of civil engineering. Since water is an essential commodity worldwide, any change to the processes for its 'routine' delivery worldwide will affect those dependent upon it. Quite apart from the agricultural sector whose dependence on the statistical delivery of rainfall is fundamental to the critical productivity of that sector, 'water' affects most if not all of society, whether in the short-term (agriculture) or beyond (water supply, power generation etc.) On the basis that climate changes will affect the natural water cycle, we need to be aware of the effects on opportunity which any change in climate is likely to have, even if prediction

may have large associated 'error bands'

The present situation is akin to walking along a plank - one knows of the danger of deviating from the 'straight and narrow'. but we do not know how long and stable it is, only that an end will inevitably be reached. This is no basis for planning, whether of the supply of food or energy.. The growing imbalance of demand for all resources between East and West can only add to concern about the competence which 'we' can reasonably expect to have in the forward planning of the supply of indigenous national resources (e.g., E, F.& R.A.). If we knew that 'climate change' was not going to shift our goal-posts, perhaps we could afford to relax - but I for one envisage world resources coming ever more under strain, such that now must be the time to consider how we may have to deal with it. In this respect I am impressed with desalination technology - yes, it take energy (which we will assume may also be in short supply, so maybe we have to sacrifice energy in order to have water - some countries (e.g., Dubai) have had to do that for years and have coped - so it can be done technically). Which shifts the question to the supply of energy, and hence how its provision may affect climate change - the focal issue to your enquiry! I suggest that we are less short of energy than water. Solar power is now beginning to shine, wind power clearly has a future, and the largest of all sources, namely gravity, has hardly been 'tapped' beyond hydro-electric power. Even in the UK the 'hydro' resource greatly exceeds the call at present made on it, and the variants of tide and sea wave sources are untouched by more than a few technical enthusiasts. The fact that those resources are large in national consumption terms, also they are 'indigenous' and beyond interference by others makes them a valuable fall-back which we know is technically attainable. Some scope for technology exporting would stem from a focussed push into the tidal energy sector. The success of others (largely non-British) in capturing tidal energy confirms UK engineering expectations that it offers a future, with the added benefit that the energy scale of available project options is relatively large in UK national consumption terms. In terms of energy and hence water security, the continued expansion of our dependence on renewable energy seems likely to be our safest option, offering the prospect of providing more secure fresh water supplies should climate change have an adverse effect on rainfall. The prospect that any trends in rainfall may not be repeated nationally suggests that in terms of national security, our water distribution network may in time have to be called upon to match supplies with demands to a different formula to that for which it was designed. Fortunately, as with electricity, the pipes/wires are capable with only limited attention to allowing flows to be reversed! In terms of 'planning', my main concern is that we have enough 'balls in the air' to deal with the unexpected. remove water and energy from our artillery and we (or any other country) will quickly seize up. I suspect that contingency planning does not extend as far as the 'what if' question which can be asked about the supply of these two fundamental social ingredients - leaving only food to literally add fuel to the fire.

**Q2** Making the perhaps unfair assumption that climate change and its consequences does not occur overnight (which seems to me to be scientifically reasonable), disadvantage to the UK should I suspect be read on an 'EU' scale, and maybe even larger if the prospect of it leading to international conflict cannot be ruled out. I vote for national salvation first and export the now-how second. I see no reason why the UK should suffer from climate change, after all we have had to live unknowingly with climate change for a long time already, and I suspect that the best approach to dealing with it is, as The Duke of Wellington is reputed to have said when asked why he kept a portrait of Napoleon Bonapart by his bedside, that it would help him to recognise him when they met! So it is with climate change - need to know how to deal with it when it becomes a real issue.

**Q3** The UK should be clear as to what action it wishes to see taken by the leaders, however these are nominated by UK Government. I see no reason why the UK should not be fully prepared to be 100% confident in such recommendations as it may make to the EU or to the UK Government in the event that the latter has a voice. Two levels of response will help no one, especially the UK.

**Q4** Same answer applies - for the UK to go into 'climate change' on the basis that a solution for the UK will succeed without at least an equivalent solution for Europe would be a bit like saying that the UK can afford to give up its independent nuclear deterrent even if all other EU Member States double theirs. It seems to me that we are all in this together, hence we either pull together or pull apart - the latter not being an option.

**Q5** Desirable, if only to ensure that all Member States work to common criteria for manufacturing etc. If agreement on environmental standards could not be reached it would be a bad day for the EU - pull together or pull .....

**Q6** Economic interest must be a factor in determining 'EU balance'. I see no reason why economic interests should not influence EU economic and environmental policy; we are all aboard the same ship, and I believe that in the EU there lies a huge breadth of experience, expertise and opinion such that common sense stands a better chance of prevailing than in any other assemblage of countries - with the possible exception of Australasia!

**Q7** I do not feel competent to make a judgement on this question - apologies, my involvement with EU legislation is clearly I need of up-grade.

**Q8** Ditto, though I would be mildly (and pleasantly) surprised if a robust answer to this question could be given. I reach this conclusion because I doubt that a sufficient base of scientific evidence is yet available to permit robust assessment. The risk must be that 'we' reach conclusive assessments on incomplete evidence, which is more likely to mean that we think we have found the answer before reaching the finishing post - easily done, and challenging to avoid that outcome.

**Q9** My understanding is that EU Member States do not reach conclusions on a unified basis - which I only to be expected in view of the huge range of circumstances which have to be 'standardised'. Environmentally, Greece and Norway, for example, are environmental worlds apart, so to expect homogeneity of thinking is not only unreasonable but it ignores the great strength of the EU which is surely 'strength in depth' - if they can be made to fly together then the rest is easy! The EU is therefore a huge democratic chopping board - all problems resolved here, even if it takes time to do so!

**Q10** The present relationship permits both 'sides' a free but where necessary a unified hand. May not be ideal but it works so why change it (a proven engineering motto).

**Q11** Keep the door open, but throw a few firecrackers like 'climate change' onto the table and stand back and await reactions. I shall be surprised if a few well-chosen examples did not help harmony by forcing some Member States to toe a line because it had been laid out - not to suggest that they cannot come up with their own formulae but easier to join a crowd than initiate a new one-Member lobby group.

**Q12** I am insufficiently aware of the present procedure to consider and hence comment on this question.

**Q13** The mounting concern about how environmental events in China and the countries from which it is drawing resources (e.g., Brazil) are likely to affect World climate unless tis risk is assessed and remedial measures taken where necessary. As matters stand at present there seem to be few if any safeguards against the effects of international rape because there is no overseeing entity with teeth in place - like the WMO, WEC or even UNESCO/WTO. This situation seems (2013) to be getting out of hand, and it is hard to see why it will end or where it will leave our planet. My guess is that force will have to be applied to deter the ecological aggressors before the latter become too many to deal with it - after all, if it's good enough for them then why don't we have a go too rather than face relegation from the Premier Division. Human nature is at play here so human nature had better reply before the really serious environmental damage is done and there is no way back. A planet without people but which has energy and water seems like an opportunity missed.

**Q14** VITAL

**Q15** Impossible to know, but since they are likely to be considerable and in the national interest, we must be alive to that challenge. Much of 'ecosystems' seems to be a learning curve - if we jump off at the wrong moment we will not justify re-joining later. My inclination is therefore to stick with it, learn while the wheels turn and be ready to act. To side-step participation now will mean losing contact with a learning process which is likely to be vital to the UK's long-term interests, so go with the tide and be aware of where and when contributions to the debate can be made.

Not being part of the action is not an answer - patience and persistence and a clear head are essential, and vital for the UK.

**Q16** I like the present format as far as I know what it is - in detail. The situation needs an open mind and an open book; fixed ideas are not good news. There is too much to learn, and too many players making moves which we may regret if we permit them to prevail. In summary, I tend to be a believer in the merit of starting from scratch - the outcome is then of someone else's making, but has 'our' condescension.

**Q17** Minimal compared with their potential consequences. Short cuts will not bring thanks in the middle/long terms.

**Q18** How to track developments when so many parties are involved? I am concerned that China seems to have garnered a 'Page 1' environmental place, for reasons which I do not rate as worthy. The 'environmental' debate clearly has a long way to run and it is likely to be bumpy if the EU does not apply the heavy roller regularly. The UK seems to be a guiding spirit to the EU on environmental policy, long may that situation prevail because the UK has much more of a 'world' perception of what has to be done that can be expected to emerge from the EU - i.e., the UK needs to view itself as a regulator - which some EU Members may resent but the UK and Commonwealth may come to welcome.

This is a new world - the UK has successfully explored before, it must do so again.

### **Simmons, Peter**

**Q1** The UK has had to keep up with action on climate change where it would otherwise have lagged, depending on which political persuasion currently holds power. The present government includes a large minority of deniers and has dragged its feet repeatedly over taking action. Appointing a climate change denier as Secretary of State for the Environment was a particularly disgraceful act of Cameron.

**Q2** None

**Q3** The national interest is tied to the global, so no 'little England' government is going to achieve what is needed. It would be preferable if the UK had politicians who are educated, intelligent, committed to progress and animal welfare and concerned about the natural world. Currently the sad lot seem to have one interest; money and the economy.

**Q4** They would likely be more robust and less affected by vested interest which own the present government.

**Q5** Essential

**Q6** Doesn't go far enough to protect the environment, economy still hold the top position in political minds across the world, which is why action on climate is far too late and far too little and why the environmental crisis threatens to overwhelm world trade and human cultures.

**Q7** I have no idea

**Q8** Carbon reduction is the main one and this needs to be strengthened and increased since we are doing nowhere near enough and the urgency is still not understood by most.

**Q9** Sounds like yet more bureaucracy rather than action. It could be used to show that national circumstances are no different to others and cannot be used as an excuse for inaction.

**Q10** We would benefit along with the rest of the world. Since Europe is one of the biggest polluters, it has to take more blame for the situation and do more to mitigate it. Some EU countries are doing this, but the UK always appears to be the complaining one doing less than the rest and unwillingly being forced to comply.

**Q11** We would all be sunk.

**Q12** WE should be promoting solar panels across the country, the government should be funding them so that not only the affluent can install them. Every tonne of carbon saved, by whatever means and on whoever's roof, is a gain for us all. Our energy demands could be easily satisfied if almost all roofs in the UK had PV, including industrial buildings, among the biggest consumers of energy. Industries should also be using wind turbines to supply their own energy on site. This should be encouraged by government and grants given to accelerate it along with planning regs adapted to allow it without objections.

**Q13** No idea what that means. Sounds like green-washing instead of action. Something governments do all too readily.

**Q14** Very important.

**Q15** The most obvious one and one which government refuses to address is the proximity of all nuclear stations, all ageing and due for removal/replacement, to the sea, which is used as a ready source of cooling water just like Fukushima which is currently releasing highly radioactive water into the sea. Nuclear power is constantly used as an excuse for non action on renewables, yet it is not feasible as a short term solution as they take so long to build. They are in any case using a fossil fuel; uranium. Sea levels are rising annually, yet these dangerously radioactive generators are sited close to present sea level. It doesn't take a genius to work out what will happen. Currently sea level is rising at 3.6mm a year.

**Q16** I'm not concerned with balance, all should be 100% making whatever change they can, this is an urgent situation, there isn't much time, yet most seem to be sleepwalking into an unknown future. Perhaps we'll just leave the mess for our grandchildren to cope with seems to be the attitude.

**Q17** The costs would be high. The benefits would be felt by everyone. Not acting will consign us to the list of extinct species.

**Q18** Climate change is proceeding much as has been forecast, yet still people are allowed to insult scientists and claim they are part of a conspiracy. Denying climate change should be made a criminal offence. If it continues, the young generation are justifiably going to be very angry with those who delayed action for their own selfish, vested interests. As society starts to break down, that generation could become avenging, violent and, without a future, nihilistic.

## **Society of Motor Manufacturers and Traders**

### **Introduction**

The Society of Motor Manufacturers and Traders (SMMT) is one of the largest and most influential trade associations in the UK. It supports the interests of the UK automotive industry at home and abroad, promoting a united position to government, stakeholders and the media. The automotive industry is a vital part of the UK economy accounting for £59 billion turnover and £12 billion value added. With more than 700,000 jobs dependent on the industry, it accounts for 10% of total UK exports and invests £1.7 billion each year in automotive R&D. The industry plays an important role in the UK's trade balance, with vehicle manufacturers exporting around 80% of production. Additionally, the UK is home to the world's largest number of specialist vehicle manufacturers and boasts global centres of design, R&D and engineering staffed by some of the industry's most highly skilled employees.

SMMT welcomes the opportunity to respond to government's Balance of Competencies Review on environment and climate change. The UK automotive industry is global, exporting primarily to European markets and selling high value products into key markets across the world. Success for growth depends on active leadership by UK government in key decisions about the EU's political, economic and industrial future.

SMMT has called for government to pursue an industrial strategy that prioritises proactive UK engagement and leadership in the EU across all critical policy areas which pursue growth, innovation and employment, supporting stabilisation of the Eurozone and completion of the internal market. It is also vital that government ensures that UK positions on current trade negotiations and the development of EU free trade agreements reflect the UK's industrial priorities on growth in automotive,



prioritising free and reciprocal market access and the abolition of non-tariff barriers (NTBs) to support UK export ambitions. The recently published, joint government and industry, sector strategy for automotive, recognises the importance of Europe to the sector.

### **Comments on environment and climate change**

SMMT has identified a number of key issues relevant for the UK automotive sector in relation to the role and competency of the EU in environment and climate change policy. While not necessarily within the scope of the balance of competencies review, SMMT believes it is important to note the issues around better regulation and ensuring that the EU through its regulatory procedures is not causing unnecessary administrative burden on businesses.

### **Impact assessments**

An overriding issue that is relevant across the balance of competencies reviews is the need for robust impact assessments. Where EU legislation is affecting environmental issues, a strong evidence base is needed to ensure that policy is made in the most rational and planned manner. An example of the importance of impact assessments is the legislation around long-term targets for reducing CO<sub>2</sub> emissions from cars and vans. Until there is robust evidence in place to inform the feasibility and cost impacts of a given ambition level of such legislation, it would be short-sighted to be instigating negotiations. For instance, increasing the technology and purchase costs of vehicles would affect fleet-renewal and potentially lead to less environmental progress, through an aging fleet, than a lesser ambition that can be achieved at lower cost to the consumer.

Similarly, when drafting legislation on emission reductions choosing the right metric is critical. For instance, regulating heavy duty vehicles (trucks) based on g CO<sub>2</sub>/km could result in the unintended consequence of vehicle operators deciding to use several smaller light commercial vehicles (vans) to deliver a cargo that was previously delivered by a single truck. The single truck is likely to be more efficient when measured in cargo tonnes/g CO<sub>2</sub> km.

### **Emissions**

A large focus for the automotive sector in relation to EU action on the environment relates to emission standards and targets on CO<sub>2</sub>. Competence of the EU in this area is critical to ensure a level playing field across Europe, as well as providing the same standards for a single market where automotive companies can design and manufacture to one technical requirement with the benefits arising from the economies of scale.

### **Role of global technical regulations**

The UN ECE process in Geneva plays a crucial role in setting global technical regulations. While European standard setting and legislation ensures a level-playing field and establishes a common set of rules for automotive companies to manufacture products for the single market, global standards potentially go one step further in opening up the global market and reducing costs to sell products to a larger number of markets. Economies of scale are greater where agreement can be reached on a global level. The UK should be a proactive voice in discussions at both EU and UN levels. SMMT understands that tightened resources within the Department for Transport and other government departments has had an impact on the UK's representation and voice at UN and European-level discussion on important issues relevant to technical standards. SMMT believes that the balance of competency is set at the right level in this area and UK government should support these EU and UN processes.

### **Energy efficiency regimes**

The automotive industry faces significant regulatory complexity in terms of energy efficiency regimes in the UK. The role for the EU should be to ensure that there is a robust European-wide mechanism to avoid the need for differing and complex regimes to be put in place by member states.

Energy regulation along with energy efficiency regimes and schemes is a key issue to SMMT and our members. The sector includes manufacturing plants of varying sizes and energy intensity. SMMT has on a number of occasions highlighted to government issues on the manufacturing side regarding the regulatory and administrative costs on automotive manufacturers through the myriad of energy efficiency regimes.

SMMT believes that the present system of energy efficiency regimes results in complex, overlapping rules that produce higher sub-metering costs and demand multiple reporting obligations in different formats, to different timelines, and under different rules. Unfortunately we only see additional workload ahead in this area, with proposals to introduce mandatory GHG reporting, the Energy Savings Opportunity Scheme and changes to the Carbon Reduction Commitment to remove the exemption for having a Climate Change Agreement (CCA). This, inevitably, adds an additional and unnecessary burden on industry. SMMT would support a simpler reporting scheme, ideally with the CCAs (including EU ETS) providing single coverage for the automotive/manufacturing industry.

### **Conclusion**

SMMT believes that the balance of competencies between the EU and UK in the area of environment and climate change is broadly right. It is vital that the EU acts in the interests of the single market in establishing common technical and environmental legislation to enable economies of scale and a level playing field across Europe. This also enhances the EU's negotiation power when looking at

trade agreements with third parties with the establishment of shared common standards. UK government should continue to have a strong voice and influence in global-level discussions to ensure that the UK is represented at the UN and other key fora crucial to the development of global technical standards to increase competitiveness and reduce international market barriers. Energy efficiency is a key issue for the UK automotive sector in terms of competitiveness and regulatory burden. This is an area where stronger EU collaboration and less complexity in domestic energy efficiency regimes would be beneficial to the UK.

### **Sustainable Development Unit, NHS England and Public Health England**

**Q1** Important that the health and care sector in all countries share good practice and successful techniques of operationalising SD and action on Climate Change. Global issues need global solutions. WHO Europe has been good in coordinating activity here.

**Q2** none known.

**Q3** important that the most effective governance mechanisms across Europe are shared and implemented more widely. This is because EU legislation suggests it is a shared challenge with shared solutions and stops activity moving to the areas of the EU with the weakest national / local governance frameworks.

**Q4** none

**Q5** EU needs to ensure that legislation is consistent and sends clear messages about direction of travel. Procurement is a good example of how some laws are interpreted as working against the interest of more sustainable practice.

**Q6** We should not see it as an issue of balance and trade-offs. We should be exploiting the co-benefits for business of acting on climate change and SD: e.g. workforce and skills for insulation and renewable energy. This reviewing the whole concept of discounting (meaningless in climate change) in economic modelling.

**Q7** don't know enough about EU legislation: but in the UK: CCA 2009, Civil Contingencies Act, Public Services (Social Values) Act 2012. Are all very important

**Q8** CCRA / NAP / etc all very important but only when clearly linked to precautionary practice. As Nobel Laureate Sherwood Rowland says, "What's the use of having developed a science well enough to make predictions, if all we're willing to do is stand around and wait for them to come true."

**Q9** Two issues: 1. how do we simultaneously increase the efficiency of the systems we have at the same time as implementing radical and transformational change

needed. Legislation is needed to improve the likelihood of transformational change - in most cases the evidence suggests that efficiency alone will not get us to where we need to be.

**Q10** A lot:

- finance
- compliance
- resilience
- reputation (UK should maintain its lead)
- health and well-being

**Q11** This only makes sense if you act on other issues which have co-benefits for the environment: e.g. better transport which is good for immediate health (more physical activity, less air pollution) and HAPPENS to be ALSO good for GHG emissions reduction. There is a case for the environment to be ONE of the reasons to act especially when so many co-benefits both immediate and in the future

**Q12** not sure

**Q13** not sure

**Q14** very important. It sends the wrong message if we are not there negotiating in common interest

**Q15** That by the time we realise action is even more important, it will be too late to reverse changes. That we focus too much on efficiency and not enough on transformation.

That we don't exploit where adaptation and mitigation overlaps and we see them as a trade off or even in separate government departments. That we see action as a trade-off against some other criteria and don't exploit the multiple benefits of action. There is a danger that we see the changes necessary solely in terms of climate change and not in terms of other social good. e.g. what happens if climate change is a hoax and we end up creating a better world for nothing?

**Q16** Please don't get into the idea that action on climate change is a trade off with promoting business. More business in a socially, environmentally and financially unsustainable world does not sound like good business. It's not an environmental issue, it's a health, social justice, and human rights issue. Read Prosperity without Growth for more details. or J K Galbraith: the Affluent Society.

**Q17** see above

**Q18** very happy to provide evidence from the UK Health and Care Sector to give examples of what is meant above. NHS England Public Health England

### **Taxpayers' Alliance**

I am writing to submit evidence from the TaxPayers' Alliance to the Department's consultation on the potential repatriation of powers from the European Union.

Research is attached [[www.taxpayersalliance.com/ets.pdf](http://www.taxpayersalliance.com/ets.pdf)] which looks at the cost and problems generated by the EU's Emissions Trading Scheme with the potential savings if certain powers were repatriated to the United Kingdom. We believe that taxpayers' money can be spent more efficiently at a national, local or – ideally – individual level. Greater accountability and flexibility means that money is less likely to be wasted or misused.

If you have any questions about this research, I would be happy to answer your questions myself or put you in touch with the author

### **Thames Water Utilities Ltd**

#### **Introduction**

Thames Water is UK's largest water and wastewater services provider. We supply 9 million customers with an average of 2,600m litres of drinking water per day in London and the Thames Valley. We operate and maintain 100 water treatment works, 30 raw water reservoirs, 288 pumping stations and 235 underground service reservoirs. We also provide wastewater services to 14 million customers through 350 sewage works treating an average of more than 4bn litres of wastewater per day.

Because our activities are closely intertwined with the environment they are significantly influenced by EU legislation, regulation and policy e.g. Water Framework Directive, Drinking Water Directive, Priority Substances Directive, Waste Directive, Urban Wastewater Treatment Directive, Industrial Emissions Directive, therefore it is fundamentally important to us how EU competences are discharged.

In addition, our activities and customer service are almost certainly to be affected by the impacts of climate change in the future.

Through the EU there have been a number of benefits where the UK has been able to punch above its weight at an international level such as with negotiations on climate change and greenhouse gas emissions. This has to be applauded and supported. However, there is now an opportunity/need for the EU to move away from prescriptive outputs i.e. one size fits all to an approach that promotes verifiable time aligned outcomes which allow member states to deliver the most appropriate activities to deliver the required outcomes. This of course also needs to consider the cost and benefit of issues vs. solutions.

The document prepared for the review of the balance of competencies for environment and climate change has almost exclusively adopted a position where climate change is considered to be a mitigation issue with adaptation being ignored. This was also reflected in the sessions held for stakeholders to share thoughts and comments. We believe that this fails to reflect the implications of EU Legislation that does not take climate change impacts into account. For example the UK is planning to implement the Water Framework Directive on the basis of a static climate i.e. climate change is effectively ignored. At best this is likely to lead to increased costs at a later date to adapt to climate change (as highlighted in the Stern Report, 2006) or worse, wasted investment in delivering solutions that are inappropriate to deliver effective measures in a climate change impacted environment.

We have outlined below examples of where interlinkages between different policy and legislative areas are inconsistent which leads to potential and actual problems associated with delivery by Member States.

#### **Detailed comments:**

#### **Climate Change**

The document prepared for the review of the balance of competencies for environment and climate change has almost exclusively adopted a position where climate change is considered to be mitigation with adaptation being ignored. This was also reflected in the sessions held for stakeholders to share thoughts and comments. Currently the UK (and the wider EU) is effectively planning to implement the Water Framework Directive on the basis of a static climate i.e. climate change is effectively ignored. At best this is likely to lead to increased costs at a later date to adapt to climate change (as highlighted in the Stern Report, 2006) or worse wasted investment in delivering solutions that are inappropriate to deliver effective measures in a climate change impacted environment.

Although Articles 191-193 of the Treaty on Functioning of the European Union do express a reference to combating climate change effectively in terms of EU regulation this only tackles greenhouse gas mitigation. Adaptation has not really been tackled and we can see that its exclusion is likely to lead to delivery of solutions across other Directives e.g. Water Framework Directive (see above).

There is an urgent need for a review of all existing EU legislation to determine if it needs to be revised to accommodate climate change, adaptation as well as mitigation. Some limited progress which reflects this need has been made in this area in the non-legislative EU Adaptation Strategy (2013) which highlights the need to mainstream adaptation into EU policies and institutions but significantly not necessarily legislation.

However, our understanding of the timing, severity and geographical variations of impacts is changing all the time therefore not only does existing and proposed EU legislation need to be reviewed to accommodate climate change adaptation there is a need for a feedback process to accommodate improving knowledge and understanding if maladaptation and the associated costs are to be avoided. It is unclear if the EU has the capacity to undertake this necessary activity.

### **Protection Designation of Raw Water Reservoirs and their intended operation**

Raw water storage reservoirs are intended to provide large volumes of water that can subsequently be treated to provide potable water for human consumption (a basic human right). However, these important pieces of infrastructure have proved to be attractive habitat for a range of biodiversity and as a consequence have been given protected status under the Habitats Directive 92/43/EEC (2009/147/EC). As a consequence this has prevented the reservoirs from being operated as intended where water levels can fluctuate as demand on the water resource they contain varies throughout the year. There is a clear incompatibility between the needs of reservoir operators to provide drinking water and objectives of the Habitat Directive that were not appropriately thought through during the legislative process to balance the needs to protect biodiversity but also allow sustainable provision of potable water.

With pressures due to climate change and population growth this mismatch will become increasingly more acute and problematic for society as a whole, which will be compounded when combined with the lack of facility within the directive to accommodate the impact of climate change on habitats and biodiversity. Whilst climate change as an issue was less high profile when the Directive was conceived the EC has failed to subsequently grasp the nettle to understand and resolve these fundamental conflicts.

Although the EC has a duty to promote 'sustainable and non-inflationary growth respecting the environment' and also to combat climate change (under the treaty of Nice Article 191(1)) action does not appear to very effective in this area.

### **Water Framework Directive**

The Water Framework Directive 2000/60/EC (made under what is now Article 192 TFEU) is intended to provide an integrating framework to coordinate action under the existing, fragmented EU legislation applicable to water, which was designed to address specific issues in particular categories of water, as well as addressing issues and categories of water that were not already covered by existing EU law. The stated aims of the Directive include protecting and enhancing the status of water bodies, in particular by reducing or phasing out discharges of priority substances,



promoting sustainable water use, and mitigating the effects of floods and droughts. However, the Directive does not mention climate change at all and competent authorities assume a static climate.

Although climate change adaptation has started to come into EU thinking it has essentially been put on hold until the next round of actions. This effectively means that actions that have or will be completed by the end of this period will have a high chance of being maladapted and so will at best require enhancement going forward (at additional cost) or be completely inappropriate resulting in wasted investment and time. There is also a link to the issues raised above with respect to designated protection of aquatic habitats that will be impacted by climate change e.g. Wild Birds Directive 2009/147/EC and Habitats Directive 92/43/EEC e.g. chalk streams.

It is clear that from **3rd Implementation report of the Water Framework Directive: River Basin Management Plans 2009-2015** Report [COM\(2012\)670](#) that the misalignment between WFD and climate change is known about but not adequately tackled.

Section 5.4. Integration of quantitative and qualitative aspects in water management  
*... RBMPs have identified measures addressing water scarcity and drought problems which are expected to be aggravated by the impacts of climate change. However, shortcomings have been identified in the RBMPs in relation to the quality and availability of datasets and lack of coherent measures...*

*... Information on the impacts of climate change is included in a number of RBMPs, but in most cases it does not influence the selection of measures and it is planned to be addressed more thoroughly in the next RBMP planning cycle...*

Recommendations to Member States:

*... Integrate climate change consideration into the RBMPs;*

The European Commission in its 2012 paper '**Communication from the Commission to the European Parliament, The Council of the European Economic and Social Committee and The Committee of the Regions - A Blueprint to Safeguard Europe's Water Resources - COM/2012/0673 final**'

identified that it will also enforce relevant requirements under the WFD and – through its feedback on the first cycle of RBMPs — encourage (not require) Member States to better integrate drought risk management and climate change aspects in their

future RBMPs and when developing cross sectoral and multi hazard risk management plans.

However, there is an opportunity with the forthcoming revision of the Directive, in 2017, to review and accommodate these issues and to find the right balance, between environmental investment that adequately considers climate change impacts and other legislation/regulation. Whilst Thames Water fundamentally support the need to protect the environment and to become more sustainable in the way it delivers its customer services, we have also to be mindful of the potential burdens of delivering EU legislation, the impacts on the affordability of customer bills and what our customers tell us they want.

### Priority Substances Directive

The proposal for an amendment to the Environmental Quality Standards Directive (EQSD) (COM(2011)876) part of Water Framework Directive (WFD) and included a revised (second) list of priority substances, and provisions to improve the functioning of the legislation. The main features of the proposal included 15 additional priority substances, 6 of them designated as priority hazardous substances.

While we are strongly in favour of the Commission's broad intentions for the protection of the environment, the original proposed revision had a risk of requiring a massive programme of investment at sewage works (**estimated at €27bn for the UK to deal with just two of the identified pharmaceutical substances**), delivering no tangible and quantifiable benefit for customers or the environment. Of those priority substances for which treatment technology exists, many would require far more intensive treatment processes than we currently use today. In order to fully meet the revised requirements of the directive, a process called reverse osmosis would be needed in waste water treatment. This highly energy-intensive treatment process is used in desalination plants, and is one that we use only when no alternatives exist, given its high energy consumption, greenhouse gas emissions and operating costs. Investment on this scale would also inevitably limit our ability to fund improvements in areas where they are genuinely needed.

The European Commission's own impact assessment on the implications of the revised Priority Substances list stated: *'The increased treatment would result in a significant increase in energy use due to the increased treatment (equivalent to 1 million tonnes of CO<sub>2</sub> in England and Wales per year, an increase of 20% in relation to the current energy consumption in UWWTPs)'*. This represents 0.2% of the UK's entire carbon output for 2011; equivalent to the carbon footprint of over 166,000 households.

The original proposals stated that the costs and benefits of the amended legislation are difficult to quantify and focus primarily on the water environment. In addition, the level of uncertainty surrounding their evidence base was a serious cause for concern. In fact, according to the Commission's own impact assessment ([www.ec.europa.eu/environment/water/water-dangersub/pdf/sec\\_2011\\_1547.pdf](http://www.ec.europa.eu/environment/water/water-dangersub/pdf/sec_2011_1547.pdf), p.31, 5.2.1) "...little quantitative information was received for many of the substances, even on the potential economic costs. In view of this and the uncertainty regarding the measures that might be applied, a largely qualitative approach was taken in the analysis ...". However, the evidence base for the effects of greenhouse gasses on climate change is much better understood.

The proposals put forward relied on evidence that incorporated insufficient certainty to justify them while, at the same time, significantly underplaying the significant and well evidenced harm they will cause from increased greenhouse gas emissions. This led to proposals that would do significant damage to the environment not only in the UK but across the EU, whilst having very large costs and poorly quantified benefits.

The levels of uncertainty (both within the scientific evidence provided and socioeconomic analysis within the impact assessment) were too high to support credible conclusions about fundamental changes to the UK's water treatment regimen. Following active engagement and provision of evidence [see attached pdf document] the proposed revisions were modified to reflect the concerns that we had raised on the quality/ lack of data to support the proposals and the sensitivity of the proposed standards to the eventual compliance cost.

Despite the issues highlighted by the ECs own documentation, the checks and balances that would be expected to apply to the revision of a directive were either missing or ineffective requiring a backend challenge to ensure inappropriate directive was not adopted. Although the EC has a duty to promote 'sustainable and non-inflationary growth respecting the environment' and also to combat climate change (under the treaty of Nice Article 191(1)) it does not appear in this example that it would be able to achieve these requirements.

### **Drinking Water Directive (98/83/EC)**

This Directive revised and replaced an earlier Directive 80/778/EEC that had been in discussion within Europe since the early 1970's. Although one of the objectives of the 1998 Directive was to update the Directive in the light of new scientific and technical information there was no review of the standards set for the concentrations of individual and total pesticides in drinking water. The pesticide standard in the drinking water directive is based on political grounds and reflects concerns that were prevalent in the 1970's about the levels of highly toxic organochlorine and organophosphate insecticides in the environment. At the time there was very little information about the occurrence or toxicity of other pesticides such as herbicides in water. Forty years on there is a wealth of information which shows that modern pesticides pose little risk to health and levels of pesticides in water sources are routinely 10-1000 times lower than would be of a concern to health, even if consumed over a lifetime. The World Health Organisation and drinking water standard setting bodies around the world, including in the United States, Australia and Canada, have all set standards for individual pesticides based on their risk to health. However, despite the improvements in scientific and technical knowledge on pesticides in water the Drinking Water Directive has not moved on from the 1970's.

The result of this lack of regulatory development is that water companies and their customers have been faced with the significant capital and operating costs of installing and operating additional treatment processes such as activated carbon and ozone. Whilst these solutions have been regarded as very effective at achieving

compliance they are energy and carbon intensive. However, in recent years monitoring by water companies has shown that certain pesticides such as metaldehyde and clopyralid are poorly removed by these processes. In order to achieve compliance for these standards water companies may need to install even more expensive and energy intensive treatment processes. An alternative approach is to encourage farmers to change the way they use these pesticides. In practice such catchment control approaches are unlikely to achieve the ten-fold reduction in pesticide use that would be required to avoid the need for additional water treatment plant. In the meantime water companies, farmers, agricultural advisers, pesticide companies and regulators are all expending resources trying to achieve a standard that is not scientifically valid and has never been subject to any formal regulatory impact assessment or cost-benefit analysis. The additional regulatory burdens on water companies and farmers are increasing costs. Not only does this reduce the efficiency of these industries but it diverts limited technical and financial resources away from other issues that have a valid scientific basis.

The impact of the pesticide standards goes wider than the Drinking Water Directive. The standard for individual and total pesticides has been incorporated into the Water Framework Directive and some water bodies are failing to reach good status because of pesticides. Moreover the same standards have been incorporated in directives on the approval and use of pesticides. Before the UK implemented the drinking water directive in 1989 regulators used the WHO guidelines to judge the risks from pesticides in drinking water. There is no scientific reason why this arrangement could not be reinstated.

### **EU Energy Efficiency Directive - Article 8**

The construction of this Directive and the subsequent proposals by Government to enact it through the Energy Savings Opportunity Scheme (ESOS) fails to allow actions already being taken by larger organisations to reduce energy consumption (e.g. via Carbon Reduction Commitment Energy Saving Scheme (CRCEES)) or deliver alternate sources of decentralised renewable energy to be reflected). This leads to considerable additional administrative burden and cost and may perversely

lead to opportunities to deliver environmental, energy and sustainable benefits not being delivered. There is presumption of inaction and that one size fits all!

Additionally, it is unclear how well such a Directive aligns with other regulatory/policy areas such as renewable energy e.g. decentralised renewable energy is also an energy efficiency measure as distribution losses are avoided and CRCEES. Given the prior existence of the CRCEES which overlaps considerably with this this directive and the proposed ESOS as its intention is to specifically drive energy efficiency in energy intensive businesses, whether it would be a shared or parallel or some other type of competence?

### **Waste Directive 2008/98/EC /Urban Wastewater Treatment Directive 91/271/EEC/ Industrial Emissions Directive – Unintended consequences**

In general the Waste Directive 2008/98/EC has driven a number of good outcomes such as Local Authorities providing a greater range of recycling services, the development of new facilities/sorting practices etc. In addition, it has helped to conserve scarce landfill capacity and the development of a thriving waste, recycling and management industry. Businesses have been encouraged to reduce, reuse, recycle waste, 'green' their supply chains, and report on and compete on their credentials in this area. The Directive has continued to positively evolve for example in the second iteration of the Directive recognising the benefits of 'energy recovery' as an option within the waste hierarchy.

However, the interpretation of the Waste Framework Directive (Waste FD) generally has become of broad concern to the waste management industry and, specifically, its relationship with other directives such as Industrial Emissions Directive (IED) and Urban Waste Water Treatment Directive (UWWTD) is of concern to the water industry. In short, almost everything that is not a product is labelled waste, and remains as waste (so incurring all of the management and treatment obligations) unless 'end-of-waste' can be proven. This is proving a very cumbersome and onerous approach that can actively disincentivise what are otherwise sustainable and low-carbon opportunities, and is pushing regulation in an

opposite direction to that of addressing climate change. There are particular issues for the water industry considering that 'waste water' is specifically excluded from the Waste FD but products arising from treatment – such as sludge that has beneficial use in agriculture - are less clearly so. This is exacerbated by the changing definitions used in revisions to the Waste FD and is not simply a bureaucratic burden, however unwelcome it may be, but can drive large increases in treatment investment and energy use with minimal environmental benefit. This is made worse by the inconsistency between Directives in that the IED does not offer the clear exclusion for wastewater treatment that is in the Waste FD. As a consequence, this lack of clarity is leading to additional costs, bureaucracy and regulatory risk for the UK water sector.

### **Transposition/Enactment of EU law into UK Law and regulation**

A separate compounding issue is more to do with how the UK regulates the requirements of the Directives (rather than the Directives themselves) in a complex and convoluted way. In the example of the Waste Directive responsibility and regulation is spread across a wide range of organisations and regulation/legislation including:

- Local Authority
- EA
- Waste Regulations
- Controlled Waste Regulations
- Environmental Permitting Regulations
- Duty of Care
- IED (as incorporates Waste Incineration Directive etc)
- The Landfill regime
- By-laws, fly-tipping, landholder's responsibilities etc.

This complexity can lead to either inaction or incorrect action being taken by regulators and the regulated. Where there are unintended short comings in EU legislation this is further compounded leading to additional costs and bureaucracy for

the UK economy. Where issues such as this arise there should be clear hierarchy of precedent developed to allow timely and appropriate decisions to be made.

## **The Freedom Association**

### **Introduction**

The Freedom Association (TFA) was founded on 31 July 1975 and is a non-partisan, centre-right, libertarian pressure group. TFA believes in the freedom of the individual in all aspects of life including economic to the greatest extent possible. As such, the Association seeks to challenge all erosion of civil liberties and campaigns in support of individual liberty and freedom of expression.

### **Subsidiarity**

Consistent with this vision is TFA's commitment to democratically accountable environmental localism where decisions affecting the environment of individuals and communities are taken as near as possible to the grassroots level. This is entirely compatible with the principal of subsidiarity,<sup>513</sup> which demands that decisions are taken as closely as possible to the citizens of the Union. It was originally an idea developed in the Catholic Church in the 1930s<sup>514</sup> as the institution sought to avoid the arbitrary decisions of totalitarian rule being imposed on the Church by duress on the elite. Diffuse power centres are more difficult to control- more specifically the idea is of decision-making by the smallest, lowest or least centralized competent authority (rather than the mere broad commitment of being close to the people given by the European Union).

### **Power of DG Environment**

Generally, Directorate General responsible for the Environment is an extremely active department as reflected in their management plan<sup>515</sup> and the Environmental Action Programme to 2020<sup>516</sup>. An enormous range of human activity is subject to

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<sup>513</sup> [Protocol 2](#) of *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*

<sup>514</sup> Wikipedia entry for [Subsidiarity \(Catholic\)](#), accessed 10.08.2013

<sup>515</sup> DG Environment [Management Plan 2013](#) Europa website, accessed 10.08.2013

<sup>516</sup> [Environment Action Programme to 2020](#), European Commission press release, 20.06.2013- see also links provided to the Programme itself.



the intervention and interference under the environmental policies of the European Commission and the legislation that it generates.<sup>517</sup>

This therefore has an enormous echo in the legislative programmes of national governments. Beyond this they seek the “greening” of much activity such as public and private sector procurement as well as the setting of standards<sup>518</sup> which extends further their power and influence.

The European Commission also heavily subsidises environmental NGOs, not just to undertake specific environmental projects, but also to raise awareness of environmental issues as well as the EU response. All too often this amounts to propaganda for the European Union project operated under a stealth subsidy.

Another concern with subsidies for environmental projects is that they push out locally supported initiatives and voluntary funding, in favour of projects which conform to the EU agenda, set at a much higher level, and less accountable to the democratic process.

European Union support and subsidy for green energy has been catastrophic from the beginning. Biofuels subsidies have led to hunger in the developing world<sup>519</sup> and wind power will never meet the demands placed on it as a source of renewable energy<sup>520</sup>. It is also ironic that other parts of the European Commission have been supporting subsidies which have a damaging effect on the environment.<sup>521</sup>

Given the size of the programmes and the remoteness from democratic accountability, it is inevitable that environment programmes should be vehicles for corruption within the European Union. This problem is further enhanced by the relationship of corruption to obtaining and/or trading in permits and also to public

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<sup>517</sup> For instance under the Environment Action Programme to 2020, the [Resource Efficiency Roadmap](#), the [2020 Biodiversity Strategy](#) and the [Low Carbon Economy Roadmap](#).

<sup>518</sup> [Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - Integration of Environmental Aspects into European Standardisation](#) SEC(2004)206

<sup>519</sup> [EU vote not enough to stop EU biofuel policy fuelling hunger](#), Oxfam press release, 11.07.2013

<sup>520</sup> Gittus J (2003) [The Future Security of UK Energy Supplies](#) BNFL and more recently [Wind Farms paid 30 million a year to stand idle](#), Daily Mail article, 9.08.2013

<sup>521</sup> Various authors (2007) [Reforming environmental subsidies](#), European Union website accessed 10.08.2013

procurement. The “greening” of public procurement itself by DG Environment has sometimes perverse consequences of local suppliers being edged out in favour of allegedly more green suppliers, who supply at a greater (and less environmentally friendly) distance.

### **Environmental standardisation**

TFA has already expressed scepticism about the European standardisation “picking winners” in their submission on research and development as there is good evidence that market driven formation of standards always (almost by definition) picks the correct winner and does so more quickly than interminable discussions in committees driven by vested interest. The greening of standards can potentially damage their applicability and, it would be in any case better to decide whether to green a standard in competition with the non-green equivalent.

### **Commission turf wars**

Instead of decisions being taken at the lowest possible reasonable level, when environmental legislation is conceived and developed by the Commission, it generates conflict between DG Environment and DG Enterprise, which is reflected in legislative and economic impact assessments, as well as the decision as to which the lead department will be.

DG Enterprise tends to take the side of business interests, which is it is, in any case, their job to promote and DG Environment takes the side of the environmental NGOs. There is an accountability imbalance between these two sides. EU trade associations represent collections of businesses with clear turnovers as well as profit and loss accounts, who are in turn responsible to shareholders. All too often the NGOs are self-appointed guardians of the environment, sometimes tracing their legitimacy to mass membership organisations but often not. Even in mass membership organisations, decision-making remains in the hands of elites.

### **Impact assessments**

Impact assessments are meant to provide an accurate as well as scientifically and economically valid measurement of the impact of legislation. Both NGOs and industry groups carry out their own impact assessments as part of this process. They engage consultants to carry out this work, as do the Commission. All too often the consultants provide the answers they are expected to give by the parties which have contracted them.

Pascal Lamy, who was Trade Commissioner at the time of the introduction of the chemicals policy (REACH) declared that he had read the economic impact assessments from industry (which maximised the impact) and the Green NGOs

(which minimised it and postulated the idea that the green economy would be further developed as a result of test houses being set up). He then declared that the result must be between the two. This is hardly scientific and no basis for the determination of policy.

Generally, European Union legislative impact assessments often pay lip-service to the principal of subsidiarity. While everyone in the European Union institutions is obliged to say that they believe in subsidiarity, not least for public relations reasons, next to no-one actually practices it in the radical form required to make the idea a reality. It is all too often set at naught by mythical ideas of European value-added for a particular programme, which normally is mere rhetoric unsupported by real science and economics.

Impact assessments examine alternative scenarios for legislative action in a particular area. Once subsidiarity is eviscerated, the choice between scenarios become artificial and in reality the way forward chosen which the Commission had already chosen internally. The process is wasteful of human time and bureaucratic effort because it is artificial.

The quality of legislative impact assessments continue to be low- despite stringent criticism even from their own Court of Auditors in 2010<sup>522</sup>.

### **Gold plating environmental legislation**

Despite recent promises by the UK government not to gold-plate EU legalisation, in the past it has been especially prone to implementing directives with “more stringent protective measures, national toppings, gold plating and over-implementation”<sup>523</sup>. Some of this is due to misinterpretation of the precise requirements of legislation, although the misinterpretation almost always errs on the side of over-implementation in the UK case. However, much more is due to rent and role seeking UK bureaucrats who have nothing to gain by under-implementation, especially given the diminution of their role otherwise, as decision-making powers as such have drained towards Europe. The UK civil service and government often hide the true source of the legislative requirement, not least by their own over-activity

The UK government attitude of agreeing to, conforming to, adding to and properly enforcing legislation stands in stark contrast to other member states who actively

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<sup>522</sup> (2010) *Impact Assessments in the EU institutions, Do they support decision-making?* European Court of Auditors

<sup>523</sup> Squintani L (2010) *Beyond more stringent protective measures, towards national toppings, gold plating and over- implementation* Paper presented at University of Groningen

promote new ideas for legislation but never properly apply legislation when an idea becomes a reality affecting national economic interests.

## **Green business**

The European Commission often point to the possibilities of and indeed opportunities for green business in response to the claim that environmental over-regulation damages mainstream business interests. There is an Eco-innovation Action Plan for enabling Green Growth, which was published in December 2011<sup>524</sup> and even a Green Action Plan for SMEs planned for this year.

As a result, product ranges and service bundles are not determined by the latest innovative technology but by their ability to comply with environmental legislation as well as wider legislation. We highlighted in our submission on research and technology policy that the Commission was showing an increasing tendency to seek to pick winners and losers for scientific research. This could not be better exemplified than by the Commission's Environmental Technology Verification Scheme<sup>525</sup>. Like standards referred to above, it is wide-open to capture by specific interests in specific member states who validate technology or write standards to fit their own commercial interests.

At the time of the introduction of the REACH chemicals policy, the Commission were eager to urge the creation of a "post-industrial chemical industry"<sup>526</sup> and indeed some companies such as Akzo Nobel (a remnant of the once-great UK chemical company, ICI) were only too willing to comply.

The company states,

"We see REACH not as a threat but as a business opportunity. In fact the REACH legislation fits well with our Product Stewardship commitment and our support for the Responsible Care® and Coatings Care® initiatives."<sup>527</sup>

It has been a very expensive business opportunity in terms of staff time diverted and the expenses of product registration with the European Chemicals Agency.

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<sup>524</sup> [Eco-innovation Action Plan for Enabling Green Growth](#), European Commission website, accessed 10.08.2013

<sup>525</sup> [Environmental Technology Verification Scheme](#), European Commission website, accessed 10.08.2013

<sup>526</sup> Statement in quotes from a senior Commission official working in DG Environment at the time-private communication to TFA. A contradiction in terms and one can only be concerned that people with similar views have any influence on UK industrial or industrial policy.

<sup>527</sup> [Akzo Nobel Reach Statement](#), accessed 10.08.2013

Product testing houses are no substitute for innovative products competing in a free market place. This amounts, far from being a radical economic transformation to a further hollowing out of European economic life, removing the real drivers of growth.

### **Corporate social responsibility**

This is part of a wider picture of corporate social responsibility. However, companies are not becoming intrinsically corporately responsible as a result of consumer and shareholder pressure, but rather as a result of a top-down, centrally directed programme, which may look attractive but is not necessarily in the best interests of either consumer or shareholder. Indeed, companies operating on tighter margins as a result of the economic crisis can ill-afford such programmes.

### **Enforcement and criminalisation**

The variable enforcement across Europe of environmental legislation has already been referred to. Every piece of legislation requires extra resources for enforcement. As in any area of government, there is a concern that fees and fines are not proportional to the offences in themselves, but are used as a means to generate finance. The British government should resist every attempt by the Commission to use environmental legislation to obtain new income streams for “own resources”<sup>528</sup>.

TFA is deeply concerned about the moves to criminalise infringements of legislation, not just in environmental matters but generally. The European Union has established a study programme, including the University of Glamorgan and Queen Mary College, University of London which runs until 2016, after which further legislative proposals can be expected.<sup>529</sup>

While it is a symptom of often justified moral outrage, these matters are essentially civil law matters where proportional justice is required in the form of damages, not backward-looking exemplary justice. Making criminals of weak or incompetent managers will not improve the performance of managers generally, deter the best from being involved in environmental management and, least of all, improve environmental standards.<sup>530</sup>

### **Risk assessment and risk aversion**

The practice of risk assessment has developed in a risk-adverse society in the most highly developed parts of the world, both in reaction to the aftermath of the Second World War when almost everyone was exposed to substantial risk on a daily basis

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<sup>528</sup> Simon F (2012) [France picks up fight on own resources on EU budget](#) Euractiv

<sup>529</sup> [European Union Action to Fight Environmental Crime \(EFFACE\)](#), accessed 10.08.2013

<sup>530</sup> [Environmental crime](#), European Commission website, accessed 10.08.2013

and also due to fear of losing everything in terms of health and livelihood in an era of general, albeit diminished prosperity. Risk assessment is rendered less precise because of the general spirit of risk aversion.

Some health effects of poor environmental quality in general or chemicals in particular are very well-characterised, as results of studies over many years that use consistent data from a variety of studies demonstrate.<sup>531</sup> However, emotion and reason have been at war, ever since Hume and Kant debated<sup>532</sup> and all too often in this area emotion-generated fears have won over reason. Debates about the health effects of environmental problems often end up in the EU “new comitology”<sup>533</sup> system, which completely lacks democratic accountability. In circumstances where there is a lack of data, even scientists on specialist committees have been known to take political decisions.

The precautionary principle, which has its philosophical origins in the moral philosophy of the 18<sup>th</sup> century, is often invoked, but again this is a substitute for a lack of real scientific evidence in many cases, and further re-enforcement of risk-aversion.

### **Rent-seeking**

All too often EU programmes are determined by rent-seekers who have a vested interest in identifying a problem. Take for instance the chemical cocktail theory, which is the idea that “some chemicals which may be relatively harmless in themselves can become quite harmful in combination with each other.”<sup>534</sup> It can also refer to the theory that given a total concentration of chemicals, a mixture is proportionately more poisonous than individual chemicals. This was the next item on the agenda of the Green movement following the introduction of the EU chemicals policy in order to obtain more restrictions on more chemicals.

A study was commissioned by the Commission from the University of London which produced the predictable result that more study was needed in the field by experts

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<sup>531</sup> See especially [OECD methodologies](#) including Mutual Acceptance of Data.

<sup>532</sup> [Hume and Kant on Morality](#), Stanford University website.

<sup>533</sup> [New comitology](#)- a good review. The [principle committees](#) are run by DG Sanco which further complicates the internal Commission politics.

<sup>534</sup> [EU Issue Tracker](#) for a history of this subject

such as themselves<sup>535</sup> and supported European guidelines for the assessment of chemical mixtures. The reality is rather that such work involves diminishing returns for larger expenditure in terms of producing effective data that would influence, in any way, day-to-day use of chemicals.

### **Minimum harmonisation**

All too often an area has been initially entered by the European Union declaring that it seeks to set minimum standards and subsequent amendments of the legislation have ratcheted up the requirement to beyond the point that the UK government was prepared initially to go. This has applied especially to air and water quality standards.

### **Legislative duplication and multiplication**

Within European Union environmental legislation, there is much unnecessary duplication as they try to target and regulate in separate pieces of legislation, sectors, sites, processes, products, environmental protection of people and finally environmental protection of flora and fauna.

The Commission are aware of the problem. Indeed, the chemicals legislation was presented as an attempt to simplify and codify the pre-existing legislation. In the end, legislation that was meant to be repealed was not and another substantial piece of legislation was added on top, which itself grew in the course of the legislative process.

The legislation places burdens on national authorities which the Commission do not have to bear themselves. At very least, the British government should claim rights to codify and simplify requirements if the need to build consensus prevented this at the European level during the legislative process.

### **Diminishing returns**

Studies have been undertaken on the number of lives saved versus the costs of individual pieces of environmental legislation<sup>536</sup>. The number of lives saved is by reduction of direct effects of pollution but there are also secondary effects of general damage to the economy and consequent effective diversion of resources away from health and social care programmes. For instance also, Commission officials conceded privately that the European chemicals legislation saved no lives but allowed for the collection of data.

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<sup>535</sup> [State of the Art Report on Mixture Toxicity](#), University of London, School of Pharmacy, 22 December 2009

<sup>536</sup> Viscusi W and Gayer T [Safety at any price?](#) Regulation, Fall 2002, Cato Institute, see especially table on Page 58 showing the escalating cost for each life saved.



## **Trans-boundary air pollution**

Sometimes there remains a lack of data which potentially could be interesting. Much European Union activity is justified by the fact that air and water pollution of their nature are no respecter of national borders. However, while global maps of air pollution are produced showing the locations of peaks and troughs, there is relatively little work to correlate these with major polluting sites and to calculate the balance of flows across each nation to nation boundary. Bi- or, if necessary, multi-lateral arrangements to deal with major pollution sites could remove some if not all of the justification for the increasing Europeanisation of environmental issues which has been seen over the decades or even reverse it, as the TFA would seek.

## **National rights on environmental issues**

The European Union has taken to itself many powers in environmental matters that are solely of national concern. For instance, protection of areas of natural beauty is a national concern, for better or for worse. If a government chooses not to protect them, there is a democratic remedy at the national ballot box.

## **Internationalisation**

The European Union seeks convergence at international level of environmental legislation burdensome to businesses. They themselves assert that that they are “setting the pace in international environmental policy”<sup>537</sup>.

In one sense, this is an attempt to create a level playing field not just across Europe but globally. However, it can have the perverse effect of depressing global economic activity, which is the ultimate source of finance for improving environmental standards and is inappropriate at a time of economic crisis, where poverty presents more immediate threats to human well-being. The European Union has never understood that each human being has a hierarchy of needs - rather they try to meet every need simultaneously.<sup>538</sup>

## **Global warming**

There is bureaucratic inertia, given the rent-seeking capacity of bureaucracy, which tends not take account of the changed state of scientific knowledge. This could not be more clearly demonstrated than in the field of global warming, renamed climate change when the scientific community were confronted with the reality of the temperature record over the last decade.

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<sup>537</sup> [International issues](#), European Commission website, accessed 10.08.2013

<sup>538</sup> For comparison, [Maslow's Hierarchy of Needs](#), which was proposed in an era when environmental concerns were far from an immediate concern.



There was never a more important need for accurate and timely scientific measurement- but much of the global temperature measurement was determined by monitors in America that were placed at airports and in car parks, where increasing traffic increased the temperature over the tarmac and from a Russian monitoring system which to say the least was patchy. <sup>539</sup>

There is a case for the European Union to cease to have any responsibility for climate change policy and research so that international governance can respond more quickly, appropriately, proportionally and in a manner based on current scientific knowledge rather than the prevailing state of knowledge a decade or more ago.

## Conclusion

Since the original report, *Our Common Future* of the World Commission on Environment and Development was published in December 1983 <sup>540</sup>, there has been much discussion and activity promoting a sustainable environment. However, any progress in enhancing environmental standards depends on economic growth and economic growth can only be sustainable if removed from a perpetual cycle of boom and bust, generated by historically high levels of regulation and taxation. A policy which attempts to promote economic growth, on the one hand, but then burdens business with environmental legislation and charges is not sustainable in the long term. While this ambivalence of goal remains at the heart of EU environmental policy, UK membership of the EU is unsustainable.

## The Wildlife Trusts

### Introduction

There are 47 individual Wildlife Trusts across the UK including 37 Wildlife Trusts in England, six in Wales, the Scottish Wildlife Trust and the Ulster Wildlife Trust. Collectively, we have more than 800,000 members and our shared vision is to create *A Living Landscape* and secure *Living Seas*.

*A Living Landscape* is a recovery plan for nature, championed by The Wildlife Trusts since 2006 to help create a resilient and healthy environment, rich in wildlife and to

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<sup>539</sup> See Uncertainties in the Temperature record in Wikipedia article on the [\*Instrumental Temperature Record\*](#)

<sup>540</sup> See [\*History of Sustainability\*](#), US Environmental Protection Agency website

provide ecological security for people. In *A Living Landscape*, habitats are restored and reconnected on a large scale with the local community closely engaged. Across the UK there are now over 100 Living Landscape schemes covering an area of nearly 1.7 million hectares. The schemes are being delivered in partnership with a huge number of individuals and organisations including Statutory Nature Conservation Bodies (SNCBs), farmers and landowners, water companies, land-based industries, local authorities, other NGOs, local communities and volunteers.

The Wildlife Trusts have a collective vision to secure *Living Seas*. Within *Living Seas*, marine wildlife thrives, from the depths of the oceans to the coastal shallows; wildlife and habitats are recovering from past declines as our use of the seas' resources becomes environmentally sustainable; the natural environment is adapting well to a changing climate, and ocean processes are helping to slow down climate change; people are inspired by marine wildlife and value the sea for the many ways in which it supports our quality of life. The Wildlife Trusts believe it is possible to achieve *Living Seas* around the UK within 20 years – a single generation – but only if opportunities are seized right now.

The Wildlife Trusts primarily engage with European Competences related to biodiversity and conservation, and assessing the environmental impacts of development. Therefore our response has focussed on case studies from the Water Framework Directive, Habitats and Birds Directives, the Marine Strategy Framework Directive and the Environmental Impact Assessment Directive. However, The Wildlife Trusts are supportive of the report published by the Institute for European Environmental Policy, '*A report on the Influence of EU Policies on the Environment*' which covers the wider range of Competences examined by this review. This report is attached as Annex 1 to this response. We have not responded to every question in the review, but to the ones most relevant to our work.

## **Consultation Questions**

### ***Advantages and disadvantages***

- 1) *What evidence is there that EU competence in the area of environment and/or climate change has:*
  - i) *benefited the UK/your sector*

It is the view of The Wildlife Trusts that EU membership has led to a cleaner and healthier UK environment; has provided the business community with the opportunity to shape regulation at the European level and to pursue the competitive advantage that progressive environmental policies in a Single Market can afford. We also believe that EU membership has provided the UK with a leadership platform on a European and international level on environmental matters and has given us a

platform to manage common resources such as our climate and common impacts such as air and water pollution.

In the 1970s and 1980s, the UK earned the unattractive reputation for being the “*dirty man of Europe*”. We had the highest sulphur dioxide emissions in the EU and allowed raw sewage to be pumped into our seas. EU membership enabled the UK to clean up its act which has led to significant health, environmental and economic gain in particular in industries such the tourist industry (for example, see case study 1a). By acting together at European level we have been able to introduce stronger protection for the environment than would have been the case if we had gone it alone in the face of concerns about competitiveness, whether justified or not.

### **Case Study 1a: Bathing Water Directive (76/160/EEC; 2006/7/EC)**

The Bathing Water Directive tests water quality in bathing waters, setting standards for the maximum level of bacteria in these waters. These bacteria indicate faecal pollution either from humans or animals which can contain viruses, parasites and bacteria (such as *E.coli*) that can cause illness if the water is swallowed. The main health problems linked to poor bathing water quality are gastrointestinal ailments (digestive tract), respiratory infections and ear, nose and throat complaints<sup>541</sup>.

The Bathing Water Directive has resulted in significantly cleaner waters around the UK. The 2012 bathing water quality standards published by the European Environment Agency found that 93.8% of the UK’s bathing waters met the minimum European water quality standard, with 58.2% meeting the guideline values<sup>542</sup>. Clean seas are fundamental to a productive tourist industry where this relates to swimming, surfing and beach holidays. There are no readily available statistics of the fall in illnesses derived from this source but in the UK, along with other European countries that UK citizen’s use for holidays, there is a noticeable improvement. It is easy to forget that in the 1980s, a 3m band of sewage would line the shallows of beaches such as Benidorm<sup>543</sup>. Research published in June 2010 shows that the seaside

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<sup>541</sup> Bathing Waters Working in partnership in England and Wales November 2010, Environment Agency.

<sup>542</sup> [www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water/country-reports-2012-bathing-season/united-kingdom-2012/view](http://www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water/country-reports-2012-bathing-season/united-kingdom-2012/view)

<sup>543</sup> Personal experience recounted by Stephanie Hilborne, CEO TWT

tourist industry in England and Wales directly supports some 210,000 jobs, with the value of the associated economic output estimated at £3.6bn (for 2009)<sup>544</sup>.

A European framework provides a number of advantages to member states over dealing with issues at a UK level including;

- The trans-boundary nature of many environmental issues, including those relating to air quality, the marine environment and migratory species, mean that if these issues are to be dealt with effectively, they must be done at a cross-boundary level (for example, see case study 1b).
- Due to the global nature of some of these issues, the European Union is more likely to be able to lever global change acting as a bloc, than where countries act in isolation or in shifting alliances.
- The possibility of sharing the resources, benefit and costs within a group of cooperating countries as well as the benefits of sharing best practice amongst member states. This is become an important issue in climate policy for example since the “burden” of emission reductions can be shared and hence a collective willingness to move forward together created. Since the EU has a common budget, there is a possibility of resourcing such joint endeavours in a way that is difficult in free trade alliances such as the European Free Trade Association or the North American Free Trade Agreement.
- The economies of scale which can be achieved through working together to develop new technologies create the necessary infrastructure for a green economy and indeed for a coherent set of protected ecosystems.

### ***Case Study 1b: The Nitrates Directive (91/676/EEC) and the Water Framework Directive (2000/60/EC)***

Taken together the Nitrates Directive and the Water Framework Directive are vital tools for the delivery of water protection and enhancement, for which cross border considerations are essential.

In addition to the obvious environmental benefits that the two Directives directly deliver in the UK, there are other factors to consider that highlight the benefits that an EU wide approach to water brings to the UK, for example, the relationships between these two Directives, and climate change and air pollution; and the links between the Directives and the sustainability and long term viability of farming businesses.

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<sup>544</sup> The Seaside Tourist Industry in England and Wales: Employment, economic output, location and trends, Centre for Regional Economic and Social Research, Sheffield Hallam University  
[www.shu.ac.uk/research/crest/sites/shu.ac.uk/files/seaside-tourist-industry-england-wales.pdf](http://www.shu.ac.uk/research/crest/sites/shu.ac.uk/files/seaside-tourist-industry-england-wales.pdf)

As an example, full implementation of the Nitrates Directive is expected to contribute to reduction of ammonia emissions by 14% at 2000 levels by 2020. Measures such as limiting amounts of fertiliser applied have a positive impact on both nitrate losses to waters and also ammonia emissions to the air. In relation to climate change, activities related to livestock and fertilizer management release nitrous oxide and methane. The Nitrates Directive could, if fully implemented could cut nitrous oxide emissions by 6% on 2000 levels by 2020.

The Directives should ensure a consistent approach across UK constituent countries (where water resource management is a devolved issue) which have some shared river catchments in some cases. In addition, the quality of water in our rivers impacts on a shared marine environment.

Evidence from across Europe suggests that the Nitrates Directive is being effective with, for example, nitrate concentrations remaining stable or falling at 70% of 2004-2007 surface water monitoring sites. All Member States have now drawn up action programmes, with some deciding to provide the same level of protection to the whole territory rather than to delineate Nitrate Vulnerable Zones. The Directive does however allow Member States to seek derogations to go beyond the 170kg limit under certain conditions and the UK obtained derogation up to 2009.

Under the Water Framework Directive, river basin management adopts a holistic approach to protecting the whole body of water, its source, tributaries, delta and river mouth, through a coordinated strategy involving all the interested parties in decision-making. We are highly supportive of this ambitious Directive and what it is trying to achieve.

But perhaps more importantly, many environmental issues require progressive and sustained action over a long period. Some depend on relatively large investments with medium to long term paybacks, such as the construction of new power stations. The stability of EU policy can be particularly valuable in this context. Whereas it sometimes can be difficult to amend in the short term, equally it is relatively resistant to the risks of political difference across Europe and can offer sufficiently stable conditions to consolidate environmental progress. The EU's practice of issuing successive Environmental Action Programmes allows forward planning on a timescale well beyond most national governments (including the UK's). The environment and its protection is in essence a long term global issue. Democracies by their nature are in essence, short term and national. Consequently, EU legislation

can act as a necessary conscience, serving to counter to short-termism by any political persuasion. Equally it can be used by governments to stave off short term lobbying by interest groups.

Should the UK choose to disengage from the EU it is far from clear that any advantage would be gained even if the goal is to avoid the influence of European policy in this area. Countries which are members of the European Economic Area, but not the EU, are still subject to a substantial body of EU environmental legislation but have no say in its formulation and adoption. Several examples are given in the IEEP report<sup>545</sup> attached as Annex 1 to this response. Switzerland, which is outside the EEA, has adopted a policy of “voluntary adaptation” whereby Swiss law is aligned with EU legislation to a large degree, but measures have to be negotiated on an ad hoc bilateral basis, which is cumbersome and creates uncertainties.

Policies to protect UK wildlife under the Habitats and Birds Directives has resulted in the most effective protection of our habitats and species, leading to the designation of some of the most important protected areas at land and at sea. Indeed, a study published by Donald et al (2007) found that the Birds Directive brought measureable conservation benefits, contributing significantly to the protection of species deemed most at risk.<sup>546</sup>

Designation at an EU level is particularly important for migratory species, such as birds and a number of marine species, whose habitats cross national boundaries (for example, see case study 1c). Furthermore, at sea in particular, EU legislation has led to the designation of protected sites, where national legislation and action is lagging behind (for example, see case study 1d).

### ***Case Study 1c: The Solent Waders and Brent Goose SPA (The Birds Directive 2009/147/EC)***

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<sup>545</sup> A Report on the Influence of EU Policy on the Environment (2013). Prepared by the Institute for European Environmental Policy (IEEP).

<sup>546</sup> Donald, P.F et al (2007). International conservation policy delivers benefits for birds in Europe. *Science*, 317(5839), 810-813.

The designated features of the Special Protection Areas of the Solent Coast include populations of dark-bellied Brent geese. These geese fly from their Siberian Arctic breeding grounds to winter along the coasts of southern and eastern England and from northern Germany to northern France. The Solent supports up to 13% of the world population, and 30% of the UK population. The network of statutory protected areas around the Solent includes most of the Brent goose intertidal feeding grounds. There would be no advantage in protecting this species at a UK level as they are a migratory species using different parts of Europe during the year. European legislation allows us to protect this species across the whole of their migratory route.

***Case study1d: Improving marine protection in the UK (The Habitats Directive 92/43/EEC)<sup>547</sup>***

The coastline and seas around the United Kingdom have a remarkable marine biodiversity and provide rich natural resources for many activities such as fisheries, industry and recreation. Yet, until recently, actions to protect this fragile marine environment were relatively few and far between. The adoption of the Habitats Directive marked a significant step change for marine conservation in the UK, and elsewhere in the EU. For the first time, countries had to protect biodiversity in their surrounding seas as well as on land and take measures to actively conserve threatened marine species such as the bottlenose dolphin, loggerhead sea turtle or Arctic tern, as well as valuable underwater habitats such as cold water reefs, *Posidonia* beds or underwater sea caves. In the UK, major marine surveys were launched to learn more about the state of this secret underwater world and to help identify suitable sites for protection. This resulted in the designation of over 100 UK marine Natura 2000 sites (covering an area the size of Belgium). Before the Habitats Directive came into force there were just three protected marine areas in the UK. Work is now underway to manage the areas in a way that ensures their wise use while, at the same time, safeguarding their rich marine biodiversity.

Protection of important sites and species at a European level can also led to greater action from national governments when the site is faced with damage or degradation than may happen under nationally protection (for example, see case study 1e).

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<sup>547</sup> Text from: The Habitats Directive. Celebrating 20 years of protecting biodiversity in Europe. 2012, Kirsten Sundseth, Ecosystems LTD, Brussels. [www.ec.europa.eu/environment/nature/pdf/20yrs\\_brochure.pdf](http://www.ec.europa.eu/environment/nature/pdf/20yrs_brochure.pdf)



**Case Study 1e: The role of EU intervention in driving protection of horse mussel beds in Northern Ireland (The Habitats Directive 92/43/EEC)**

Unique natural features, outstanding beauty and high economic, recreational and cultural value have led Strangford Lough to be the most highly designated and protected site in Northern Ireland. However management of certain aspects of wildlife and ecosystems within the Lough, particularly horse mussel reefs, has been of concern to conservationists since the late 1980's. The uniqueness of the horse mussel (*Modiolus modiolus*) reefs in Strangford led to them being a key feature in the Lough's European designation as an SAC. However, the horse mussel community was in decline due to a lack of appropriate regulation and management of activities in the Lough.

Over two decades of lobbying the local and UK government on the need for action by the Ulster Wildlife had no effect until 2003, when the European Commission investigated a Wildlife Trust complaint regarding horse mussel community decline and inadequate protection as required by the Habitats Directive. The European Commission responded by notifying the government that it was considering taking infraction proceedings against them. This led to increased focus on the issue, the implementation of a temporary ban on mobile fishing gear, a restoration plan aimed at bringing the horse mussel communities back to 'favourable conservation status', and £1 million of funding over three years to undertake the restoration work.

Despite these efforts the decline continued and timelines and specific objectives within the plan were not met (including a commitment to bring in total protection for both pristine and damaged reefs by 2007). Again Ulster Wildlife issued a complaint to EU officials, which again has acted as a catalyst and a driver for change. It has since resulted in a new restoration plan with more robust management, monitoring and enforcement measures, perhaps most notably a 'Total Protection Zone' has been legislated for through a Fisheries Exclusion Zone and a byelaw on anchoring and diving. These measures collectively are designed to provide the conditions for recovery of the horse mussel beds, which should in turn benefit the fisheries as the horse mussels support the diversity of life that previously covered extensive areas of the seabed of Strangford Lough.

Protection of these sites also leads to economic gain. It is well established that natural ecosystems provide a range of services including flood defence, CO<sub>2</sub> sequestration, pollination, food, water and materials. Benefits that EU policy brings the UK have been recognised by this Government in the publication of the National Ecosystem Assessment. The summary document states,



*“changes in national policy and legislation, latterly often drive by European Union policy, along with technological developments and changing attitudes and behaviour, have led to improvements in some ecosystem services, particularly in the last 10-20 years.”<sup>548</sup>*

The protection of the diversity of species and habitats found in Europe’s Natura 2000 sites create important sites for recreation and tourism by providing natural spaces to relax in or explore. This can create the potential for the development of new economic activity. One recent European Commission study estimated that, if properly resourced and managed the Natura 2000 Network could provide a Gross Value Added (GVA) of €3.05 billion in the regions in which is it located. In Europe, generally around 4.4 million jobs, and €405 billion in annual turnover, are directly dependent on the maintenance of healthy ecosystems. The protection of all 300 Natura 2000 sites in Scotland was estimated to have an overall benefit cost ratio of around 7 over a 25-year period.<sup>549</sup>

Additional benefits of EU legislation should also be noted. These are outlined in the IEEP report (2013)<sup>550</sup>, found in Annex 1 of this response.

Economic growth and safeguarding or improving the environment is intrinsically linked- one cannot be viewed as a barrier to the other- a healthy, diverse and functioning environment under pins much of our economic function. We need to ensure that short term economic aims do not end up undermining our environment and ultimately, our economic future. This becomes easier when we are acting together with a range of member states with positive experience of the longer-term benefits to competitiveness of an effective framework of environmental regulation.

**i) *disadvantaged the UK/your sector***

We believe that EU action on the environment has been overwhelmingly positive for our sector and the UK as a whole.

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<sup>548</sup> UK National Ecosystem Assessment (2011). The UK National Ecosystem Assessment: Synthesis of Key Findings. UNEP-WCMC, Cambridge.

<sup>549</sup> Investing in Nature 2000: for Nature and People. European Union 2011.

[www.ec.europa.eu/environment/nature/info/pubs/docs/brochures/investing%20in%20N2000%20brochure.pdf](http://www.ec.europa.eu/environment/nature/info/pubs/docs/brochures/investing%20in%20N2000%20brochure.pdf)

<sup>550</sup> Text from: A Report on the Influence of EU Policy on the Environment (2013). Prepared by the Institute for European Environmental Policy (IEEP). See Annex 1 for the full report.

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

- 2) *Considering specific examples, how might the national interest be better served if decisions:*
  - i) *Currently made at an EU level where 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?*

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

- 3) *To what extent do you consider EU environmental standards necessary for the proper functioning of the internal market?*
  
- 4) *To what extent does EU legislation on the environment and climate change provide the right balance between protecting the environmental and wider UK economic interest?*

The Wildlife Trusts believe that European legislation has helped us manage common resources and impacts and has resulted in the more effective protection of our habitats and species, in particular at sea where national legislation is lagging far behind. While the Marine and Coastal Access Act was seen as a significant piece of legislation, implementation has proven to be a slow and unambitious which means marine planning and conservation is still 20 years behind progress on land. EU legislation has also provided a uniform framework in which industry can work, creating a balance between protection of our environment and sustainable development, and providing a level playing field across our most important markets. Furthermore, in the marine environment, where development can cross multiple national boundaries, the uniform framework is valuable in streamlining development (for example, see case study 4a).

#### **Case Study 4a: Dogger Bank (The Habitats Directive 92/43/EEC)**

The Dogger Bank is a large sand bank complex located in the North Sea and is located in UK, Dutch, German and Danish waters. It is an important marine habitat supporting large numbers of sand eels and fish which in turn support marine mammals and seabirds. Due to the importance of the sandbank habitat, the UK, Dutch and German Governments have designated their parts of the Dogger Bank a SAC for the feature 'sandbanks covered slightly by water at all time'. In the Dutch

and German sites, harbour porpoise and grey seals are also listed as features of the site.

The Dogger Bank is an important area for seabirds and many birds from designated SPA colonies forage in the area. This makes it important for the viability of these populations.

Through the Habitats Regulations Assessment process which has been established for the Habitats and Birds Directive it has allowed for one HRA to be carried out for the development which is able to assess the transboundary affects the development may have on SACs and SPAs outside of the UK jurisdiction. If these designations were carried out under national law, with differing requirement for assessment it would mean that the developer would have to carry out several different assessments, dealing with different governments and conservation bodies resulting in the assessment being a more drawn out process and less joined up.

This is also the case for the development of the EIA which looks at wider environmental impacts. Again the developer must consider trans- boundary impacts of their development and the EIA process allows them to do this in a manner which is used across member states.

From an environmental perspective this is also of benefit as it is possible to assess the full impacts of the development over the North Sea area, rather than only discreet pockets of impacts in the specific country area. This is especially important when considering mobile marine mammals and seabirds that the development is not going to have an impact at the population level in the region.

Unfortunately, legislation can be seen as a blockage to growth<sup>551</sup>. It is essential that decision makers understand that the environment and the diversity of life it supports is fundamental to our economy; it has a positive impact on our physical health and emotional wellbeing; and it contributes to our children's educational and social skills. If it is wrong to leave financial debts for future generations, it is surely equally wrong to leave them to deal with a deficit in our natural capital. As we have argued above, there is a strong case for saying that effective environmental legislation at EU level can enhance competitiveness and provide major long-term benefits to our economy.

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<sup>551</sup> [http://webarchive.nationalarchives.gov.uk/20130129110402/http://cdn.hm-treasury.gov.uk/autumn\\_statement.pdf](http://webarchive.nationalarchives.gov.uk/20130129110402/http://cdn.hm-treasury.gov.uk/autumn_statement.pdf)

Indeed, a recent Defra review into the ‘burden’ that the EU Habitats and Birds Directive place on industry found no evidence of the ‘gold-plating’ (although this review did identify opportunities for improvement in communication, information sharing and decision making). In publishing the results of the review, Defra concluded 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"*<sup>552</sup>. The Wildlife Trusts provided evidence for this review, providing a number of examples where a balance was struck between environmental protection and development (for examples see case studies 4b and 4c).

#### **Case study 4b: Dibden Bay (The Habitats Directive 92/43/EEC)**

In October 2000, Associated British Ports applied for consents to construct a deep water port on the New Forest coast of Southampton Water. The application was considered at public inquiry and was rejected by the Secretary of State in April 2004 on a number of grounds including reasons arising from the Habitats Directive.

The Habitats Directive issues considered at the inquiry were complex. The complexity arose from the scale of the development, the diversity of wildlife interests and also the mismatch between the wildlife features of acknowledged importance with the statutory designated boundaries. For example, the bird populations for which the area had international importance were dependent on land that was only partially classified as a Natura 2000 site.

With the benefit of hindsight the Habitat Directive related reasons for refusal were apparent at the outset of the application process and public inquiry. Despite this, the applicant chose to pursue their aspirations not only at considerable costs to themselves but also to many others, notably the Planning Inspectorate, local authorities, local people and community groups. The Habitats Directive assisted in the decision making process, by helping to prevent an inappropriate development on an internationally important habitat.

#### **Case Study 4c: Thames Basin Heaths (The Birds Directive 2009/147/EC)**

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<sup>552</sup> [www.defra.gov.uk/habitats-review/](http://www.defra.gov.uk/habitats-review/)

Thames Basin Heaths SPA generated a sub-regional strategic assessment that has provided a basis for a practical response to managing urban growth. It is unlikely that this would have occurred, as this assessment was required under the Birds Directive and probably would not have occurred had the site not had SPA designation and only SSSI designation. The presence of the SPA resulted in 11 planning authorities working together to create a strategic solution which resulted in continued protection of a significant habitat whilst creating a framework for developers to work within to allow development of the area without significant impact.

Numerous studies have identified that recreational pressure can have a significant adverse effect on the integrity of the Thames Basin Heaths SPA. The site comprises an aggregation of 13 separate SSSIs within 11 local planning authority areas. Each LPA has varying levels of population growth proposed in the South East Plan. In the absence of a strategic solution, LPAs were faced with a substantial planning issue: the Habitats Regulations require likely impacts of any development both alone and in combination with other developments potentially affecting the site to be assessed. In principle all applications for residential development close to the SPA would need to be screened to establish whether an Appropriate Assessment was required because they were likely to add to recreational pressure and thus have an adverse impact on the populations of ground and near-ground nesting bird species for which the site had been classified.

To overcome the problem, English Nature devised a strategic approach that enabled any housing development which met defined standards to proceed without the need to undertake Appropriate Assessment. The standards applied were deemed to ensure that such developments would not be likely to have a significant effect on the integrity of the SPA. They comprised measures to divert recreational pressures from the SPA and to manage recreational use of the open access heathlands. The Thames Basin Heaths 'Delivery Plan' approach was endorsed by the Secretary of State in every case which went to appeal and was thoroughly tested through a series of technical sessions as part of the Examination in Public of the South East Plan. Local authority planners, Natural England, voluntary bodies (including The Wildlife Trusts and RSPB) and house builders all participated in these debates.

Following the EiP, a Joint Strategic Partnership Board comprising the affected local authorities, advised by key interested parties including Natural England, land owners, developers and environmental NGOs was established to develop the Plan. The Partnership Board produced and adopted a finalised Delivery Framework<sup>7</sup> and a legal agreement between the LPAs which now form the basis for enabling development whilst avoiding impacts on the SPA.

The TBH Delivery Framework 'standards' comprise the following key provisions:

- avoiding housing development within 400 metres of the SPA;
- allowing the LPA to approve, without recourse to an Appropriate Assessment, housing development between 400m and 5km of the SPA (an evidence-based 'zone of influence') on condition that:

(1) sufficient 'Suitable Alternative Natural Greenspace' (SANG) of appropriate quality and in an appropriate location is available to divert recreational pressure from the SPA; and

(2) strategic access management measures and monitoring provision across the areas of the SPA open to public access has been supported by an appropriate developer contribution.

These measures result in consistency across all local authorities and reasonable certainty that housing development individually and in-combination will not adversely affect the Thames Basin Heaths. Any development proposals that do not meet the Delivery Framework standards will, of course, be subject to Appropriate Assessment to determine their likely impacts on the SPA.

Indeed, the Wildlife Trusts would argue that the balance between environmental protection and wider UK economic interest is still skewed in the favour of short-term economic gain. Recently The State of Nature report, launched on the 22<sup>nd</sup> May 2013 revealed that 60% of UK wildlife species are in decline<sup>553</sup>. This report provides more evidence of the need for a change in our attitude to nature in the UK. The report indicates that a shocking number of the plants and animals for which we are all responsible are in serious trouble. Where nature was once common, now we have to seek it out. Most people in this country value nature and many recognise our total dependence on it; but too few of our critical decisions reflect this.

### ***Current legislation***

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<sup>553</sup>State of Nature (2013) Dr Mark Eaton [www.rspb.org.uk/stateofnature](http://www.rspb.org.uk/stateofnature)

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

Whilst we agree that evidence based decisions are important, it is also important to have sight of what the EU is trying to achieve as an outcome of the legislation. This means in some cases where evidence is less fully developed, it may be legitimate to rely more heavily on the precautionary approach. This scenario is embedded at the heart of the Habitats Directive.

### ***Doing things differently***

6) *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?)*

- 7) *How far do you think the UK might benefit from the EU taking:*
- i) *More action on the environment/climate change?*
  - ii) *Less action on the environment/climate change?*

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

Although there may on occasions be good reasons for recognising specific national circumstances e.g. by allowing a longer time for implementation, care needs to be taken not to undermine the advantages of predictability and consistency across the European Single Market. Alternatives to regulation such as voluntary agreements by industry are unlikely to be effective at EU level because of the multitude of players and high risk of free riders. The framework of enforceable and predictable law is one of the major benefits of acting at EU level.

While The Wildlife Trusts fully supports the environmental Directives and Regulations, we do feel that implementation at a member state level to date has not been properly addressed and there has been a tendency to do no more than maintain the status quo. For example, to achieve Favourable Conservation Status for habitats and species of European interest, it will often be necessary to take more positive action. Our view is that the EU has set some strong environmental Directives which should benefit our wildlife, our health and our economy. Unfortunately the full potential of these Directives has not been met because of weak transposing legislation at a member state level.

It is becoming clearer that we do not properly account for the benefits that our natural capital bring us and we are only just starting to scratch the surface of our



understanding around its true value and the economic benefits that it brings. We need to ensure that economic growth has the environment at its heart to ensure that it can be truly sustainable.

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

b) *How important is it for the UK to be part of “Team EU” at UNFCCC*

Being part of “Team EU” at an international level brings a number of important benefits for wildlife, especially through CITES and management of unregulated fishing and whaling. Being a member of ‘Team EU’ allows the UK much greater influence than we would ever have, acting independently as the UK.

### ***Future challenges and opportunities***

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

There is ample evidence to demonstrate that habitats and species continue to decline<sup>554</sup>. One of the key messages from the UK National Ecosystem Assessment (2011) states:

*“The UK’s ecosystems are currently delivering some services well, but others are still in long-term decline. Of the range of services delivered in the UK by eight broad aquatic and terrestrial habitat types and their constituent biodiversity, about 30% have been assessed as currently declining. Many others are in a reduced or degraded state, including marine fisheries, wild species diversity and some of the services provided by soils. Reductions in ecosystem services are associated with declines in habitat and extent or condition and changes in biodiversity, although the exact relationships between biodiversity and the ecosystem services it underpins is still incompletely understood.*

*The UK population will continue to grow, and its demands and expectations continue to evolve. This is likely to increase pressures on ecosystem services in a future where climate change will have an accelerating impact both here and in the world at large. The UK’s population is predicted to grow by nearly 10 million in the next 20 years. Climate change is expected to lead to more frequent severe weather events and alter rainfall patterns, with implications for agriculture, flood control and many*

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<sup>554</sup>State of Nature (2013) Dr Mark Eaton [www.rspb.org.uk/stateofnature](http://www.rspb.org.uk/stateofnature)



*other services. One major challenge is sustainable intensification of agriculture: increasing food production while decreasing the environmental footprint.*<sup>555</sup>

Ecosystem services are critically important to our well-being and economic prosperity, but are consistently undervalued in conventional economic analyses and decision making. Contemporary economic and participatory techniques allow us to take into account the monetary and non-monetary values of a wide range of ecosystem services. These techniques need to be adopted into everyday decision making practice.

Recognising the true value of ecosystem services would allow the EU to move to a more sustainable future, in which the benefits of ecosystem services are better realised and more equally distributed.

*b. 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?*

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

It is our view that action at an international, EU, UK, industry and Third Sector level should not be viewed as mutually exclusive. All have a role to play and indeed work best when action is co-ordinated at all levels. However, the EU has a particular advantage in providing a framework of law which can be enforced more effectively than international action, provide an example to others, deal with the most urgent cross-border issues, and provide opportunities for business across a wide market through a relatively predictable and transparent legal framework.

### ***Anything else?***

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

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<sup>555</sup> UK National Ecosystem Assessment (2011) The UK National Ecosystem Assessment: Synthesis of the Key Findings. UNEP-WCMC, Cambridge.

The Wildlife Trusts are pleased to have had the opportunity to participate fully and constructively in this review. We have devoted considerable resources to the process because we believe that full implementation of EU environmental directives underpins nature conservation across the UK: any weakening would jeopardise our ability to fulfil our country's stated intention to halt overall biodiversity loss and would be contrary to the thrust of the Natural Environment White Paper and similar initiatives in Scotland, Wales and Northern Ireland which emphasise the need for more coherent and resilient ecological networks.

Annex 1 - [www.ieep.eu/assets/1230/Final\\_Report\\_-\\_Influence\\_of\\_EU\\_Policies\\_on\\_the\\_Environment.pdf](http://www.ieep.eu/assets/1230/Final_Report_-_Influence_of_EU_Policies_on_the_Environment.pdf)

### **Thompson, James**

**Q1** Air Quality in particular around stricter emissions limits mandated for Sulphur Dioxide Emissions from Large Plant which clearly needs to be done at a transnational level due.

Landfill Directive and Waste Framework Directive - massive success, cut in Biodegradable Waste creating new jobs and industries and reducing pollution WEEE/ROHS etc - Producer Responsibility Regulations, save taxpayers money and promote reduction in has waste and more recycling, a win, win, win.

Generally EU politicians make far better regulations than UK parliament, better awareness of environment and precautionary principle on the continent, more experience of green industries and generally better laid of laws.

**Q2** There are no disadvantages, all / more environmental regulations should be made at EU level, those arguing for national regulations only might as well propose different rules for Wales & England, its nonsense, pollution knows no boundaries and people and goods and services live on and travel across borders of countries every day, as does pollution. We need a level playing field across the EU for businesses not a race to the bottom to create pockets of deprivation and pollution.

**Q3** Devolution to local councils for local environment quality like dog fouling and litter. More centralisation to Brussels for broader issues like pollution, climate change, waste, energy, strategic issues would create better and more effective legislation Frankly the less done at Whitehall the better, councils and the EU are the best placed to decide, have a better understanding than UK MPs and are less corrupt and better education and generally make the best rules in this area

**Q4** No answer

**Q5** Absolutely integral too especially manufacturing because they are part of the product spec. e.g. how energy efficient an appliance is, how much waste was generated making your new kitchen sideboards etc, it is part of the product spec. so without common rules you get people making cheap and nasty versions of your product on the cheap, then undercutting British business and imperilling British jobs by out competing us on purely cost basis by not paying the full cost of production - it generates externalities which is a cost to society aka the taxpayer

**Q6** It not only balances it, it helps create jobs UK is expert in consultancy services and engineering and design, we do really well out of these rules its stimulating new jobs and industries in Britain, efw, composting, recycling, renewable, core jobs, growth areas, high tech, high paid, high skilled, all driven by and supported by EU regulations, thank god for Brussels, if Whitehall was left to run the show, we would be even more economically ruined!

**Q7** ?

**Q8** 100%!

**Q9** I think we just don't agree on this. Their regulations are implemented by UK govt, if you don't like the implementation don't blame the EU! Sometimes legislation is better than voluntary agreements etc and on issues like this which effect health, safety, quality of life etc, we need robust firm legislation not weak voluntary approaches.

**Q10** a lot, we are especially susceptible to it due to many towns on coast or rivers and we can benefit most from renewable as so windy and wet and huge potential with our engineering expertise to get rich from this too!

**Q11** Why on earth would anyone grown up, educated and sensible want to take LESS action on climate change????????? Have you not read the Stern Report!?!?!?

**Q12** The best thing for the environment and the economy would be for more rags to come from the EU, get the stupid, incompetent corrupt and inefficient UK MPs out of it and let the grownups make the rules in future please.

**Q13** A lot of advantages, centralisation creates more consistency and more economies of scale and thus less taxpayers money going on administering the rules

**Q14** Vital

**Q15** Toxic

**Q16** More done and EU and sometimes even UN level and less done in the UK is the right approach for UK PLC

**Q17** Big costs, but saves money in the long run, see stern review

**Q18** Try to keep it evidence based and apolitical if you can, gets better outcomes

## **Transform Scotland**

**Q1** I spent my working life within the UK Water Industry, primarily as a Laboratory Services Manager within the Scientific Services of river authorities and water utilities. I know from attendance at meetings at the time that there was substantial resistance to the introduction of legislation relating to acid rain, drinking water quality standards, wastewater discharges to sea and other issues. The EU was the driving force behind much of this taking effect in the UK earlier rather than much later.

Q2 None

**Q3** I am not convinced that environmental type legislation should be made at national level because, for example, pollution is a trans-national problem best handled at an EU level. It is also better for industry to have EU wide legislation so that there is a level playing field with competitors in neighbouring nations.

Q4

**Q5** I think these are very important if based on scientifically proven principles and data. It ensures that all countries are working to the same standards and that one nation is not causing pollution to neighbouring countries or enjoying a competitive and cost advantage derived from employing lower standards.

**Q6** Climate change is one example where EU and international agreement is essential because of the potentially dire consequences that are likely to arise from increasing GHG emissions. The danger is that if the UK withdraws from EU legislation there will be an effort to delay action. One can see already the rush to fracking as a possible source of energy despite the fact that it is yet another fossil fuel. The UK should be decarbonising its energy sources, not carrying on as before.

**Q7** I think most of the environmental legislation to be focused on outcomes; one must note that many of the items listed in your Table of Legislation are designed to provide guidance and standards for use with the main item. As an example, 91/271/EEC on urban waste water treatment is supported by related legislation like 79/923 on water quality for shellfish; 91/676 on pollution by nitrates; 2000/60 on the water framework. These various items of legislation provide a level of integration required to effectively tackle pollution of coastal and marine waters. The same case can be made for other areas of legislation relating to climate change, air quality, pesticides etc

**Q8** My own direct experience relates mainly to the Water and Marine Environments. I know from involvement with expert groups at the time that 98/83 on the quality of

drinking water intended for human consumption is based on WHO guidelines. Similarly, 2006/7 relating to the management of bathing water quality is based on health guideline. I am not inclined to think that much, if any, of EC legislation is not well founded from a scientific point of view.

**Q9** I do not know of better ways to protect the environment than to adopt international standards based on best scientific knowledge. Past experience suggests to me that there are often strong industry and vested interest lobbies opposing environmental legislation and that these are best overcome by international agreement.

The current process within the EU does involve representation and submissions from scientists and others during the process. One problem may be that some member states may not participate fully in the discussions and then complain about the outcomes.

My suggestion would therefore be to ensure that the UK is involved from an early stage and that competent, credible representatives are seconded to the process.

**Q10** I think every nation will benefit from EU action on climate change because we have seen the economic consequences to the UK in recent years from extreme flooding due to intense rainfall that is almost certainly due to global warming. The nature of the solution is international in nature.

**Q11** The UK is actually performing poorly, as are many other member nations, when it comes to reducing GHG emissions. It is hard to see that the UK would perform any better if outside the EU process.

**Q12** I think the UK has implemented EU Directives in a conscientious way although it has been argued that the UK often goes overboard in implementation. Perhaps a closer eye needs to be kept on what is actually required and not going further than required by the science. As regards climate change, the UK needs to act to reduce GHG and reduce and decarbonise transport, which is one of the major sources of GHG.

**Q13** I think there would be great advantages from such an involvement from the point of view of reducing GHG emissions but also, in a more general way, creating a more even playing field so that competition is on an equal footing between nations. It could also provide a way of getting better safety and quality standards introduced in other countries and a way of introducing equally good environmental legislation to countries that are, frankly, 19th century in their approach to environmental pollution.

**Q14** Very important that the UK is well represented in Team EU. The UK does have a good name in international circles as regards the professionalism of its scientists and civil servants and will add credibility to the process.

**Q15** I think the really big challenge relates to climate change because the science is now pretty well understood despite the misinformation put out by various climate

denier and vested industry lobbies. Nations need to work to reducing GHG emissions and developing green energy supplies. The business potential is enormous and the UK should be investing in research in these areas. Why are solar panels mainly sourced from Germany and China and not the UK? Another example of lack of foresight?

**Q16** I think the balance between EU and UK is about right and given that all EU industry is working to the same legislation it means that UK industry is competing on a level playing field and can produce to a uniform standard rather than meeting different regulations within different countries. I would say the main thing is for industry and government to get involved and play a constructive part in enunciating and developing new legislation.

**Q17** Cannot say what the costs are likely to be but it is clear that the benefits to industry could be huge. One only has to look at the case of Germany, working within the EU to the same legislation, yet outclassing most international competitors in terms of manufacturing capacity aligned to the perception of high quality. The UK used to, and could once again, do the same.

**Q18** I would only make the general point that I think the UK is much better served by being a member of the EU and that the legislation developed has, on the whole, been beneficial to the environment and to the harmonisation of standards throughout Europe. In terms of major legislation, the EU wide approach is good and has been shown to be so. Most of the criticism is trivial and often based on factually incorrect assertions. The UK should work co-operatively with fellow members because there is strength in membership.

## **Tyndall Centre for Climate Change Research**

**Submission from:**

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## **ADVANTAGES AND DISADVANTAGES**

**1. What evidence is there that EU competence in the area of environment and/or climate change has:**

- (i) benefited the UK/your sector?
- (ii) disadvantaged the UK/your sector

***The peer reviewed academic literature has examined the impact of EU membership on the UK as well as many other Member States, across a wide variety of policy sectors. This literature suggests that the EU has very significantly affected (or 'Europeanised') many fundamental aspects of UK environmental policy.*** Today, almost all 'national' environmental policy is made by, or in close association with, the EU (Jordan 2002). The EU's influence vastly exceeds that of the other supranational organizations such as the UN and the Organization for Economic Co-operation and Development (OECD). ***The EU has had many significant and long lasting effects on UK practice.*** For example, it has:

- ***significantly raised (and subsequently maintained) environmental standards across many areas***, but especially those relating to water, air quality, waste and wildlife protection;
- ***led to more scientific monitoring and hence public information.*** Through the mechanism of Directives dealing, for example, with public access to information, environmental impact assessment and bathing water, the EU has helped to produce and disseminate much more detailed information on the changing state of environmental quality to pressure groups and the public. Legislation on EIA and SEA has provided the public and interest groups with new opportunities to become involved in decision making.
- ***even more fundamentally, changed the way in which environmental policy is thought about.*** Prior to EU membership, the British tended to view 'environmental policy' in slightly narrower terms than other northern European states. They focused on problems that bulked large in a relatively crowded island state that shares no land borders with others states (e.g. heritage and landscape protection, land use planning and nature conservation). These issues tended to be addressed in an incremental, ad hoc and piecemeal fashion, consistent with the UK's common law traditions. By contrast, in continental countries, environmental policy has generally been viewed much more in terms of reducing the pollution of shared resources such as estuaries and rivers, via common and fixed emission standards.

- ***affected the practices of governing in Whitehall.*** Through its engagement with EU policy-making, the environment ministry DEFRA (formerly DoE) has altered its *internal management*, its *tactics* and, most radical of all, its very *identity and political interests* (Jordan 2003). Over time it has 'learnt' new and more *European* tactics, established new alliances with organisations outside the UK and, most profoundly of all, adopted a new (i.e. more environmental and more European) 'departmental view' (Jordan 2003). These were inherited by DECC when it was established in 2008.
- ***Led to greater centralization within the UK.*** Matters which used to be routinely left to the discretion of local officials have had to be centralized in order to ensure that the UK meets its EU reporting and compliance obligations (Haigh 1986).

***EU membership has also significantly affected the way in which the UK interacts with the rest of the world. It has:***

- ***greatly enhanced the UK's ability to exert international leadership on broad issues such as climate change.*** Being part of an alliance of 28 Member States gives the UK greater policy leverage in international discussions in the UN and the OECD. On broad issues such as climate change and sustainable development, EU membership has allowed the UK to shape the terms of international debate (Rayner and Jordan 2011). *It has also allowed the UK to export more specific policy ideas more effectively to other countries.* Mitigation instruments such as the ETS were to some extent piloted in UK, and adaptation is an area where UK is seen as relatively advanced;
- ***provided the UK with a means to influence environmental practices in other Member States,*** such as in relation to the protection of wild birds and habitats, integrated pollution control and environmental management systems. The EU is a system of multi-level governance which is continually being affected by and in turn is affecting all states. Indeed, alongside policy areas such enlargement, defence, foreign policy and the single market, the environment is probably one of *the* EU policy areas in which the UK's influence has been greatest. In fact, states



that used to lead EU policy making are now to be heard complaining that EU policy has become too Anglicized (Wurzel 2002)!

- ***Provided an opportunity to induce aspiring and non-member states to join international environmental protection activities.*** Recent research shows that the EU uses the 'carrot' of EU membership to induce such states to enter into international environmental activities (Schultz and Tosun 2013), such as those under the aegis of the UN. In other words, EU membership provides an opportunity for environmentally ambitious states to build alliances across and within different levels of governance.
- Through these activities, ***spurred huge amounts of financial investment*** (e.g. in the water and waste sectors) ***and in technological innovation*** (especially in the renewables sector where EU targets for 2020 have proven to be extremely challenging).

***Some organisations have unquestionably benefitted from the EU's involvement:***

- ***Environmental pressure groups:*** Europeanization has greatly empowered them, offering a higher authority to whom they can (and very often do) appeal (Lowe and Ward 1998: 295). By working together at a European scale through the organisations of the EU, they have been able to exert influence right across Europe.
- ***National environmental ministries:*** the Europeanization of policy making has greatly strengthened the hand of DEFRA within Whitehall, even though DEFRA did not consciously set out to achieve this outcome. The Environment Council of Ministers provides environment ministries with a means to adopting legislation, free of some of the constraints imposed by the need to adhere to collective responsibility in national cabinets.
- ***Larger, well organized businesses:*** who make and sell products across Europe, and have the means to mobilize in Brussels. The EU allows them to create a more level playing field both internally within Europe but also in the EU's trading relationships with existing and emerging trade powers.

***Others have been less positively affected or seen their influence reduced, chiefly:***

- **UK Parliamentarians:** as decision making power has inexorably shifted to EU level, MPs have struggled to exercise effective oversight, and now it is the European Parliament that keeps the EU's executive in check. Today, the European Parliament's environment committee is vastly more influential than its opposite numbers at the national level (Burns 2012). Indeed it is more influential than they have ever been in the past.
- **Local level officials such as pollution control professionals:** these used to enjoy huge professional discretion working together with industry in relatively closed professional policy communities; Europeanization has greatly circumscribed their professional discretion and hence their influence.
- **Smaller and less well-resourced businesses:** have struggled to keep abreast of policy making developments in Brussels. It is no coincidence that these are often the first and only businesses to complain about 'red tape' and 'gold plating'.

***There is some discussion in the academic literature of how much policy change over the last 40 years can realistically be ascribed to EU membership*** (Bache and Jordan 2006). After all, the counterfactual (i.e. what would have happened if voters had opted to leave the EU in 1975) cannot be known. However, three sources of evidence suggest that the total EU effect has been significant. First of all, so many of the changes noted above are to be found in other comparable member states, that the EU's influence is very likely to have been a significant one, albeit amongst several others drivers (Jordan and Liefferink 2004). Second, comparative policy analysis work suggests that any domestic change that would have occurred in the UK independently of the EU's influence, would almost certainly have adopted a very different form i.e. far fewer rigid timetables, binding targets and explicit standards (Jordan 2006). Third, areas where there have been infringement proceedings against the UK for non-compliance with EU rules (in areas such as water and air quality for example) provide further insight into what a 'non-EU' world might have looked like.

Finally, ***there is the important matter of whether the changes described above were or were not expected at the time of membership in 1972-3.*** Again, extensive comparative research suggests that for almost all Member States (and not just the

weakly co-ordinated, countries that ‘take’ their lead from the EU), Europeanization has been an unpredictable and, at times, hugely disruptive process. In the UK, the EU was certainly not expected to have any significant effect on domestic policy. In 1972, there was still a widespread view that membership would offer Britain an opportunity to share its long experience of dealing with environmental problems with other member states, but British policy would not be systematically Europeanized by the EU (Jordan 2006).

## **WHERE SHOULD DECISIONS BE MADE?**

2. Considering specific examples, how might the national interest be better served if decisions:

(i) Currently made at EU level were instead made at 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?

***In the first two decades of EU environmental policy, decisions about ‘which level should do what’ were taken in a rather ad hoc and incremental manner*** (Jordan 2000). Some proposals for legislation were not based on a sound legal basis in the founding Treaties (Jordan and Adelle 2012), prompting concerns about ‘creeping competences’. In the early 1990s after the Danish ‘no’ vote, the EU seized upon the federal principle of subsidiarity to justify the prevailing balance of competences. This principle states that decisions should be taken at the lowest level commensurate with effective action (see Golub 1996; Jordan and Jeppesen 2000; Benson and Jordan 2010). In theory, in any multi-level (i.e. quasi federal) system of governance, subsidiarity dictates that trans-national issues should be addressed at a higher level, to integrate ‘spillovers’ (i.e. physical, economic and psychological effects that cross borders) (Stewart 1992)), whereas ‘local’ issues should be dealt with locally.

***In practice, the EU has struggled to arrive at a common operational definition of subsidiarity.*** The principle is open to too many competing interpretations (Benson and Jordan 2014). Be that as it may, several significant areas of EU activity, such as noise, do not have a clear international / cross border dimension. But the vast majority of

environmental issues do have trade or trade-related dimensions that require some harmonisation within the context of the single market, e.g. chemicals, GMOs, pollution control, wastewater treatment, product regulation.

The inability of the EU to agree 'what level should do what' is of course also one major reason why it has proven difficult to 'repatriate' existing items of legislation to the national level; just as it is difficult to agree on what the EU should do, it is difficult to agree on what it should not do. This is why previous attempts to repatriate (e.g. in the area of water policy in the early 1990s) have conspicuously failed (Jordan 2000). Related to that, there is no institutional mechanism to speedily 'repatriate' legislation to the national level. And in any case, even if one were created, it is by no means guaranteed that sufficient agreement would be forthcoming on precisely what to repatriate. ***At present, the wholesale 'repatriation' of large areas of EU environmental policy therefore seems most unlikely.*** In the meantime, agreement is more likely to be forged on so-called 'no go' areas where the EU should not trespass in the future (the Dutch government's 2013 Subsidiarity View provides an example of this). Similarly more flexible framework type legislation that reflects differences in national context might offer another means to achieve greater 'unity in diversity' commensurate with the subsidiarity principle. Indeed the EU is already moving in this direction through measures such as the Water Framework and Marine Strategy Framework Directives. Both these measures allow for regional scale objectives setting for environmental quality, agreed between member states and the European Commission. Policies evolving via the Open Method of Coordination (such as the EU Adaptation Strategy) offer a similar route to achieving the same thing. However, a significant price might yet be paid in terms of less effective implementation (see below). Finally, greater use of 'sunset' and 'revision' clauses could be incorporated in Commission proposals so that modifications can be made to deal with unforeseen effects.

## **INTERNAL MARKET AND ECONOMIC GROWTH**

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

***The EU has generally argued that differential national environmental standards constitute barriers to trade, inhibit innovation/resource efficiency and facilitate a***

**'race to the bottom' in environmental standards** (Benson and Jordan 2008). High standards can, the Commission in particular has regularly claimed, create new market opportunities for environmental goods and services, both within the EU and globally; a claim which is consistent with a wider philosophy known as ecological modernisation (Weale et al. 2000: 75-80). This philosophy holds that high environmental standards are a precondition for sustainable economic growth and thus a vital prerequisite for the efficient functioning of the internal market.

***In practice, internal market issues have always been an overriding concern in the negotiation of new EU environmental rules.*** Indeed, environmental policy only really developed at EU level as an offshoot of the single market programme (Weale et al. 2000). Before the single market programme EU environmental amounted to little more than a collection of 'incidental measures' (Jordan and Adelle 2012). The case for EU action has traditionally been stronger in relation to product as opposed to process standards. Only in a small number of cases are environmental rules adopted that distort the functioning of the internal market (Weale et al. 2000). They are very much the exception, not the rule. However, it should be noted that even the UK (under parties of both left and right) has pushed for EU action in relation to process standards such as integrated pollution control, environmental management standards and climate change/energy.

#### **4. 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?**

This is a deeply normative question. ***In general, environmentalists in the EU have justified EU intervention in terms of 'ecological modernist' ideas i.e. that the relationship between environmental protection and economic growth is positive rather than zero sum.*** The academic literature indicates, however, that ***those developing EU rules have not routinely presented clear evidence that EU action genuinely 'adds value' to national action, or that economic and environmental issues have been transparently weighed*** (Jordan and Schout 2006). For example, in

the past cost benefit analyses of new EU rules were not produced, either by the Commission or by the Member States (Pearce 2000). Consequently, implementation costs and other costs at both EU and national level were not known at the adoption stage. However, the situation began to change in the 2000s with the advent of a system of impact assessment at EU level (Adelle et al. 2012), and the wider deployment of regulatory impact assessment in many member states including the UK (Hertin et al. 2009). With this information, it is easier to assess what evidence has or has not been used to inform policy judgements. Systematic ex post policy evaluation work (i.e. assessments of how policy functions in practice) is, however, only just taking off at EU level under the rubric of 'Smart Regulation'. Its absence in the past has greatly reduced the opportunities to learn lessons about what really works in regulatory policy making (Mickwitz 2012).

## **CURRENT LEGISLATION**

**5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

**a. Focused on outcomes (results)?**

***Most EU environmental rules are very deliberately and directly focused on outcomes.*** The vast majority of EU policies are implemented via Directives, which specify the goals to be achieved not the precise means of achieving them. For this reason, Directives are often held to be more consistent with the subsidiarity principle (see above), but they do suffer from a significant disadvantage in that they are also heavily implicated in the EU's significant implementation problems (Jordan and Tosun 2012). One way to address these problems (and thus unburden the EU's bureaucracy) would be to make greater use of Regulations (which are directly effective and hence more prescriptive), but many member states (the UK included) have consistently argued against such a move, on the grounds that it could violate the principle of subsidiarity (see below).

**b. Based on assessment of risk and scientific evidence?**

Very often, ***those developing new environmental rules at national and EU level have not routinely presented clear evidence that new policy ‘adds value’, or that economic and environmental issues have been transparently weighed*** (Jordan and Schout 2006). Some member states (including the UK) and the EU have, however, become much better at basing new policies on a transparent assessment of risks, costs and benefits. ***At EU level, impact assessment and the other mechanisms of ‘Better Regulation’ (such as annual work programmes, road maps and thematic strategies) have made the EU policy process much more open, transparent and predictable, underpinned by minimum standards of consultation*** (Tanesescu 2012). In EU environmental policy, other devices have been employed to marshal evidence in a more systematic and rigorous and consistent manner (e.g. the European Climate Change Programme, the Thematic Strategies implementing the Sixth Environmental Action Programme etc.). In this regard, EU policy making is now no different to (and may even be superior to some) national policy systems.

## **DOING THINGS DIFFERENTLY**

### **6. How could the EU’s current competence for the environment be used more effectively?**

There are some strategic issues on which the EU could focus its energies to improve levels of environmental performance in pursuit of sustainable development:

- ***Improve policy implementation:*** this is proving to be a difficult nut to crack (Jordan and Tosun 2012), not least because several proposed solutions involve vesting the EU with greater power (e.g. a centralised inspectorate; greater use of Regulations etc.). Yet, uneven implementation is bad for the environment, undermines fair competition and has a significant social costs (in terms of exposure to air and water pollution) (DG Environment 2011).
- ***Integrate an environmental dimension into all policy areas:*** better integration is enshrined in the Treaties but has proven difficult to achieve in practice (Jordan and Lenschow 2008), not least because it requires organisations at EU level (the Commission, the Parliament, the Council) to cooperate with one another (Jordan and Schout 2006), as well as with the member states.

- **Use funding streams to lever greater environmental benefits** at national and national/sub-national levels: more environmentally effective use of cohesion/structural and CAP funding, particularly in relation to water policy (Benson et al. 2012). Better climate policy ‘mainstreaming’ can encourage measures facilitating adaptation to climate change and discourage those which are ‘mal-adaptive’ or lead to ‘lock-in’ to carbon-intensive forms of infrastructure (Hjerp et al 2012; Rayner and Jordan 2012).
- **Use the full toolbox of instruments:** despite much discussion of the merits of ‘new’ instruments such as taxation and voluntary agreements and many complaints about regulation, the EU essentially remains a ‘regulatory state’ i.e. regulation constitutes its primary mechanism or mode of governing. This situation has partly arisen because of the many legal, political and practical barriers to using the ‘new’ instruments in practice (Jordan, Benson, Wurzel and Zito 2012). It is also because when they have been used – e.g. the emissions trading system and the voluntary agreement on car emissions – the new instruments have not performed as well as expected.
- **Learn from the past:** undertake more ex post evaluation exercises (see above), drawing on the varied experiences of the Commission and the Member States. An evaluation focused network modelled on IMPEL (see below), would be a good place to coordinate this effort.

## 7. How far do you think the UK might benefit from the EU taking:

a. More action on the environment/climate change?

b. Less action on the environment/climate change?

This question can only really be answered on a case by case basis, bearing in mind what we know about how the EU has impacted the UK in the past. **Further action on climate change action would certainly accord with the UK’s long-term leadership ambitions and underpin the national targets established in the Climate Change Act.** It will provide the necessary certainty for investments in the low carbon economy. **Promoting ambitious action globally in the short-term on mitigation should also be transparently assessed against the potentially significant costs of having to respond to the increasingly evident impacts of climate change in the future (‘adaptation’).**



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

- ***The EU and hence the UK could employ more of the ‘new’ instruments, but these are not panaceas and, crucially, also suffer from implementation problems of their own*** (see above).
- ***If the EU is to remain mostly regulatory in nature, more thought could be given to how to build stronger links between national inspectorates.*** The experience of the implementation network of national inspectorates (IMPEL) has been extremely valuable for the UK in this regard and the approach could even be extended to other policy areas where future EU action seems necessary but is contested.
- ***The UK could employ more innovative implementation mechanisms within the context of existing EU Directives.*** One current example is recently introduced UK policy on promoting collaborative catchment level management of water resources in support of regional scale river basin planning – an approach that could provide valuable lessons for other EU states (Benson et al. 2012).

**9 A. 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?**

**B. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

***The EU is an extremely important actor in global environmental policy.*** It is a party to all the major multilateral environmental agreements. Indeed without the EU, the Kyoto Protocol would almost certainly have expired and international climate policy would have become even more gridlocked than it is now. There are of course some tensions between who should have negotiating rights (the Commission or the Council?) in areas of shared competence, but in general UK policy appreciate that there are obvious advantages of allowing the EU to speak with one voice internationally. In fact, recent research demonstrates ***how the EU uses the ‘carrot’ of membership to induce third states to enter into international environmental agreements*** (Schultz and Tosun 2013).

## **FUTURE CHALLENGES AND OPPORTUNITIES**

- 10. A. What future challenges or opportunities might we face on environmental protection and climate change?**
- B 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?**
- C. What would be the costs and benefits to the UK of addressing these future challenges at an EU level?**

Aside from the immediate challenge of austerity, the challenges arising in an increasingly resource-constrained world are likely to be considerable. The international nature of such problems – potentially including migration, resource scarcity and climate change – means that governance will need to operate across multiple scales and actors. In many respects, ***the EU provides a handy model for how governance across borders could be organised in other regions.*** For the UK, EU membership involves pooling sovereignty. That is to say, it means trading some national autonomy for enhanced influence on a global scale. In an increasingly interconnected world, this is an important capacity to have.

***In order to make the most of EU membership, the UK should devote more energy to working inside the institutions of the EU to further its national interests.*** In the past, the UK has tended to be more interested in issues of ‘policy’ and less concerned with shaping the EU ‘institutions’. In future, when the EU could conceivably comprise 30+ states, shaping both to reflect UK interests is going to be an even more of an important challenge, where necessary cultivating links with other member states on issues of common interest.

## **ANYTHING ELSE?**

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

Firstly, ***compared to other policy areas, the environment has been relatively deeply affected by the EU.*** The vast majority of policies are now decided in or with the EU (RCEP 1998). The sunk costs associated with UK membership are therefore relatively high, and the extent of uncertainty created by discussions of withdrawal from the EU therefore correspondingly greater c.f. less Europeanised sectors.

Second, despite what is commonly assumed, ***all Member States have been affected by the EU, even the most environmentally progressive or 'leader' states*** such as Germany, Sweden, Norway and the Netherlands (Jordan and Liefferink 2004). The UK is not the only state to have been impacted by the EU, whilst the rest have remained unaffected. The most disruptive environmental policies have actually been mainly procedural in nature, for example the directives on environmental information, EIA and EMAS. Although these have been fairly comfortably accepted in countries such as the UK, they misfitted with everyday practices in states such as Sweden, Germany and Austria (Jordan and Liefferink 2004), causing social and political debate.

Third, ***the overall EU effect has been uneven across states and policy areas. Despite what is commonly assumed in the UK, differentiated harmonisation is the norm, not total harmonisation.*** While some core aspects of national policy have become much more similar through their interaction with EU policy and there are basic minimum requirements, there has been no long-term convergence towards a single, standard 'EU-inspired' model of policy. Thus on closer inspection the 28 member states continue to process environmental policy in noticeably different ways, leading to different approaches and standards in some sub-areas. Comparative analysis indicates that compared to the overall trend, homogeneity is greater for obligatory policies than for non-obligatory ones (i.e. Regulations vs. Directives), and stronger for trade-related policies than for non-trade related ones. (Holzinger et al. 2013).

Fourth, ***some elements of national policy have been more deeply affected than others.*** The impact of the EU has been particularly evident in relation to domestic legal structures (Macrory 1987; 1991), which have become more formalized and much more specific in terms of the overall objectives to be achieved. It is considerably harder to

identify a clear 'EU effect' on national administrative and bureaucratic structures. The most obvious changes include the creation of a permanent representation (UKRep) in Brussels, the creation of some new regulatory agencies and the establishment of a EU coordinating unit in DEFRA. The really big 'machinery of government' changes - e.g. the creation of new ministries such as DEFRA or the merging of existing ones to create DECC - have mostly been triggered by domestic and then mainly 'non-environmental' political demands. Given these continuing differences in national policy and structure, it is hardly unsurprising to discover that EU membership has not lead to a convergence in levels of environmental quality (Neumayer 2001).

Fifth, Eurobarometer polls demonstrate that **public support across the EU for centralising environmental powers is relatively strong, compared to other policies issues** (Jordan and Adelle 2012). However, the overwhelmingly positive influence that EU membership has had on the UK environment often goes unreported in the mainstream media. **Therefore it is not at all clear whether the public really understands the impact of the EU and thus the risks and opportunities associated with it possibly leaving the EU.**

Sixth, **no state has ever left the EU before. Therefore the uncertainties created by even raising the possibility are potentially very substantial.** Given what it is at stake, it is therefore important that different scenarios are clearly identified and transparently evaluated. One is possibly moving from EU to EEA membership, in which case Norway offers a valuable example (Hovden 2004). The existing literature indicates that as an EEA member, Norway has less capacity to use the EU to exert international leadership. It also has to abide by the *acquis communautaire*, with less scope for shaping it in its own image. Another option might be to leave the EU entirely. On the face of it, this would seem to provide an opportunity to dismantle EU inspired rules (or at least ensure non-implementation was not penalised), but the UK would probably still have to maintain some environmental rules to secure access to the single market; rules that it would then have little or no ability to influence.

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## **UK Chamber of Shipping**

**Q1** No EU environmental or climate change Directive or Regulation has had a positive impact for shipping. Whilst the good intent of the EU is recognised and largely supported in this area, as shipping is such a truly global industry, arguably more so than any other, it remains imperative that shipping is regulated globally, through the IMO, to prevent distortion of trade and unfair competition.

**Q2** There are many examples. The Sulphur Directive has placed an unwelcome and unfair additional burden upon shipping over and beyond IMO regulations. The Offshore Directive has failed to recognise the high standards already in place in the North Sea and is likely to reduce not improve safety standards. Potential EU regulation on ship recycling will almost certainly derail the case for countries to adopt the IMO's Hong Kong Convention and do nothing to improve standards in developing countries. Shipping must be regulated globally through the IMO, something that the Commission seems to be realising with aviation given their move away from an EU ETS for aviation, preferring rather to support ICAO's moves towards global regulation on reducing GHGs.

**Q3** Environmental and climate change regulation and associated decisions should be made globally through the IMO. Whilst it is accepted that progress within the IMO on climate change has been slow this has been because of a political impasse at the UNFCCC rather than IMO inaction. The EU would do better by using its efforts to unblock the impasse at higher political level rather than threaten regional action that would seriously disadvantage European shipping.

**Q4** There would be no advantage to shipping by moving the decision making from the IMO to the EU.

**Q5** Not at all.

**Q6** There is little balance between the two as the economic interests of shipping (UK shipping's contribution to UK GDP is £13 Bn) is disadvantaged by the EU imposing regional standards for an industry that is best regulated globally through the IMO. The IMO imposes exacting environmental standards and though there is clearly room for improving those standards, this must be done through the IMO rather than distorting trade through inequitable regional measures.

**Q7** Whilst it is true that EU legislation does focus on outcomes, the unintended consequences can have the opposite effect. The EU sulphur regulations for example within European Emission Control Areas will drive some trade and freight back onto roads and thus have a profoundly negative impact upon carbon targets.



**Q8** It is to be hoped that the EU's intent to introduce a system of monitoring, reporting and verification (MRV) of carbon emissions from shipping will provide an accurate assessment but as the IMO is trying to introduce a similar system globally, that is where it best lies. Political expediency within the EU all too often seems to drive their environmental agenda.

**Q9** Should engage more fully and energetically within the IMO to ensure the highest standards of environmental regulation are introduced there rather than regionally by the EU.

**Q10** Considerably, but only if they constrain their efforts to working through the IMO.

**Q11** Regional environmental measures for shipping should be avoided and if less action means fewer EU Directives and regulations for shipping then that is positive though they should still engage fully within the IMO.

**Q12** Continue to ensure that EU regulation is as closely aligned as possible to IMO regulation thus avoiding gold plating.

**Q13** When the EU does introduce environmental regulations regionally, then the sooner this can be transposed into global regulation the better it is for shipping. Working therefore with other countries outside the EU to adopt similar regulations is then helpful.

**Q14** Critically important. The UK must continue to push hard as a member of Team EU to more closely align the UNFCCC principles of CBDR with 'no more favourable treatment' as applied by the IMO. This lack of parity is providing the perfect mechanism for those that wish to block progress within the IMO to do so.

**Q15** Achieving global consensus to reduce emissions, including carbon, from shipping. Adoption of the Hong Kong Convention on ship recycling. Implementation of the IMO's Ballast Water Convention.

**Q16** Both the UK and EU should work tirelessly within the IMO and UNFCCC to achieve global progress rather than introducing potentially harmful regional measures that may damage both trade and the environment.

**Q17** Potentially damaging trade by distorting competition (UK shipping contributes £13 BN towards UK GDP) and the environment by driving freight away from the sea and back onto roads.

**Q18** No

## **UK Environmental Law Association**

1. I am writing with the response of the United Kingdom Environmental Law Association ("UKELA") to the above call for evidence.

## **Who are UKELA?**

2. UKELA is the UK's foremost membership organisation comprising both lawyers and non-lawyers. Our aim is to improve the understanding and awareness of environmental law, and to make the law work for a better environment. UKELA monitors and, where appropriate, comments on the development of environmental policy and legislation.
3. The membership of UKELA comprises those with an interest in environmental law and draws upon lawyers in private practice, public and administration, academic institutions and non-governmental organisations (NGOs). This means that it is able to comment from both a theoretical and practical point of view.
4. In responding to consultations, UKELA's aim is to ensure that the proposed policy measure or law will work including within the policy and legislative landscape within which it is framed.

## **UKELA's response to the Balance of Competences Review**

5. UKELA's response to the Balance of Competences Review will focus principally on climate change, nature protection and biodiversity, water and waste.

## **OVERVIEW**

6. As a general position, UKELA strongly supports continued EU competence in the areas of the environment and climate change.
7. Most (estimated as being over 90%) of the environmental legislation currently in force in the UK is derived from EU legislation which, in itself, is influenced by member states' own policy positions and priorities through dialogue with the Commission. This has resulted in a considerable improvement in the quality of marine, freshwater and terrestrial environments both within the UK and across Europe as a whole. It has also brought economic benefits. The improvements and benefits are elaborated further below.

8. UKELA considers that EU competence brings with it significant advantages over dealing with environmental issues at a purely national level.
9. Many environmental issues – from water and air pollution to global climate change - do not respect national boundaries. There are, therefore, important technical advantages in dealing with interconnected environmental issues through common controls. If neighbouring member states are bound by common requirements, they can work together to enhance the quality of the environment as a whole.
10. EU competence in this area brings with it mechanisms for ensuring all member states comply with their obligations under the environmental legislation. Proceedings for breach of EU law – including infraction proceedings brought by the Commission against member states – are a means of ensuring that member states meet their obligations. If, for example, the UK were to experience harmful pollution caused by another member state failing to implement a directive (perhaps giving that other member state a competitive advantage over the UK due to cost savings from that non-compliance), the other member state could be compelled to comply through legal proceedings and the imposition of fines.
11. This raises another issue, namely that subjecting all member states to the same duties under environmental legislation provides a level playing field for internal market competition. Even the 'greenest government ever' will be cautious about regulating for an environmental problem that is unregulated in other member states, for fear of their country losing its competitive edge.
12. As a member state, the UK is not only bound by EU law, it can also shape it. This can be done through negotiations on working drafts of Directives and Regulations, at Council meetings and by MEPs. For example, Directive 96/61/EC on integrated pollution prevention and control (IPPC) drew heavily on the UK's integrated pollution control law as a result of effective influencing work by UK representatives. In this way, UK can use its position as a member state to push for laws that meet specific national priorities; but that will apply to all member states thereby ensuring a level playing field.
13. UKELA recognises that there are some areas where current EU environmental legislation needs to be improved to make it more effective. UKELA identified a number of such areas in the course of its research project on the state of UK environmental legislation.<sup>556</sup> They include a need for more

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<sup>556</sup> *The State of UK Environmental Law in 2011-2012: Is there a case for legislative reform?* May 2012, paragraphs 4.11-4.12. A copy of that report (the 'Final report') is attached to this consultation response. The Final report and the more detailed Interim Report are also available to download at [www.ukela.org/Aim5](http://www.ukela.org/Aim5).

detailed legal guidance on the definition of waste and end-of-waste criteria for particular waste streams; and a need for reforms to integrate better the requirements of the Habitats and Environmental Impact Assessment Directives. In its final report on that research project, UKELA recommended that the government takes appropriate action to negotiate suitable reforms, and more generally to 'seek to influence the drafting of EU legislation with a view to minimising its ambiguity of terms and maximising the integration of substantive and administrative obligations'. UKELA urges the government to act on those recommendations.

## **COMMENTS ON SPECIFIC ISSUES**

### **NATURE PROTECTION AND BIODIVERSITY**

#### **Advantages and disadvantages**

14. The legislation (The Conservation of Habitats and Species Regulations 2010 which transposes the Habitats Directive 92/43/EEC into national legislation (E&W)) is robust ensuring that appropriate protection is afforded to species and habitat types of European importance.
15. The legislation has resulted in a complementary development in the underpinning national legislation providing greater protection for habitat types and species of national importance (for example, the measures contained in the Countryside and Rights of Way Act 2000 to manage and protect Sites of Special Scientific Interest (SSSIs)).
16. Prior to the EC Directive 92/43/EEC, the protection of wildlife under national law was restricted to land and waters within Territorial Waters. Following a legal challenge the provisions of the wildlife Directives were extended to UK Offshore Waters. The provisions are transposed into national legislation by means of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842).
17. The introduction of the precautionary principle to safeguard sites of European importance (SPAs and SACs) has been a challenge. However, its application does not necessarily preclude potentially damaging plans and projects being approved, only that the necessary checks and balances are in place to ensure that the overall conservation status of a habitat type or species is not detrimentally affected.

18. The Habitats Directive (92/43/EEC) required the establishment of an ecologically coherent network of sites comprising of Special Areas of Conservation (SACs) designated under the Directive and Special Protection Areas (SPAs). It also requires that Member States in securing the coherence of the network, take measures for the complementary management of the wider countryside. This provision has provided the impetus to securing nationally important ecological networks.
19. The only marine protected areas prior to the Habitats Directive were 3 Marine Nature Reserves established under the Wildlife and Countryside Act 1981 (as amended) and the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (1985 N.I. 1) (as amended). The Directive and its application to Offshore Waters has resulted in a major boost to marine conservation.
20. The Habitats Directive requires that every 6 years Member States report on their implementation of measures taken under the Directive (Article 17). This includes the assessment of the conservation status of species and habitat types of European importance and measures taken to maintain or restore them at favourable conservation status. The subsequent consolidated assessments undertaken by the European Commission considers status at biogeographical and European levels. These overarching reports identify the respective value of species populations and the distribution of habitat types within Member States. This information is used to develop action programmes to secure the favourable status of species and habitats of European importance.
21. Cross compliance between the requirements of the wildlife Directives and meeting EU biodiversity targets and those of the Common Fisheries and Common Agriculture Policies are essential. Measure under the latter are established but need improvement. Considerable work is need on the former.
22. The overlap and complementary legislative provisions to secure overarching environmental benefits are found between the Water Framework Directive in seeking to secure good ecological status, the Marine Strategy Framework Directive in seeking to secure good environmental status and the Habitats Directive in seeking to secure favourable conservation status. The communication and co-operation between the relevant statutory bodies in producing their respective programmes has been essential to securing a better environment. Note that the definitions of 'status' also set the benchmark for damage under the Environmental Liability Directive.
23. Certain issues benefit from having a European consideration and the coordination of measures. These include migratory species, plant diseases and non-native invasive species.

24. At global conferences or convention standing committees, EU coordination and representations ensure a greater weight is given for agreed positions rather than that taken by individual Member States.
25. Much criticism is made of the precautionary principle as set out in the Habitats Directive. The perception is that the provisions prevent those plans and projects at risk of damaging a European interest feature from being undertaken. This is incorrect. Such plans and projects can be approved and undertaken where there are no alternatives and imperative reasons of overriding interest. Compensation is required, that is to secure commensurate measures to address the impact of the damaging plan or project. This is consistent with the accepted 'polluter pays principle' applied to the general environment.

### **Future challenges and opportunities**

*Keeping the Directives up to date and relevant.*

26. Many of the Directives came into force when there were only a dozen or so Member States and whilst changes have been accommodated by means of accession treaties the context and detail of some elements require review. For example the species and habitat types listed in Annexes in the Birds and Habitats Directives.
27. The European Union now comprises 28 Member States. Ensuring that legislation remains relevant and is consistently applied, is a challenge.

### **CLIMATE CHANGE REGULATION**

#### **Advantages and disadvantages**

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

**Benefits to industry:**

28. The launch of the EU Emissions Trading Scheme (EU ETS) in 2005 as the world's first greenhouse gas (GHG) cap-and-trade scheme set a high level of ambition in managing GHG emissions for other regions and countries to emulate. It raised the profile of climate change as a global problem requiring ambitious and international solutions to combat it. While it is acknowledged that the scheme suffers from issues which the EU is currently taking steps to resolve (principally the surplus of allowances,) it is fair to say that in engaging the financial and business communities on GHG emission reductions, the scheme has pushed climate change up the corporate agenda and provided a valuable learning experience on the challenges involved in reducing GHG emissions. Entities that are responsible for 45%<sup>557</sup> of the EU's GHG emissions are now familiar with the idea that they must monitor and reduce their emissions. A national scheme could not have had the same impact.

### **Benefits to the UK:**

29. EU climate change policies have benefited the UK in the following ways:

- Providing an environment that coincided with the UK's own climate change aspirations. This has encouraged the UK to take the steps it has to tackle its GHG emissions. The UK economy has benefited from the growth of a low-carbon industry that has evolved in response to EU and UK policy drivers. In 2011/12 the global market for low carbon goods and services (LCEGS) was worth £3,442 billion and the UK's share of LCEGS was 3.7% (i.e. worth £128 billion).<sup>558</sup> In relation to the EU ETS, the financial markets in London have readily adapted to include this new product range. Many investment banks have a "carbon desk" based in London and the ICE Futures Europe derivatives exchange lists a range of emissions products<sup>559</sup>.
- Helping the UK to achieve its commitment under the Kyoto Protocol and the EU Burden Sharing Agreement (*Council Decision 2002/358/EC concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder*<sup>560</sup>) to reduce its GHG by 8% during the first Kyoto Commitment Period (2008-2012). The EU achieved GHG reductions of 15.4% in 2010 compared with a 1990 baseline. The UK's GHG emissions over the same time period were reduced by 23%.<sup>561</sup>

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<sup>557</sup> [www.ec.europa.eu/clima/policies/ets/index\\_en.htm](http://www.ec.europa.eu/clima/policies/ets/index_en.htm)

<sup>558</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224134/LCEGS-underlying-data.xls](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224134/LCEGS-underlying-data.xls).

<sup>559</sup> [www.theice.com/emissions.jhtml](http://www.theice.com/emissions.jhtml).

<sup>560</sup> [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:130:0001:0001:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:130:0001:0001:EN:PDF)

<sup>561</sup> [www.epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsdcc100](http://www.epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsdcc100)

- It is also worth noting that where the UK has wanted to go further on climate change mitigation or to do things differently, the fact that the EU has introduced policies and legislation in this area has not unduly fettered the UK's policy in this area<sup>562</sup>. This is demonstrated by the fact that the UK has set itself a binding target of an **80% reduction in GHG levels (below 1990 levels) by 2050 under the Climate Change Act 2008**. The UK has also introduced a number of climate change policies that are independent of EU action, for example the CRC Energy Efficiency Scheme, the Climate Change Levy (CCL), Carbon Floor Price and Climate Change Agreements (CCAs)

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

**Considering specific examples, how might the national interest be better served if decisions:**

**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?)**

**Currently made at another level were instead made at EU level?**

30. In our view, as climate change is a global problem, decisions need to be taken collectively by countries acting in the common interest. Ideally, decisions should be taken in fora such as the United Nations Framework Convention on Climate Change (UNFCCC) but in the absence of such a global agreement, decisions taken across a region such as the EU are more likely to have an effect on global emissions than unilateral action by individual countries. Evidence of this can be found in the fact that island nations in the Pacific and other oceans, that are affected by rising sea levels as a result of climate change, have formed the Alliance of Small Island States (AOSIS)<sup>563</sup> to improve their negotiating positions at the UNFCCC. There are also a number of other groups representing a number of nations with similar interests or positions that lobby the annual UNFCCC Conference of the Parties (COP)

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<sup>562</sup> Environmental matters are a matter of shared competence so that both the EU and member states are both authorised to adopt binding acts in these fields (Treaty on the Functioning of the European Union (TFEU), Article 4, paragraph 2(e), [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF)). Member states may exercise their competence only in so far as the EU has not exercised, or has decided not to exercise, its own competence. Article 193 TFEU states that these measures shall not prevent any member state from maintaining or introducing more stringent protective measures relating to the environment. Such measures must be compatible with the Treaties. They must also be notified to the Commission.

<sup>563</sup> [www.aosis.org/](http://www.aosis.org/)



meetings, for example, the G-77 (which represents developing countries) and the BASIC countries (which include Brazil, South Africa, India and China)<sup>564</sup>.

31. The difficulties<sup>565</sup> that the EU has faced in adding aviation to the sectors covered by the EU ETS demonstrates how difficult unilateral action would be for a country with ambitious climate change mitigation plans.
32. There is also value in the EU taking action on climate change (for example, in agreeing targets under the EU Burden Sharing Agreement<sup>566</sup>). This is because EU legislation can be more readily enforced than international agreements (which often suffer from weak enforcement mechanisms) to ensure all member states comply (for example, by way of infraction proceedings etc). This benefits the UK as it avoids the risk (at least within the EU) of losing a competitive advantage to other countries that ignore the law. Notwithstanding this point, we consider international action on climate change is vital and EU action should be supplementary rather than a substitute for international action.
33. The EU's ability to negotiate at the UNFCCC COP meetings as a bloc of 27 nations responsible for approximately 11%<sup>567</sup> of total global CO2 emissions, is greater than the UK's position as it is responsible for approximately 1.75% of total global CO2 emissions.
34. If the EU's competence on environmental matters was changed so that it could not make decisions on climate change issues, it is anticipated that this would have result in a much lower level of action on this issue by the majority of member states. In addition, the impact of the actions by countries such as the UK that aspire to be leaders on this issue would be considerably reduced. By being part of the EU's decision making processes on climate change regulation, we think that the UK's influence on climate change mitigation is

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<sup>564</sup> [www.unfccc.int/parties\\_and\\_observers/parties/negotiating\\_groups/items/2714.php](http://www.unfccc.int/parties_and_observers/parties/negotiating_groups/items/2714.php)

<sup>565</sup> These difficulties include the application for judicial review by the Air Transport Association of America, American Airlines, Continental Airlines and United Airlines in 2009, against the Department of Energy and Climate Change, concerning the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009 (SI 2009/2301) (see [R \(Air Transport Association Of America Inc\) v Secretary Of State For Energy And Climate Change \[2010\] EWHC 1554 \(Admin\)](#) and Case C-366/10). Although the US aircraft operators withdrew their judicial review challenge in March 2012, a group of 26 non-EU countries, including China and Russia, that oppose inclusion of their airlines in the EU ETS agreed a package of retaliatory measures, To try and prevent such measures, the EU has put in place the "stop the clock" decision (*Decision derogating temporarily from Directive 2003/87/EC of the EP and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community*), which will suspend the inclusion of flights to and from non-EEA countries from the EU ETS for one year.

<sup>566</sup> Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020.

<sup>567</sup> [http://ec.europa.eu/clima/news/articles/news\\_2012071801\\_en.htm](http://ec.europa.eu/clima/news/articles/news_2012071801_en.htm)

amplified. If the UK were to leave the EU, the push for greater action on climate change mitigation at EU level would be weakened as the Commission would have lost one of its most vocal champions on climate change mitigation. The EU would be affected by finding it harder to push through ambitious climate change policies. The UK would be affected as what it can achieve acting unilaterally would be so much less than when it is one of the leaders of a bloc of countries that account for such a large proportion of global CO2 emissions.

### **Doing things differently**

**9(a). 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?**

#### **EU's negotiating power**

35. Where the EU can negotiate on international issues such as a global agreement on climate change mitigation, it should be able to achieve a greater success than individual countries negotiating such agreements can hope to achieve given that it represents 11% of the world's CO2 emissions. If EU member states decide not to allow the EU to negotiate on their behalf and insist on maintaining separate negotiating positions, not only is the EU's negotiating power diminished but EU officials' time is distracted from negotiating with other countries by having to try and convince member states to buy into the EU's ambition on climate change mitigation.

**9(b). How important is it for the UK to be part of "Team EU" at the UNFCCC?**

36. We think that the EU will achieve more if the UK is part of the EU Team at the UNFCCC. The UK's ambition on climate change mitigation will help to ensure that the EU is not persuaded to weaken its ambition by other member states that have lower levels of ambition on climate change mitigation. The EU needs member states that are in favour of taking decisive and ambitious steps on climate change mitigation in order to influence other member states that this is an important goal.

37. If the UK leaves the EU so that it no longer negotiates as part of the EU at the UNFCCC we think that both the EU and the UK's positions will be weakened and less will be achieved.

## Anything else

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

**38. Cost of exiting the EU:** If the UK decides to leave the EU, the original basis and rationale for much of the UK's environmental legislation would be lost. If the UK remains in the European Economic Area (EEA), some international environmental laws including some relating to climate change, will still apply to the UK but other environmental laws will not<sup>568</sup>. The UK will presumably then need to decide whether to repeal any UK implementing legislation (assuming the relevant EU legislation was a directive) or to preserve that legislation. This would take up a great deal of government and parliamentary time which has implications for departmental budgets and also for the other policies that could be pursued if the relevant department's and Parliament's time were taken up with EU "exit issues".

**39. UK ability to influence EU climate change law and policy:** If the UK decides to leave the EU but remain in the EEA, we would (as noted above) remain subject to certain EU laws on climate change but our ability to influence the development of those laws would be very limited<sup>569</sup>.

## WASTE

### Advantages and disadvantages

40. According to the Call For Evidence (paragraph 58) the UK produced 259 million tonnes of waste in 2010. In a global economy in which resources are becoming increasingly scarce, it is vital that the UK recognises the value of its waste and transitions from a linear to a circular economy. The UK has traditionally been slow to recognise the value of waste, with landfill being the preferred method of disposal, but the EU has driven change in the UK's waste

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<sup>568</sup> Articles 73-75 of and Annex XX to the EEA Agreement (*Agreement on the European Economic Area*, [www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf](http://www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf) and [www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex20.ashx](http://www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex20.ashx)) provide how EEA states should protect the environment and specifically what EU legislation will apply to them. For example, the EU ETS Directive (2002/358/EC) and its associated Regulations and Decisions apply to EEA states.

<sup>569</sup> EEA participation in the EU legislative process can be by (i) European Free Trade Area (EFTA) experts participating in Commission committees; (ii) the EEA EFTA submitting comments on EU legislation (iii) adopting resolutions responding to Commission initiatives (see <http://www.efta.int/~media/Files/Publications/Bulletins/eeadecisionshaping-bulletin.pdf> and also <http://www.efta.int/~media/Documents/eea/1112099-basic-features-of-the-EEA-Agreement.pdf>).

management industry by stimulating recycling and energy recovery. The certainty of direction which EU competence has provided since the original Waste Framework Directive (75/442/EEC) has provided investors with long-term certainty in a way that national policy has not and has allowed the marketplace for waste and resources to develop and grow stronger throughout the EU. In its [UK Waste Management and Recycling Industry 2010 Labour Market Investigation](#), Energy & Utility Skills estimated that the waste and recycling industry directly employed 142,550 people in the UK in 2010 and identified a number of pieces of EU legislation as key political drivers for the growth of this industry, namely the Landfill Directive (1999/31/EC), the Packaging Waste Directive (94/62/EC), the Waste Electrical and Electronic Equipment Directive (2002/96/EC – now recast as Directive 2012/19/EU), the End of Life Vehicles Directive (2000/53/EC) and the Batteries Directive 2006/66/EC).

41. If waste is to be treated as a resource, then UKELA believes that it needs to be subject to the EU's single market rules in the same way as any other raw material or commodity. However, waste is different to other raw materials and commodities in that in some cases it may pose a risk to human health and the environment. Trans-boundary shipments of waste therefore need to be regulated at supra-national level.
42. The case law of the European Court of Justice/Court of Justice of the European Union on the definition of waste has caused much confusion across the EU, but the revised Waste Framework Directive (2008/98/EC) attempts to resolve this confusion through the adoption of provisions dealing with by-products (Article 5) and end-of-waste status (Article 6).

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

43. UKELA is of the view that the current balance between EU and national decision-making in waste management legislation is about right. However, one area where UKELA believes that greater EU involvement should be encouraged is in setting end-of waste criteria. Although under Article 6 of the revised Waste Framework Directive (2008/98/EC) the European Commission can set EU-wide end-of-waste criteria for certain waste streams (which are those for the materials that are most likely to be traded across the EU for recovery or recycling), there is little or no certainty over the end-of-waste status of recovered or recycled materials falling outside these EU-wide criteria. Different Member States' competent authorities may view these materials differently and have the power under the Waste Shipments Regulation (Regulation (EC) No 1013/2006) to reject consignments. This not only hinders the development of the single market for these materials, but also puts exporters and importers at risk of criminal liability.

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

44. UKELA believes that the standards set by the EU for the waste management industry are vital for the proper functioning of the internal market. An example of this is the Waste Incineration Directive (2000/76/EC) (now incorporated within the Industrial Emissions Directive (2010/75/EU)) and the Landfill Directive (1999/31/EC), which have established common standards for waste

incineration plants and landfill sites respectively across the EU. This has prevented Member States adopting lower environmental standards in order to attract waste streams, thereby distorting competition within the internal market.

45. As mentioned above, the UK has traditionally been slow to recognise the economic value of waste materials. Reliance on landfill as the principal means of dealing with waste not only has adverse environmental consequences, but also results in the loss of large quantities of scarce natural resources from the economy. The Waste Electrical and Electronic Equipment Directive not only prevents hazardous materials in waste electrical and electronic equipment being sent to landfill, but also enables substances such as precious metals and rare earth metals to be recovered. In a global economy in which there is global competition for resources, the UK cannot hope to compete against countries such as the US and China for natural resources; the only way in which it can hope to compete is as part of the EU.

### **Current legislation**

46. There are examples of both outcomes-based legislation and standards-based legislation in EU waste management legislation. UKELA does not consider that there are any particular advantages or disadvantages of either, but that the nature of the legislation should depend on what it is trying to achieve.
47. UKELA believes that EU waste legislation is generally properly based on a robust assessment of risk and scientific evidence. As an example, the process of developing the Waste Incineration Directive and the related BAT Reference Note took approximately two years of work. UKELA also notes that the quality of legislation is directly related to the quality of the data and evidence fed into the legislative process. If poor and/or incomplete data and evidence are fed into the legislative process, then poor quality legislation with inappropriate targets is more likely to emerge. This highlights the need for the UK Government to properly engage in the EU, rigorously and from an early stage, taking full account of the views of the Devolved Administrations.

### **Doing things differently**

48. UKELA believes that there is sufficient flexibility in EU waste legislation to allow Member States to adopt different approaches to transposition. Even within the UK, this can be seen in the way that England, Wales and Scotland have each implemented the revised Waste Framework Directive. The Devolved Administrations are now able to develop their own policies and solutions to waste issues governed by EU legislation. This means that within the UK Member State, EU legislation may be implemented differently. That said, waste does not necessarily respect administrative boundaries, so there is a need for compatibility in respect of the implementation of EU legislation between the various countries within the UK.
49. UKELA believes that the EU must continue to play a role in negotiating and entering into international treaties and agreements relating to matters such as trans-boundary movements of waste and the disposal of waste at sea (examples include the Basel Convention and the London Convention), given the potential cross-border impacts of such matters.

50. UKELA would also support the regular review of EU waste legislation, in particular how it is being implemented in Member States.

### **Future challenges and opportunities**

51. One of the principal challenges that the UK's waste management industry faces is the uncertainty generated by the current debate over the UK's relationship with the EU! As the Government should be well aware, regulatory and political uncertainty creates concerns for investors, who may be less likely to invest in the UK. There is an opportunity for the UK to create a circular economy, which would provide great economic benefits, but the UK is unlikely to be able to achieve this in isolation from the EU.

52. UKELA is aware of the pressing energy, water and resources challenges that the UK will face over the coming decades and suggests that the Government needs to be more open about the potential consequences of certain policy decisions on other sectors. For example, if significant unconventional hydrocarbon resources are developed, then this could have an impact on the viability of many waste to energy plants.

## **WATER**

### **Advantages and disadvantages**

53. UKELA considers there to be significant advantages from there being EU competence to address water issues because:

- water is a vital resource. It is fundamental to human life, nature and the economy.
- water flows freely across frontiers, and pollution does not respect national boundaries. Given the scope for activities in one member state to affect the water resources of another, it therefore benefits all member states if they are bound by the same controls (albeit with appropriate discretions as to implementation: see further comments below about the Water Framework Directive).
- subjecting all member states to the same requirements provides for a level playing field (avoiding countries gaining a competitive edge by applying lower standards) that can be enforced through legal proceedings.

54. Given these advantages, it is no surprise that over the years there has been significant EU level activity to address water pollution. The First Environment Action Programme ("EAP") in 1973 placed water pollution as a priority matter and there have been many Directives since. These have increased standards

for emissions and water quality, and driven improvements across a wide range of water issues. As a result, water quality across the EU has improved significantly, and EU citizens now enjoy some of the best water quality in the world.

55. EU action on water issues has had a significant impact on UK's domestic water pollution law, policy and practice over the last forty years. EU legislation and policy has been the major impetus for reforms including: the development of a formal system of water quality classifications and objectives; regulations on drinking water quality; a shift in relation to the control and regulation of the discharge of sewage effluent to the sea; and the introduction of specific standards for the control of dangerous substances.

*Examples of benefits from measures introduced as a result of EU competence in this area*

*(a) Improvements to bathing waters*

56. In 1970s and 1980s, Europe's seas were heavily polluted. Raw sewage and floating litter were a common sight in UK bathing waters, posing risks to human health, harming the environment and adversely impacting on tourism.

57. The Bathing Water Directive (76/160/EEC) introduced standards for the quality of bathing waters and required member states to take measures to meet those standards. Over the years since the Directive was introduced the UK has had to react and change approaches to sewage treatment and releases of nitrates. As a consequence, bathing water quality in England has improved significantly over the last 20 years. Cleaner beaches attract more tourists and bring economic benefits.

58. Under the revised Bathing Water Directive (Directive 2006/7/EC) bathing waters in England now have more stringent water quality targets to achieve by 2015. As well as improving water quality there is a much stronger emphasis on managing beaches and providing information. Bathing waters are to be classified as Excellent, Good, Sufficient or Poor. The UK aims to have all bathing waters classed as Sufficient by 2015. By driving further improvements to bathing water quality and making better information available, the Directive is expected to enhance the attractiveness of UK's beaches to tourists, bringing more economic benefits.

*(b) The introduction of adequate sewerage treatment systems.*

59. The Urban Waste Water Treatment Directive (Directive 91/271/EEC) was adopted in 1991, with the objective of protecting the environment from the adverse effect of urban waste water discharges and discharges from certain industrial sectors. It requires member states to provide waste water collecting systems (or sewerage networks), and to treat sewage to certain standards before it is discharged to rivers and the sea.

60. Over the years since 1991, the UK and other member states have invested heavily in improving sewerage infrastructure to meet the requirements of this directive. Water quality has improved significantly due to a reduction in untreated discharges and overflows, and improvements to the quality of treated effluent. This has benefited human health and sanitation, and the animals and plants that live in and around water. Others to benefit include recreational users of waters previously adversely affected by sewage discharges, and associated economic sectors such as water sports and tourism.<sup>570</sup>

61. Although the directive has often been seen as costly, it addresses key waste water challenges and has clear and binding objectives. It allows member states to provide alternative solutions and encourages innovations both in waste water collection and treatment.

*(c) Integrated catchment-based approach to managing the water environment*

62. Currently, the Water Framework Directive (Directive 2000/60 EC) sets the framework for community action in the field of water policy. A key benefit of this directive is to provide for a more integrated approach to managing the water environment.

63. Prior to the Water Framework Directive, a patchwork of different directives each addressed specific water issues, such as: certain polluting activities (e.g. waste water discharges, agricultural use of nitrate fertilisers); particular kinds of pollutants (e.g. certain dangerous substances); and the quality of particular kinds of waters (e.g. bathing waters and groundwaters). This organic,

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<sup>570</sup> See further

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69592/pb13811-waste-water-2012.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69592/pb13811-waste-water-2012.pdf) (see pages 19 and 20);

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69592/pb13811-waste-water-2012.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69592/pb13811-waste-water-2012.pdf)



incremental approach led to a rather incoherent, piecemeal regulatory system with some unnecessary duplication of controls.

64. The Water Framework Directive represents an ambitious attempt at comprehensively overhauling EU water policy. It requires member states to manage the water environment at catchment level, through river basin management plans, thereby recognising the interactions between different waters within a catchment. Successful implementation will help protect all elements of the water cycle and enhance the quality of groundwaters, rivers, lakes, estuaries and seas.<sup>571</sup> Thus the Directive provides for objectives to be set for *all* water bodies rather than just certain types of water. Under the Directive, standards must be set for all aspects of water status rather than just certain pollutants (through classification systems for good ecological and chemical status, and good groundwater status). And, whilst previous directives focused on controlling 'point source' pollution (e.g. from sewage works), the Water Framework Directive also requires controls on 'diffuse pollution' (e.g. run-off from agriculture and urban areas).
65. The Water Framework Directive has brought significant 'better regulation' benefits, by streamlining the legislation in this area. It repeals a number of older directives that have been superseded.<sup>572</sup> It also brings the other directives that had developed piecemeal to address specific issues within its overarching integrated framework.

### **Where should decisions be taken?**

66. UKELA is of the view that the current balance between EU and national decision-making in water legislation is about right (see further, comments on advantages of harmonised laws, above; and comments on doing things differently, below).
67. The EU institutions have been critical in maintaining momentum for improvements in this area, driving up standards, facilitating data sharing, pushing for implementation and driving the 'better regulation' agenda. Given continued pressures on water resources, UKELA considers it crucial that the EU maintains its leading role on water policy. For example, UKELA supports

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<sup>571</sup> See [www.environment-agency.gov.uk/research/planning/33106.aspx](http://www.environment-agency.gov.uk/research/planning/33106.aspx)

<sup>572</sup> Article 22 of the Water Framework Directive repeals by the end of 2007 the Surface Water Abstraction Directive (75/440/EEC), Exchange of Information on Surface Water Decision (77/795/EEC) and Surface Water Abstraction Measurement / Analysis Directive (79/869/EEC). It repeals by the end of 2013 the Freshwater Fish Directive - 78/659/EEC; Shellfish Waters Directive (79/923/EEC); Groundwater Directive (80/68/EEC); Dangerous Substances Directive (76/464/EEC).

action to implement the Commission's November 2012 Blueprint to Safeguard Europe's Water Resources – a strategy for ensuring that enough good quality water is available to meet the needs of people, the economy and the environment.<sup>573</sup> The UK should continue to influence the development of European policy to ensure it best meets domestic objectives, through negotiations, decisions in Council etc.

### **Doing things differently**

68. UKELA believes that there is sufficient flexibility in EU water legislation to allow Member States to adopt different approaches to transposition. For example, the Water Framework Directive sets the framework for an integrated catchment-based approach to managing water, but leaves discretion to member states to:

- decide on appropriate environmental standards (through the Annex V process for developing classification schemes);
- set the environmental objectives for each water body, taking into account socio-economic considerations (under Article 4);
- and decide on programmes of measures to achieve environmental objectives, taking into account socio-economic considerations.

### **Future challenges and opportunities**

#### *Raising standards and continued implementation of EU water legislation*

69. UKELA considers that a key challenge facing the UK is the need properly to implement the Water Framework Directive with a view to bringing all waters to good status. This is particularly important given the increasing pressures on water resources and the impacts of climate change (for example, 2012 was the wettest year on record but in the South there were still water shortages, drought and hose pipe bans). We are faced with ever competing demands for water from industry, business and households but have an old and ageing water infrastructure.

70. The 7<sup>th</sup> Environment Action Programme provides that “there is likely to be a global shortfall of 40% in water by 2030 unless there is significant progress in improving resource efficiency” and “despite considerable efforts to date, the requirement under the WFD to achieve ‘good ecological status’ by 2015 is likely to be met for only for some 53% of surface water bodies in the EU...”

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<sup>573</sup> [www.ec.europa.eu/environment/water/blueprint/](http://www.ec.europa.eu/environment/water/blueprint/)

there is also a risk that the Marine Strategy Framework Directive to achieve 'good environmental status' by 2020 may be missed..."

71. As noted above, UKELA believes that the EU should maintain a leading role developing water policy to address these challenges, and ensuring the legislation is properly implemented by member states.

### *Business opportunities*

72. UKELA believes that ambitious European environmental policies offer business opportunities to UK firms as they can become leaders in developing new technologies. Thus, the European Innovation Partnership has commented:

(a) "With its pathfinder legislative standards world class companies and cutting edge technology providers, Europe is already a leader in the global water sector... Europe should take the responsibility to take lead in developing innovative solutions to tackle the global water challenges whilst seizing the market opportunities this will bring..."<sup>574</sup>

73. In the UK (and across Europe as whole), the EU's environment policy (including water legislation and policy) has stimulated innovation and investment in environmental goods and services, water technology, goods and services thereby generating jobs and export opportunities.<sup>575</sup>

74. In order to be exposed to and take the real benefit of innovative water technologies and the development of the same, the UK needs to, and should be, at the heart of the EU.

## **UK Green Building Council**

The UK Green Building Council (UK-GBC) is a membership organisation campaigning for a sustainable built environment – one that minimises negative environmental impacts while maximising benefits for people everywhere.

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<sup>574</sup> European Innovation Partnership on Water ("EIP"), European Commission. See the work of the EIP/EIP Water Task Force. [www.ec.europa.eu/environment/water/innovationpartnership/](http://www.ec.europa.eu/environment/water/innovationpartnership/)

<sup>575</sup> For an example of innovative water projects in UK see [www.environment-agency.gov.uk/news/147461.aspx](http://www.environment-agency.gov.uk/news/147461.aspx)

Our mission is to radically improve the sustainability of the built environment, by transforming the way it is planned, designed, constructed, maintained and operated.

We are concerned with homes and non-domestic buildings – new and existing – as well as the infrastructure that binds the built environment together.

Launched in 2007 to offer clarity, cohesion and leadership to a disparate sector, we bring together anyone involved in the complex process of planning, designing, constructing, maintaining and operating buildings. A registered charity, we work with our 400 members – who are mostly businesses, but also not-for-profit organisations, government agencies and academic institutions – to enable them to truly embed sustainability in their business practices.

## **Advantages and disadvantages**

### **1. What evidence is there that EU competence in the area of environment and/or climate change has:**

#### **i. benefited the UK / your sector?**

Several climate change/energy efficiency Directives have benefited the UK construction and property sector.

The Energy Performance of Buildings Directive (EPBD I & II) in particular has raised the awareness in the industry of energy efficiency through requiring buildings to be labelled with an Energy Performance Certificate (EPC). Notwithstanding the issues around the technical details and the software behind the methodology of EPCs (which need to be improved), on the whole the implementation of EPCs has been seen as 'a good thing' by the green building industry and has created business opportunities. This is because it brings a degree of awareness of energy efficiency to building owners and occupiers, and enables further legislation/incentives to be brought in such as the minimum efficiency requirements for privately rented buildings expected in 2018.

The EPBD was designed to address several market failures, as set out in the original RIA for the EPBD: 'The reasons for the lack of investment are well understood and include: lack of information on the opportunities, the short payback periods required if there is no perceived increase in asset value, and landlord/tenant issues concerning who invests and who benefits.'<sup>576</sup>

For most businesses, energy efficiency does not rate as a high priority because it forms a comparatively low proportion of their overall costs, so even when highly cost-effective savings can be made, they are often overlooked. Therefore, the implementation of energy labelling helps businesses to reduce their costs by firstly

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<http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/archived/publications/planningandbuilding/regulatoryimpactenergyperformanc>

making them aware of the poor performance of their buildings, and secondly recommending how the building can be improved. However, UK-GBC's view is that EPCs do not go far enough, and we need Display Energy Certificates for all commercial buildings which tell occupiers what their operational energy use is and therefore where they are wasting energy and money.

The implementation of EPCs for sale/rental of domestic properties has also raised awareness of energy issues for home owners and lessees, although there is still a pressing need for valuers to better understand and value energy efficiency in buildings for this to have real impact. It has also facilitated the introduction of the Green Deal by providing the basis for the GD assessment.

There are other articles in the EPBD which have been/will be of benefit to the building industry. These include the requirement for 'nearly zero energy buildings', and for retrofits.

Overall, the main benefit of the legislation is the policy certainty it brings for the industry, especially in the midst of ambivalence towards climate change and energy policy by the current UK administration.

Unfortunately we do not have figures on the numbers of jobs directly attributable to the implementation of EPBD and other directives like the EED. However, as a recent CBI report highlighted: 'In trying economic times, the UK's green business has continued to grow in real terms, carving out a £122 billion share of a global market worth £3.3 trillion and employing close to a million people. And in 2014/15, it is expected to roughly halve the UK's trade deficit.' The consistent policy signal from Europe that climate change and energy efficiency is important, helps to bolster and stimulate this growth.

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

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

The consistent application of common metrics of measurement across the EU helps businesses who work across countries to understand and work in different markets, and provide standardised products and services and achieve economies of scale.

However, care must be taken that EU environmental standards allow enough flexibility for national circumstances, be they economic, social, geographical, climate related etc.

#### **4. 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?**

Arguably EU legislation takes too much account of the economic interest and not enough of the environmental imperative, given the realities of climate science. Of course economic factors must be taken into account in implementation in the UK and other member states, but more challenging environmental targets in line with climate science would drive the wholesale adoption of green economic growth and create investment in green jobs and industries.

### **Current legislation**

**5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

**i. focused on outcomes (results)?**

**ii. based on an assessment of risk and scientific evidence?**

See answer above – not enough focus on assessment of risk and scientific evidence.

### **Doing things differently**

**6. 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?)**

The European Commission should have more resources to engage with and spend time in Member States to explain its policies, ambitions, and the business opportunities associated with them.

They should also work more closely with member states to disseminate the information, policy discussion and thought leadership that happens in Brussels.

**7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change?**

The UK would benefit from the EU taking more action on environment and climate change because we already have so many businesses who are actively delivering, or gearing up to deliver green solutions.

The application of similar policy across member states creates export opportunities for British companies.

**9. a. 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?**

It is important for the EU to have a strong voice in climate negotiations, since any one of the individual member states is fairly insignificant in the face of the larger players like China, Brazil and the USA.

**b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

Very important. Our UK leadership on climate change issues must be heard – we have a lot of businesses depending on strong climate policy.

**UK Major Ports Group**

**Introduction**

UKMPG is an association representing 9 major commercial port groups operating 42 ports and handling over two thirds of the UK’s international trade by volume. UKMPG ports are mainly privately owned and are funded by private finance and operate without subsidy. UKMPG members are currently investing at a record level of over £300m per annum mainly in facilities for handling increasingly large container ships and their cargoes. Many major ports have also developed proposals to invest in renewable energy facilities particularly offshore wind and biomass.

UK ports collectively handle over 95% of the UK’s international trade by volume. Around 40% of UK ports traffic is with the EU, 35% is with non – EU countries and 25% domestic (mainly oil). The UK ports sector is a significant contributor to UK employment (nearly 400,000 people directly employed or supported) and to UK GDP (£21bn – 1.4% of total GDP) and is a key enabler for a number of other important economic sectors such as chemicals, oil refining, steel and fisheries.

Since 1980 short sea container and ro-ro traffic to and from the UK (including the Channel Tunnel) has increased by around 340%. Equivalent deep sea traffic outside the EU has grown by 330% over the same period.

**Answers to specific questions below – all answers are from the perspective of ports policy**

**Q1 What are the advantages and the disadvantages to the UK of EU action in the field of transport? You may wish to focus on a particular mode.**

The ports sector is unusual amongst transport sectors in that there has been relatively little specific EU legislative action to date. Ports are of course covered by the general rules of the EU treaties and are also significantly affected by EU legislation in other fields notably environment, customs and public procurement. Some of the main reasons for the lack of action at EU level have been the wide

variations in the nature and type of ports, their geographical situations and types of traffic handled and in their ownership and governance structures.

Overall since EU entry UK ports may well have benefitted from the growth of intra EU trade attributed to the internal market and from simplified customs procedures. There may also have been some marginal benefits from the limited amount of environmental subsidy available under the TEN-T, Motorways of the Seas and Marco Polo programmes. However the costs of complying with much environmental regulation have been high, particularly the Habitats and Wild Birds Directives (for example initial costs for ecological works at the London Gateway site to comply with Habitat Directive requirements are in the order of £16.5 million).

The major ports specific EU legislation to date has been the Port Security Directive which has required UK ports to make procedural changes to their security practices which have added to costs (for the Government as well as ports) and increased bureaucracy without producing any noticeable benefits in security.

**Q2 To what extent has the EU succeeded in creating an internal transport market: how far has this contributed to economic growth in the UK? What have been the costs and benefits?**

To date the EU Commission's approach on ports has mainly been to allow member states freedom of manoeuvre in determining the policy framework for ports provided that this was consistent with the general rules of the Treaty and regulatory requirements in other sectors such as customs, public procurement and the environment. The Commission has also promoted best practice through producing occasional guidance notes such as that published in 2010 on the application of EU Habitats legislation in estuarial areas. Another aspect has been the development of port performance statistics under the PPRISM programme co-funded by the Commission and by the EU ports association ESPO. This so called "soft law" approach has served UK ports well and has been consistent with the development of a market driven ports policy in the UK which has attracted in substantial international private investment. However the EU Commission is now seeking to apply a more regulatory approach to ports (see Q9 below).

**Q3 To what extent is the EU internal transport market necessary for the functioning of the EU internal market as a whole?**

Since a high proportion of intra EU traffic is carried by sea at some stage in its journey it must be the case that ports have an important role to play in the functioning of the EU internal market. However this does not require there to a highly developed internal market for ports with common standards applied to a wide range of ports activities. Under the current "soft law approach (see Q2 above) UK ports and those in many parts of the EU particularly in N Europe have been able to develop as highly efficient undertakings comparable with the best in the world, attracting in the



necessary investment and offering a good quality of service at a competitive price with strong links to other parts of the logistics chain.

**Q4 To what extent is EU action to harmonise social and environmental standards (eg to ensure safety and security or to limit vehicle emissions) necessary for the proper functioning of the internal transport market as opposed to desirable in its own right?**

Extensive environmental and to a lesser extent social standards already apply to the EU ports sector. As mentioned above there has also been EU action on security at ports (see Q1 above). Apart from this, social and environmental regulation has largely been cross sectoral and has not been specifically applied to the transport or ports sectors.

**Q5 What impact has EU action had on different stakeholders; for example, has it provided the right balance between consumers and transport operators?**

As mentioned above there has been little specific ports legislation so to date it is difficult to assess the effects on operators and users. UK Government policy on ports is based on ports themselves taking decisions on services, investment and pricing in accordance with market needs. In UKMPG's view this is the best way of giving customers a good service at a competitive price. One area which has concerned ports is public procurement legislation whose coverage is in the process of being extended through the addition of concession agreements. This is a complex area whose application to UK contract law is not yet well understood and which could have potentially wide reaching consequences for UK ports and their tenants and contractors. This is an example of a legislative proposal where there should have been a good deal more pre consultation before legislation was introduced – the same situation arises with the proposed Port Services Regulation discussed at Q9.

**Q6 The EU's competence in the field of transport has primarily been exercised through legislation and clarified through case law. To what extent has the EU approach been proportionate: what alternative approaches would suit the UK?**

As mentioned at Q2 above, the Commission has to date generally followed a non legislative approach on ports. UKMPG sees significant benefits in continuing with this approach which reflects the wide diversity of port structures in the EU.

**Q7 To what extent could the UK national interest be better served by action taken at a national or wider international level, rather than by the EU, and vice versa?**

The maritime sector is worldwide and there are clear dangers in legislating at EU level without taking account of the wider international implications. Where a matter is within the competence of the IMO action should always be initiated at IMO level and

if it is necessary to enforce the outcome at EU level this should be done without adding to it through “gold-plating”.

For ports the national level is normally the most appropriate level for taking action as until recently the EU Commission themselves have recognised.

**Q8 What advantages are there for the UK in the EU having a greater or lesser say in negotiating agreements internationally (eg ICAO or IMO) or with third countries (eg EU-US, EU-China)?**

There are very few international agreements specifically relating to ports.

**Q9 What challenges or opportunities are there for the UK in further EU action on transport?**

UKMPG’s strong preference is for the Commission to continue with the existing “soft law” approach on ports which has served the industry and the EU internal market well over recent years. We are also looking for the Commission to take a more consistent approach on applying state aid rules in the ports sector with ports (particularly larger ports which are in competition with each other) treated as normal economic undertakings and expected to operate without subsidy. However we do not support the Commission’s recently published proposal for a Regulation on EU Port Services which would introduce new bureaucratic procedures coupled with Commission interference in normal commercial negotiations which could have a serious adverse effect on investor confidence. The Commission has tried unsuccessfully on 2 previous occasions to introduce similar legislation. We hope that this latest proposal will also be defeated or withdrawn. It is to be regretted that the Commission did not discuss its intentions more fully with the ports sector before introducing legislation as there might well have been agreement to achieving the objectives the Commission are seeking to secure through other means which would have avoided the difficulties which the proposal is now generating.

## **Umweltdachverband**

### **Introduction**

The Umweltdachverband (UWD) is an umbrella organization of 39 environmental NGOs in Austria with a total of 1.3 Mio. members. Within its member organizations, the Umweltdachverband has a number of research institutions on environmental issues as member organizations with a continuous exchange with regional and national administration in advisory boards. The UWD employs policy analysts for energy and climate, water, rural development and biodiversity, and connects a network of voluntary experts from member organizations and beyond.

At European level it represents Austrian NGOs in the European Environmental Bureau ([EEB](#)) in Brussels.

The Umweltdachverband welcomes the opportunity to respond to this Review. European Union (EU) environmental legislation and policy plays an important role in protecting biodiversity, water quality and climate protection as well as climate mitigation & adaptation measures throughout the EU and beyond. Many environmental issues are global and trans-boundary in nature, in respect of which harmonized EU action is essential to establish common standards through an EU-wide approach.

We also see significant economic, commercial and social benefits to establishing common EU standards for environmental protection.

EU legislation and legal actions have led to stronger environmental protection in Austria, including improvements in water quality, reductions in industrial emissions and reduced levels of waste going to landfill. However, Austria played and plays a central role in shaping the development and establishment of EU legislation, such as GMOs, anti-nuclear policy and renewables.

### **Advantages of EU law and policy (1. i. and ii.)**

There are numerous benefits associated with the area of environment and climate change & protection at a European level:

Climate is global and trans-boundary in nature and climate protection can only be made globally and EU level, respectively. Austria is too small to be able to establish climate policies on its own. European policies and positions are paramount to fight for strong climate actions. These include for

- a. Climate:
  - Clear and uniform rules of ETS.
  - Climate protection treaties (burden sharing agreement, EU 2020, Kyoto protocol).
  - Boarder-tax adjustments (to prevent market distortion, within and outside EU territory).
  - Austria's anti-nuclear power policy depends strongly on EU environment policy. This legislation gives Austria the possibility to enforce higher technical standards through the strategic environmental impact assessments.
  - Electricity labelling requirements make sense on European level only.
  - Energy Tax Directive: fuel taxation is pivotal for accomplishing climate targets in the transport sector; e.g. additional emissions from fuel tourism in Austria equal Austria's failure of reaching the Kyoto goals.
- b. Environment:
  - EU funding: many nature protection projects are co-funded by EU funds of at least 50%.

- The Commission, in order to preserve its prerogatives as guardian of the Treaties pushes Austria regularly to implement higher standards, e.g. infringement of the Natura 2000 network (see attachment, Mahnschreiben EU Commission).
- Water Framework Directive: environment protection is not limited to national policies or borders (e.g. Danube).
- Natura 2000 network: the implementation of the Habitat Directive and Bird Protection Directive supported strongly nature protection in Austria. Additionally, Austria's regions (Bundesländer) were forced to co-ordinate and implement higher protection levels. Regarding transparency of data, Austria was forced to eventually join the Natura 2000 viewer, <http://natura2000.eea.europa.eu/>, and implementing the Article 17 report on conservation status of species and European importance.
- Macro-regional alpine and EU Strategy for the Danube Region.

### **Where decisions should be made (2. i. and ii.)**

- If Austria could be entitled to prohibit the import of electricity of nuclear energy, Austria's anti-nuclear energy policy could be supported successfully and easier.
- The fixing of carbon prices, personal carbon budgets or and climate targets should be agreed on a global level (based on natural scientific targets). However, as any global agreement alike is out of reach at present, EU-wide climate action is the necessary choice.

### **Internal market and economic growth (3. and 4.)**

Harmonized EU environmental standards are necessary for the proper functioning of the internal market for:

- Agriculture (e.g. animal transport, GMOs, sustainable energy production)

Regarding the right balance between protecting the environment and the wider economic interest it has, based on the on-going financial and debt crisis, to be concluded that the actual economic benchmarks (GDP) are not functioning any more. We want to draw the attention to beyond-GDP as well as zero-growth. (see European Commission's Eurostat:

[www.epp.eurostat.ec.europa.eu/portal/page/portal/gdp\\_and\\_beyond/introduction](http://www.epp.eurostat.ec.europa.eu/portal/page/portal/gdp_and_beyond/introduction)).

### **Doing things differently (6., 7. and 9.)**

EU's current competence for the environment could be strengthened by implementing more binding, national targets (e.g. Natura 2000 strategies should be binding targets; post-2020 climate and energy targets should be legally binding; see attachment EEB priorities 2014).

Austria could benefit from the EU taking more ambitious targets creating level playing fields for all Member states ([see attachment EEB priorities 2014](#)).

Being part of Team EU at UNFCCC is paramount for a small Member State like Austria.

Vienna, August 2013

Attachments:

[www.ldf.lv/upload\\_file/30021/EEB%20Priorities\\_2014.pdf](http://www.ldf.lv/upload_file/30021/EEB%20Priorities_2014.pdf)

[www.umweltdachverband.at/fileadmin/user\\_upload/pdfs/Natura\\_2000/130530\\_Mahn\\_schreiben\\_EU\\_KOM\\_Natura2000\\_-\\_ohne\\_Anhang\\_B.pdf](http://www.umweltdachverband.at/fileadmin/user_upload/pdfs/Natura_2000/130530_Mahn_schreiben_EU_KOM_Natura2000_-_ohne_Anhang_B.pdf)

[www.umweltdachverband.at/fileadmin/user\\_upload/pdfs/Publikationen/Dok\\_09.01\\_Positionspapier\\_Umweltpolitische\\_Meilensteine\\_f%C3%BCr\\_das\\_neue\\_Regierungsprogramm\\_2013.pdf](http://www.umweltdachverband.at/fileadmin/user_upload/pdfs/Publikationen/Dok_09.01_Positionspapier_Umweltpolitische_Meilensteine_f%C3%BCr_das_neue_Regierungsprogramm_2013.pdf)

## **University of York, Environment Department**

Submission from:

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### **1. What evidence is there that EU competence in the area of environment and/or climate change has benefited the UK?**

EU environmental competence has benefitted the UK through putting in place clear enforceable rules. The traditional approach to environmental policy in the UK was voluntaristic and based upon an accretion of informal rules over time, an approach that led to low and poorly enforced standards (Carter and Lowe 1994). Through joining the EU and implementing its policies the UK has been able to put in place a set of coherent, well-developed and legally enforceable regulations thereby ridding itself of its poor environmental reputation as the 'dirty man of Europe' (Rose 1990) and enabling it to emerge as a leader on some key issues such as climate change (Rayner and Jordan 2011; Carter and Jacobs 2013). Indeed the presence of EU rules under the European Climate Change Package has encouraged the current government to maintain ambitious targets under the carbon budget. The EU model of governance provides policy-makers in Brussels with some insulation from national electoral cycles enabling long-term planning and providing certainty. The presence of a relatively stable set of rules gives certainty to businesses and national

stakeholders responsible for policy implementation allowing environmental policy goals to be pursued in a consistent fashion. Moreover, EU membership has given the UK a leadership platform internationally: rather than being a small northern European state shouting into the wind alone we are a significant actor within the largest trading bloc globally, and thereby able to participate in and shape discussions on the international level from which we would otherwise be excluded or marginalised.

It is obviously difficult to know what would have happened in the absence of UK membership of the EU but if we take the example of European Economic Area (EEA) members, their experience suggests that in order to access the Single European Market we would, like those states, have been subject to the *acquis communautaire* (EU rules) but with limited ability to shape policy (see for example, Hovden 2004).

## **2. 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?**

The balance of competence across the levels of governance (local, national, regional and international) is about right. As noted above, our membership of the EU means that we have put in place legally binding, enforceable rules. Due to the operation of qualified majority voting at EU level European policy-makers can adopt rules faster than is possible at global level where typically agreements are reached via consensus; hence it can be time-consuming and difficult to reach agreement and difficult to revisit the standards. The failure to agree to a new treaty to replace Kyoto provides a perfect example of the problems that attend global environmental negotiations. Also the mix of states in the European Union, with the so-called pioneer states such as Denmark, Germany, the Netherlands, Sweden and Finland (Andersen and Liefferink 1997) pushing for higher standards, means that policy does not converge on the lowest common denominator. Moreover, the inclusion of the environmental guarantee in the Treaty (Article 193) means that we can, if we wish, pursue higher standards nationally than prescribed at the European level, as long as they are consistent with the Treaties and proportionate to their aims (See Danish bottle ruling, Case 302/86). The UK has assumed this leadership role successfully in relation to climate policy and as such is well placed to shape the EU position (see Carter and Jacobs 2013). As a substantial portion of environmental policy is adopted via directives which state the goals to be met but leave the means by which those goals are to be achieved to the member states, the UK government has considerable leeway in deciding how best to implement policy goals. Only when regulations are chosen as the legal instrument for EU environmental policy are both the means and

the ends specified but regulations are normally chosen for safety or competition reasons, as for example in the case of the rules on the registration, evaluation and authorisation of chemicals (REACH).

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

A holistic, well-developed and well-enforced environmental policy regime is a *sine qua non* for the effective operation of the single market. A key reason for the development of EU environmental policy was to ensure the proper functioning of the single market by preventing environmental dumping (one state pursuing lower standards to attract business but some or all other states suffering the consequences via increased pollution). As the vast majority of environmental pollution is trans-boundary there is a clear competitive case for having common rules across the Single European Market. There have been some calls to renationalise some areas of EU environmental policy. For example in the UK there have been calls to reduce habitat protection<sup>577</sup> and in the Dutch subsidiarity review there have been calls to limit EU legislation on soil and noise pollution (Ministerie van Buitenlandse Zaken 2013). However, whilst environmental effects can appear more localised often there are potential wider negative ecosystem effects that may arise if one species or media is subject to pressure. It is well-established that nature provides us with a range of ecosystem services, such as pollination, carbon sequestration and flood defences and that we should be protecting species and environmental systems because they perform useful roles (Raffaelli and White 2013; Lawton et al. 2010). In each of these areas (habitat protection and soil and noise pollution) there are potential transboundary environmental effects (e.g. location of airports near borders, migratory species, and soil pollution carried through water courses) and the scope for distortions to the market. Thus, European coordination on these and other environmental problems make sense both on environmental and economic grounds.

### **4. 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?**

The European Commission is now obliged to provide an impact assessment at the start of every piece of legislation in which it analyses the balance of costs and benefits taking into account the economic, social and environmental consequences of the legislation.<sup>578</sup> Hence, there is scope for the UK's economic interests to be taken into account through effective agenda-setting at the drafting stage in the Commission and thereafter throughout the legislative process. However, it is important that the UK government be proactive in representing UK interests and

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<sup>577</sup> [www.theguardian.com/uk/2011/nov/29/autumn-statement-george-osborne-green-policies](http://www.theguardian.com/uk/2011/nov/29/autumn-statement-george-osborne-green-policies)

<sup>578</sup> See [www.ec.europa.eu/governance/impact/index\\_en.htm](http://www.ec.europa.eu/governance/impact/index_en.htm)

shaping the Commission's agenda at the earliest stage due to the greater use of the ordinary legislative procedure and, under that procedure, the shift to agreeing at first reading (see House of Lords 2009; Burns 2012; Burns et al. 2013). For example, between 2009 and 2011 seventy-eight per cent of legislation adopted under the ordinary legislative procedure was decided at first reading (European Parliament 2012, p.4). The implications of this move are that small groups of actors from the European Parliament and the Council make decisions on policy in small informal meetings. The scope for those excluded from these meetings to shape policy is consequently reduced, making earlier engagement with the Commission at the legislative drafting stage more important. Key stakeholders therefore should be made aware of the need to track EU decision-making and utilise all available opportunities to shape policies and see their interests represented. It is consequently incumbent upon the government (national and local), relevant agencies (such as the Environment Agency) and industrial associations (e.g. Confederation of British Industry, National Farmers' Union) to ensure that key stakeholders are informed about prospective regulations to enable UK business interests to be represented effectively at the EU level, thereby guaranteeing UK competitiveness alongside strong and effective environmental legislation.

## **5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

### **i. focused on outcomes (results)?**

### **ii. based on an assessment of risk and scientific evidence?**

The vast majority of EU legislation is focussed on outcomes. In some cases legislation may be prescriptive in terms of process (e.g. regulations on chemicals or environmental impact assessments), but typically with an outcome in mind – reducing release of substances into the environment or reducing any potential negative impacts of economic activities. There are well established structures in place to ensure that appropriate expert-based risk and scientific assessments take place, for example through agencies (e.g. European Food Standards Agency [EFSA], European Chemicals Agency [ECHA], European Environment Agency [EEA]) and standing committees. Policy is underpinned by the precautionary principle which is included in the Treaty (Article 191[2]TEU).

However there is scope to improve current safety assessment protocols. As it stands, safety assessments are too often focussed upon the impact of individual substances on individual species, yet in the real world species are encountering potent cocktails of pesticides and pharmaceuticals that are not yet recognised within testing protocols (see Arnold et al. 2013; European Commission 2012). Risk assessments need to start taking into account the impact of substances upon a wider range of fauna (beyond the narrow range of species used in laboratory



conditions) and also of the potential combinations of substances, in order to provide more effective protection for the environment and human health (Arnold et al. 2013; Boxall et al. 2012).

**6. 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?)**

There are several ways in which the Commission and the UK government can improve the way in which environmental policy is developed and implemented.

First, as indicated above, UK stakeholders need to be provided with timely and useful information so that they are able to feed effectively into decision-making processes.

Second, there needs to be a more effective and rapid way of updating or removing legislation. The Commission could consider whether it would be cost-effective to build more periodic reviews into its legislation to enable policy goals to be adjusted to reflect new scientific knowledge or emerging challenges. Depending upon the nature of the legislation it may be appropriate to consider including sunset clauses but such an approach should be used with caution as these clauses may discourage states from making the necessary efforts to implement legislation.

Third, a key issue that has emerged in recent years is the growing awareness of the need for more effective coordination of policies within the environmental sector and across other cognate sectors. For example, some policies designed to improve energy efficiency may have negative health effects through reducing building ventilation (See Carslaw et al. 2009); policies reducing dumping of sewage of sea whilst improving the marine environment have raised the risk of contamination of terrestrial and freshwater ecosystems (Mathney 2011); and policies designed to address climate change may inadvertently cause wider social problems – the classic example being the relationship between biofuels and food prices (Wise 2012). The EU has long struggled with environmental policy integration and coordination (e.g. see Lenschow 2001; Schout and Jordan 2005) but as we face increasingly complex global environmental challenges, and are more aware of the holistic nature of ecosystems it is of the utmost importance to review existing policies to ensure that they are consistent and coherent to ensure that environmental policy goals can be achieved. Such reviews would be consistent with the Commission's smart regulation agenda.<sup>579</sup>

**7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change?**

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<sup>579</sup> [www.ec.europa.eu/smart-regulation/index\\_en.htm](http://www.ec.europa.eu/smart-regulation/index_en.htm)

## **ii. Less action on the environment/climate change?**

The balance of activity and current priorities (see European Commission 2013) are about right – the Commission needs to secure better implementation, seek to update legislation where appropriate and coordinate more effectively across environmental and other policies to ensure holistic and consistent approach. There is no need to roll back on current activity and the Commission should be free (subject to Member State approval) to respond to new challenges as they emerge. There is arguably a case for more activity at the European level in those key polluting sectors where the *acquis communautaire* is less developed (e.g. road and rail transport and energy policy) as long as such policy is restricted to environmental effects. However, as such efforts are likely to run into strong opposition from Member States keen to maintain control over nationally sensitive policy sectors, the use of the open method of coordination may be appropriate to set some benchmarks for best practice and future cooperation. On the issue of climate change there is a need for both the Commission and the UK government to push for more ambitious targets at European and International levels.

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

The key to successful implementation of EU legislation is to ensure that stakeholders are engaged and aware of legislative initiatives thereby enabling UK government representatives to shape policy to reflect UK interests. It has been demonstrated that positive engagement with the EU agenda-setting process can aid a better fit between national and European standards (Jordan and Liefferink 2004), thereby reducing the cost of implementation domestically. For example, the UK became more successful in implementing policy once UK government representatives understood the need to shape negotiations in Brussels (see Jordan 2003).

### **9. a. 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?**

### **b. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

The balance here again is about right – as a key trading bloc the EU is in a powerful position in international negotiations and has worked hard to export certain ideas or norms to the rest of the world (e.g. democracy promotion, respect for human rights and the rule of law) (Article 11 TEU; Manners 2002). However, a key issue is coordination to ensure consistency – the EU’s ability to be taken seriously by other partners can be undermined if it seems incoherent. For example, the division of

competence between DG Environment and DG Development undermined the EU's ability to present a united front at the negotiations in the 2002 World Summit on Sustainable Development in Johannesburg (see Burchell and Lightfoot 2004). The EU has been better in recent years in presenting a clearer EU mandate and has been identified as playing a leading role in UNFCCC negotiations by participants (Parker et al. 2012). Being part of a cohort of 28 states puts the UK in a stronger position: whilst being part of the EU delegation limits the UK's scope for autonomous action at the negotiations, it is nevertheless more likely to achieve its desired goals as part of this bigger group. Moreover, the UK's emerging reputation as a climate leader means that it is well-placed to shape the wider EU position. Any efforts to weaken domestic climate policy carry with them the risk of weakening our scope to exercise climate leadership within and beyond Europe.

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

**b. 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?**

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

There is a range of well documented on-going environmental challenges that will continue to dominate the policy agenda such as air and water pollution, climate change, biodiversity and food security. New challenges include the increasing release into the environment of synthetic biological products, nanotechnologies and personal care and pharmaceutical products both within the EU and beyond. The environmental and human health effects of these products are not yet well understood – it is therefore imperative that research be carried out in these fields, and that in line with the precautionary principle, their use be regulated and monitored at national, regional and international scales. Aid to developing nations should be tailored to improve industrial, municipal, and domestic waste and sewage discharges to minimise the impacts of increased manufacture and consumption of personal care and pharmaceutical products (see Arnold et al. 2013).

A further emerging challenge that requires more research and may require regulation relates to indoor air pollution (Carslaw et al. 2009). Since the introduction of improved energy efficiency measures in the 1970s (notably reducing building ventilation), adverse health effects have been frequently reported indoors, such as eye, nose, throat and airway irritation, as well as headaches and fatigue, which have unknown causes, but which typically improve away from the workplace (Buchan et al. 2008). Such building-related symptoms have been identified as being responsible for a 2% reduction in productivity, leading to a significant economic loss (Mendell et al. 2002). It is therefore important both for human health and economic productivity

that more research be carried out in this field, that monitoring and data collection be improved and further legislation be adopted if appropriate. All of these challenges have either or both single market and ecosystem implications. Consequently, there is a case for any regulations on the release of substances into the environment or on minimum housing standards to be negotiated at the European level.

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

Whilst it is not part of the balance of competence review the government's decision to commit to a referendum on the UK's membership of the European Union provides a highly politicised backdrop to this exercise. It is consequently worth reiterating the very positive role the EU has played both in shaping UK environmental policy and in offering the UK government a platform for international leadership. We have no direct comparators available on the implications of a UK exit for the conduct of environmental policy as no state has yet left the Union. However, given the importance of the EU in trade terms for the UK (it is our largest trading partner) if the UK does leave the EU it is likely that we will want to continue to have access to the Single European Market. That being the case we are likely to be required to maintain most of the same environmental provisions (for, as noted above, the vast majority of EU environmental policies can be justified on economic/competition grounds) but will have much less scope to shape the content of new policies or updated legislation (e.g. see Hovden 2004 on the Norwegian case; Burns 2013). This outcome may be problematic for regulatory authorities and businesses as they will be responsible for implementing policies that the UK has had little opportunity to design. Moreover, the UK Parliament will have far less opportunity to scrutinise European policy thereby reducing democratic oversight in this and all other areas covered by the single market. There are therefore environmental, economic and democratic cases for maintaining our membership of the EU. The primary aim of EU environmental policy moving forward should be to ensure legislation is coherent and consistent within the environmental and climate policy domains and across cognate areas. The balance of legislation is about right with a strong case for continued European cooperation on both ecological and competition grounds.

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## **Valpack**

### Introduction

Valpak Ltd is the UK's largest compliance scheme operator with member schemes for the Packaging, WEEE and Waste Battery regulations. In addition we provide recycling services and sustainable development consultancy. Valpak currently represents over 3000 members and clients across the UK. We wish to offer our expertise and experience in response to this consultation and have included below answers to the questions to which we have relevant information.

### **Advantages and disadvantages**

#### **1. What evidence is there that EU competence in the area of environment and/or climate change has:**

##### **i. Benefited the UK / your sector?**

The flexibility in implementing directives means the UK has been able to adopt the most cost effective model for UK business. A good example of this is the UK packaging waste regulations, these are uniquely designed on a principle of 'shared producer responsibility' which we believe delivers compliance with recycling and recovery targets at a much lower cost to business than in other European countries. As an example in 2012, a company importing and selling to the public 800,000 filled steel cans, 500,000 filled aluminium cans and 150,000 bottles of wine inside 19,250 card boxes, would have paid around £2,200 towards recovery and recycling in the UK. Whereas in Spain they would have paid around £5,000 or nearly £11,000 in Austria.

The other benefit is that EU legislation often tackles environmental objectives that may not be addressed at a national level. This is because the EU has the advantage of being able to take a long view on environmental issues that national governments may not be able to do (especially in periods of economic difficulty or austerity).

##### **ii. Disadvantaged the UK / your sector?**

Although the flexibility of Directives enables legislation to be implemented in the UK in a cost efficient manner, it can also be argued that the differences in implementation across Europe causes international producers additional burdens as they must assess their liabilities at a national level rather than an EU level, and there can be significant differences in approach and requirements.

Another disadvantage is the time it takes for EU Legislation to be amended or updated. As an example the process of amending the WEEE Directive (2002/9/EC) started in 2008, but the recast Directive (2012/19/EU) was not published until 2012, and is not due to be implemented until February 2014.



**Where should decisions be made?**

**2. 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?**

Internal market and economic growth

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

EU regulations implement environmental standards or goals which play an essential role in ensuring that producers are on a relatively level playing field across Europe. This is especially in the case of regulations regarding products, for example the WEEE, Waste Packaging and Waste Battery Producer Responsibility Directives which require producers to contribute towards collection, recovery and recycling. Or the Energy Using Products Directive that provides energy efficiency standards and ecolabelling requirements.

**4. 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?**

EU legislation that is set out in directives gives the UK Government the flexibility to implement the requirements in a manner that is consistent with the wider UK economic interest. We believe that this should be the preferred approach where possible as opposed to specific EU regulations, which provide no scope for flexibility.

**Current legislation**

**5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

**i. Focused on outcomes (results)?**

**ii. Based on an assessment of risk and scientific evidence?**

**Doing things differently**

**6. 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?)**

**7. How far do you think the UK might benefit from the EU taking:**

**i. More action on the environment/climate change**

**ii. Less action on the environment/climate change?**

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

Voluntary agreements are often raised as an alternative to regulation. However, we feel that it is important to note that voluntary agreements are likely to be taken up by only a small proportion of high profile producers. This means that either the companies who volunteer will carry a hugely disproportionate share of the costs, or that targets will be missed. We strongly believe that mandatory approaches achieve higher levels of participation and are fairer across all producers.

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

**c. How important is it for the UK to be part of “Team EU” at the UNFCCC?**

**View of Irish NGOs and business groups collated by the British Embassy in**

**Dublin**

**Introduction:**

1. The British Embassy Dublin held a roundtable discussion on 26 June to provide evidence for the UK government’s Balance of Competences Review into EU Climate Change and Environment policy. Attending the roundtable were leading figures in this policy area from Irish business, non-governmental organisations, lobby groups and think tanks. Embassy officials also discussed the review separately with an industry representative the following day who was unable to attend the roundtable. His views are also incorporated below.
2. The Embassy grouped its questions to participants into four main areas:
  - i. Where should decisions be made? At a regional, national or European level?
  - ii. Is the current legislation sufficiently focussed on results and based on scientific evidence?

- iii. Should the EU take more or less action on the environment/climate change?
- iv. What advantages or disadvantages might there be in the EU having a greater or lesser role in negotiating and entering into agreements internationally on environmental matters?

**Key Points:**

- Broad agreement that decision making at the EU level has been, and will remain, crucial for the development of coherent and progressive environment and climate change policy.
- Particular value in EU action where actions from one member state impact on another e.g. climate change. More scope for national policy leadership where they don't.
- Member States should be allowed to impose higher standards above and beyond the EU level where there are particular national reasons to do so. But need to be careful that policy coherence is not significantly damaged by this.
- Need for greater coherence between the objectives of different Commission DGs.
- Certain areas where there should be greater flexibility within EU environment and climate change policy to account for unique features of certain member states.
- Politics sometimes gets in the way of the science, especially in areas where the European Parliament takes a close interest.
- EU leadership on international climate change negotiations has been crucial in the past, but has lost some of its effectiveness in recent UNFCCC rounds.

**Detail:**

**Where should decisions be made? At a regional, national or European level?**

3. There was general agreement amongst participants that the EU played an important role in the fields of environment and climate change policy. Without decision making at EU level, individual Member States would be likely to make rational but short term economic decisions in an attempt to increase their competitive advantage over one another. This could mean rapid exploitation of cheap fossil fuels, which might facilitate industrial development but with negative implications on other Member States, on the environment and more broadly.
4. Participants raised a number of examples where EU decision making had had a positive impact on environment and climate change policy. Ireland's EU membership, for example, had played a transformative role in raising the bar on environmental protection in the country.

5. One speaker argued that while it was important to have common standards across the EU, member states should enjoy a degree of flexibility as to how they would give effect to them. Differences in climate and geography across the EU meant that a detailed one size fits all blue print on implementation might cause unnecessary friction in some member states and undermine support for the environmental aims being pursued.
6. There was a particularly strong case for EU decision making in areas where the actions of one member state could impact on another. However, there could also be value where this wasn't the case such as where greater EU competence could help unlock greater opportunities for trade e.g. by reducing aggregate costs of compliance for European companies operating across borders.
7. It was important to allow national governments to impose higher standards above and beyond the EU level, where there are particular national reasons to do so. An example where this might be the case was imposing restrictions on free movement of some plant/animal products to prevent transmission of diseases. Adhering to EU rules should not mean a member state should have to lower standards to its own detriment.
8. However, higher national standards could create unintended consequences which could damage the coherence of EU policy and its ability to achieve the required objectives. Some of the UK's national policies on climate change had undermined the way the EU carbon market operated.

**Is the current legislation sufficiently focussed on results and based on scientific evidence?**

9. EU environment and climate change policy generally had a robust scientific foundation, but was often adjusted due to political factors. The setting of national GHG emission targets was one such example. The EU's overall GHG reduction requirements were based on scientific evidence, but there had then been a process of negotiation which resulted in wealthier member states having to set more ambitious targets for the purposes of social cohesion. Rightly or wrongly, such action diluted the link between science and policy.
10. There were also examples where assumptions underpinning policy had been made with political considerations in mind e.g. ever-increasing fossil fuel prices.
11. The growing influence of the European Parliament was increasing the degree to which science-based policy emerging from the Commission was being altered for political reasons.
12. Several participants raised the issue of competing priorities between different Commission DGs – in particular DG Clima and DG Energy - which had, in several instances, resulted in conflicting policies. Policies in the areas of energy security, energy efficiency, and climate change frequently competed with one another. There should be more harmonisation between DGs,

possibly by linking climate and environment policy under a single policy lead, i.e. as has been the case in the UK.

13. Science-based policy development at the EU level didn't always sufficiently take into account local specificities, and as such, sometimes resulted in unintended consequences. For example, the lack of account given to the uniquely high proportion of GHG emissions from agriculture in Ireland could act as a disincentive to this high-efficient dairy industry. The result of this could be counter to the interests of food security and lead to 'carbon leakage' to non-EU countries with less efficient dairy industries.

**Should the EU take more or less action on the environment/climate change?**

14. There was broad agreement amongst participants that there should be more focus by the EU on implementation rather than new legislation.
15. Several participants suggested that the Commission should act more quickly to impose consequences for infractions, with one participant suggesting that the lack of action against Ireland's continued harvesting of peat had led the UK to import significant quantities across the Irish Sea.
16. Another participant stressed the need for consideration of local specificities, including the importance of introducing derogations where necessary to prevent sudden shocks on the populations and industries of member states.

**What advantages or disadvantages might there be in the EU having a greater or lesser role in negotiating and entering into agreements internationally on environmental matters?**

17. There was broad agreement that the EU had played a highly influential role in international climate change negotiations in the past. Participants were more divided on their view of the EU's current role. There were also differences in views on whether the EU should be taking a leadership role, or should now assuming more of a back seat and letting others lead the way.
18. Participants described the following advantages of the EU's role in the UNFCCC process: i. other countries saw the EU as a bloc, and such unity had been highly significant in securing movement from others; and ii. countries looked to the EU as a source of best practice in some areas e.g. the US regional carbon trading scheme had been modelled roughly on the EU's ETS.

*British Embassy Dublin, 27 June 2013*

**Water UK**

Water UK is the policy development organisation that represents all major water and waste water companies in the UK. We work on behalf of the industry towards a sustainable future.

## **Introduction**

There is no doubt that European environmental legislation has had a positive effect on the state of the Union's water bodies, habitats and air quality in the last twenty years. Rivers are cleaner, wildlife has returned and is returning, and precious and irreplaceable landscapes have been protected. There has been recognition that Europe's precious natural environment should be protected and invested in; this is a legacy of which those who developed the legislation should be proud. However, there is a growing sense, across all sectors as well as the water industry, that the relentless pressure for further improvements may come with an increasingly burdensome price tag for customers, and increasingly marginal benefits for the environment.

### **The end of "one size fits all"**

The organisation that was set up in 1951 ensured that, by having common coal and steel management, six western European countries could no longer turn weapons against each other. Some years later the organisation also took on the job of ensuring the peoples of Europe would not starve again, with joint policies on agricultural support.

However, this small group has now become an organisation that determines legislation across a wide spectrum of policy areas for 28 countries. It could be argued that the time has come to revisit the largely one-size-fits all approach. Increasingly, there are areas of environmental legislation where the spread of national circumstances and priorities are so wide, that even finding a common consensus on the issue or problem that is to be solved by legislation becomes difficult.

Even within the UK there are huge variations in water availability, geology, storage and climatic conditions. Working with these variations, companies have very different ways of ensuring their customers have clean, fresh drinking water and that their water they have used is taken away and properly treated.

For example, all companies in the UK ask their customers to use water wisely, and customers for their part respond magnificently; for example, during the recent drought last year, when some companies had to place temporary restrictions on water use after more than two years of exceptionally dry weather. However, there

were areas of the country where an excess, rather than a deficit, of water proved to be the problem; indeed, there were some parts of the country where companies were in simultaneous drought restriction and flood warning, as heavy rain moving quickly over parched earth only slowly replenished depleted groundwater supplies.

As one can imagine, trying to create a common policy on water which effectively encompasses conditions from the south of Spain to the north of Sweden is extremely difficult, and liable to several negative potential outcomes:

1. one ends up with a legislative fix for a problem that only affects a few countries, but which all have to pay heed to, generating unnecessary secondary legislation and regulation in the majority of countries;
2. Legislation is fixed at the pace of the slowest mover, diluting best practice and slowing down those who are genuinely innovative;
3. Legislation is overly led by aspiration, leading to decisions that place a heavy burden on taxpayers, often with a lack of robust scientific data to support the legislation.

In order to manage increasingly diverse national interests, there is a danger that European environmental legislation becomes too focused on highly descriptive outputs to demonstrate compliance rather than measurable outcomes. This approach stifles innovation - a good solution can be discounted because it fails to meet the description of the output, irrespective of the outcome, as the following examples illustrate.

### **River basin planning**

An example legislation leading to outcome 1 is that around river basin planning. The diversity of approach adopted in water resources management extends to catchment planning. Setting a single policy framework to work on catchments that straddle national boundaries makes sense; apart from Northern Ireland, which shares a land border with another member state, it appears difficult to think of a compelling reason why this approach needs to be adopted in the UK.

### **Priority substances**

A good recent example of outcome 3 is the potentially heavy financial burden that would have been placed on customers by treatment of some of the pharmaceutical

compounds suggested for inclusion on the recently revised priority substances list. We understand from Commission officials that the UK, through Water UK and the water industry's research arm, UKWIR, provided the only substantive, robust research document on the potential costs of including compounds such as diclofenac, and naturally occurring oestrogens, on the revised list. The cost was estimated at 20 billion pounds for a handful of substances over five years, a figure which industry experts have recently revised upwards, to closer to 30 billion pounds. There is not robust method of monitoring for some of the chemicals considered, for others the treatment process is highly complex or even non-existent.

One would hope that, when considering imposing such a heavy financial burden on water bill payers across Europe, the Commission would not feel ready to make a decision without a significant body of robust scientific evidence available on the environmental and economic impacts of these substances. In fact, according to the Commission's own impact assessment:

*"...little quantitative information was received for many of the substances, even on the potential economic costs.. In view of this and the uncertainty regarding the measures that might be applied, a largely qualitative approach was taken in the analysis .<sup>580</sup>"*

Water UK, working with colleagues in the European Federation of National Associations of Water Services (EUREAU), strenuously made the argument at national, and at European parliamentary and Commission level, that customers were likely to find it unacceptable that bills would be increased despite a paucity of evidence of the impacts of these substances. This was an argument accepted by the relevant committee of the European Parliament, and by the UK and other national governments. As a result, several compounds have now been placed on a "watch list", in order to gather more evidence on their prevalence and impact on water bodies. We worked closely throughout with officials at Defra, who were supportive of the arguments we made. However, it was only due to a concerted effort from the European water industry that these arguments were effectively made at a member state level.

## **The future and the Water Framework Directive**

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<sup>580</sup> [www.ec.europa.eu/environment/water/water-dangersub/pdf/sec\\_2011\\_1547.pdf](http://www.ec.europa.eu/environment/water/water-dangersub/pdf/sec_2011_1547.pdf), p.31, 5.2.1



It has become an open secret in many workshops, conferences and meetings where those interested in water policy meet, particularly if these gathering are pan-EU. Meeting the requirements of the Water Framework Directive, even with considerable financial assistance from the EU, is likely to be unachievable for many member states. The “polluter pays” principle is difficult to enforce, and the “no deterioration” principle, while ensuring that the current high standards are met, means that many countries are concerned about the possible future burdens to be placed on them, particularly in the current economic climate. We would suggest that the forthcoming revision of the Directive, in 2017, would be an apposite time to revisit the feasibility of the Directive’s objective, perhaps considering a more realistic trajectory for environmental improvement. Companies are willing and enthusiastic conservers of the UK’s unique landscapes; however, they are also of mindful of the potential burdens placed on many customers by rising bills. We would suggest that finding the right balance, between environmental investment and good value for money, would be an admirable objective for the 2017 revision.

## **Wedge Group Galvanizing Ltd**

### **1. What evidence is there that EU competence in the area of environment and/or climate change has:**

**i. benefited the UK / your sector?**

**ii. disadvantaged the UK / your sector?**

ii. Implementation and interpretation by the UK of the European Directive on IPPC has cost our company (with 14 individual sites) over £300,000 in order to comply with regulations and there are also annual on-going costs. This has had no real effect on improving the ‘pollution’ aspects of our industry.

The industry used to be regulated as a ‘Part B’ process under Local Authority control but is now regulated as a ‘Part A2’ process adding more bureaucracy and costs to individual companies. This is as a direct result of the European Directive.

Forthcoming implementation of the Industrial Emissions Directive will possibly introduce further additional costs and controls and again will not necessarily result in improvements to the environment.

### **2. 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?**

i. Implementation on industrial pollution would be better made at National level, rather than at EU Level, in order to take into account local and regional differences that can affect pollution levels and the economics of an area. In the UK DEFRA already have the powers to introduce necessary legislation.

ii. The UK's Policy decisions made on Climate Change and carbon reduction targets are far too stringent and ambitious. We do not believe that these decisions are based on sound science and in this instance feel that EU targets would be far better and more realistic for the UK, especially in providing a 'level playing field' across Europe.

The whole concept that 'global warming' is caused by increased levels of CO<sub>2</sub> is highly questionable and policies should be reviewed by both the UK and the EU with immediate effect.

There is a risk that in the real possibility that Anthropogenic Global Warming is proven to be an exaggerated factor or possibly even wrong, a huge amount of unnecessary damage will have been done to the UK economy for no useful purpose.

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

EU standards are necessary to produce a 'level playing field' but they should not be too onerous or costly and should be implemented in a fair manner across different Member States.

The implementation of REACH will have major cost implications for many industries and some of the substances being put forward are questionable regarding their actual environmental impact.

**4. 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?**

An example of adverse cost benefits to the UK stems from the Industrial Emissions Directive and Climate Change policies with the phasing out of coal-fired power stations.

Energy production and procurement should be decided at National level, rather to having to be influenced by EU decisions.

Again, are reducing CO<sub>2</sub> levels the real answer to preventing climate change?

**5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:**

- i. focused on outcomes (results)?**
- ii. based on an assessment of risk and scientific evidence?**

i. Climate Change policies appear to be focused on results (outcomes – reduction in CO2 levels) rather than scientific evidence.

ii. The assessment of risk and scientific evidence appears to be questionable in drawing up the Water Framework Directive. One size does not fit all and local regional aspects (including historic background levels – disused mine workings, etc.) must be duly taken into account when issuing limits on pollution levels in waterways. Just because it appears to be the right thing to reduce pollution levels in waterways does not always relate to the economic viability in certain areas.

**6. 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?)**

All of the above: -

Better ways of developing proposals and impact assessments, greater recognition of national circumstances and looking at alternatives to legislation for both protecting and improving the environment

**7. How far do you think the UK might benefit from the EU taking:**

- i. More action on the environment/climate change?**
- ii. Less action on the environment/climate change?**

ii. Companies would have far less 'red tape' to deal with if EU directives and regulations were to be reduced.

A great deal of time and effort is spent on providing information that does not appear to have much use, e.g. data gathered for E-PRTR (European Pollutant Release and Transfer Register). There are obvious inaccuracies in some of the data being put forward for inclusion – does anyone check this?

The Energy Efficiency Directive will impose further burdens on industry with regular audits being undertaken and mandatory Greenhouse Gas Emissions reporting requirements. This will not improve the environment or reduce emissions but will add further unnecessary burdens and costs to industry.

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

Be careful not to 'gold plate' Directives when transposing them to UK Regulations.

The UK sometimes goes beyond agreed European targets on the basis of being a "world leader". In doing so, it increases the disadvantages caused to the UK by introducing costs and other negative consequences before there is any need to do so. This has a negative effect on business and the private industries, as we see in the "green" taxation being applied to energy bills.

**9 a. 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?**

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

Very important.

Although we do not agree with some policies, the UK must be part of the negotiations in order to have any influence in changing them.

A better option would be to leave the EU altogether.

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

Climate Change policies will have a major influence on manufacturing in the UK, especially where uncompetitive energy policies and taxes are concerned.

The race for renewable energy production is an absolute nonsense and will not benefit the UK. The 20-20-20 targets should be scrapped.

It is our understanding that the Spanish Government now believes that an overzealous pursuit of renewable objectives has been an important factor in their current economic difficulties. It has been suggested that every "green" job created has cost three jobs in the broader economy.

We now see in the UK billions of pounds of tax payer's money raised by imposing renewable funding taxes on energy bills, being spent almost wholly with overseas manufacturers and on foreign labour to install massive wind turbine power generation facilities. It is ironic that the Spanish companies GAMESA and IBERDROLA having lost massive business in Spain because of revised Spanish Government strategies are now prominent in Scotland because of the foolhardy Scottish Government objective to have 100% renewables by 2020.

**10 b. 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?**

If the UK remains as a member of the EU then far less influence from the EU is required, with the UK being allowed to determine its own policies for the environment, including full consultation with industry.

The European function should be one purely of information exchange and strategy co-ordination where this is seen to be necessary.

If this cannot be achieved, we are better out.

Over-centralisation of power is proven to be a recipe for disaster,

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

As stated earlier at present it would probably be better for the UK to adopt EU decisions on Climate Change because the UK policies will be more expensive and damaging to industry.

This should not, however, include the unacceptable and uneconomic drive for renewable energy (20-20-20).

We think that the current UK policy of exceeding EU criteria on carbon pricing is a perfect example of the previously described tendency of UK politicians to adopt a "macho" approach to environmental issues on the basis of being "a world leader" or "the best". They completely fail to recognise the real risk as this translates into "the first to make the biggest mistake", with potentially catastrophic consequences for the UK.

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

The UK is more than competent to make rules and regulations on climate change and the environment without interference from the EU.

It would be better for the UK to leave the EU.

**Weitsch, Martina**

**Q1** It seems to me that there is a major advantage in looking at environmental and climate change issues on a cross border basis; both the environment and climate do not respect national borders.

The only question would be whether cooperation and coordination needs to be wider than the EU - and of course it is - but it is a good thing in my view if the EU speaks with one voice in order to be heard against the other large and emerging economies.

**Q2** I can't see any disadvantage to the UK; we may feel that the targets we have to meet are too onerous but (1) the UK has a voice in setting them - and uses it and (2) the targets are still far too conservative to achieve the significant change required; we should be more ambitious rather than less so and there are no rules that would prevent the UK from achieving higher/better targets than those set by the EU

**Q3** In practice, decisions are made at international level (i.e. beyond the EU) already; the EU needs to feed into them in a coherent way. Making decisions at national level is too narrow because the environment and climate affect us beyond borders.

**Q4** In my view, all decisions relating to the environment and climate change must be made at EU or international level; the EU is better able to move things forward in a shorter timescale and so there is every reason for the EU to lead by example. Many of the developing (and even emerging) economies, have contributed less to the problem, so the developed economies must also contribute more to the solution; and if the US is less willing to engage here, than that makes it more important for the EU to act.

**Q5** Clearly, where products and services impact the environment - thinking here both about energy standards and the use of environmentally harmful toxins in agriculture - the standards must apply equally in all MS; if they did not, MS with lower standards would have unfair advantage.

**Q6** There would not be a UK economy (or indeed an EU economy) without a viable environment. So it makes sense to ensure that our interference with the environment is limited to the extent that it allow the environment to function. Putting economic considerations before that is both foolish and only possible in the short term.

Q7 None

Q8 None

Q9 None

**Q10** In my view, there needs to be more action; we need binding energy efficiency targets; this would be one key way forward in terms of protecting the environment.

**Q11** I think that any less action is simply ignoring the situation we are in.

**Q12** There are two ways in which the UK could do things differently:  
Promote the EU directives positively in a way that is accessible to the public so that the public can see the benefits that arise from those directives;  
Ensure that the UK is best place to outperform the directives and targets (i.e. do better by the environment and lead from the front).

**Q13** Copenhagen in 2009 showed very clearly that because the EU is not united in these matters it is side lined on the international stage; it was embarrassing to witness the shambles of an agreement brokered without the EU (or any MS) even in the room.

**Q14** See above: absolutely critical!

**Q15** There are potentially a lot of challenges: extinction of species (see the problems faced by the bee population at the moment); drought, floods, extreme weather events; failed harvests; the list is too long to fit here.

The list of opportunities is equally long: we can face all the challenges if we are prepared to do things differently and if we are prepared to approach food security more locally, more organically and with a clear understanding that someone, somewhere is paying the price for our cheap food; it may yet be the environment as a whole that we sacrifice.

**Q16** The EU needs to speak with one voice as a leader for the environment at international level; the EU needs to set the policy and target framework for its MS; the UK needs to ensure that these policies and targets are seen positively (i.e. this is safeguarding our future and not 'yet more interference from Brussels'); the UK must ensure that it doesn't act as a brake in EU negotiations; the industry needs to respond with innovation to ensure that the targets can be met and that we can live within the resources of our one world (with the UK - and all other countries - only consuming/using its fair share - which we are currently not doing: we are using way above our share).

**Q17** The benefits are a functioning environment into the future.

The costs may be higher food prices, less meat consumption, less dairy consumption, a slightly lower standard of living (in line with 'our fair share'); the cost of not doing this may be a planet not fit for human habitation.

Q18 None

## **Welsh Government**

The Welsh Government is pleased to set out its formal response to the call for evidence in respect of the Environment and Climate Change report in the Balance of Competences Review.

We live in a changing world and many of the environmental challenges we face, such as climate change and declining biodiversity, are global in nature. It makes sense that these issues are tackled at least at an EU level.

Minimum environmental standards set out in EU legislation help to harmonise and encourage Member State compliance with international environmental obligations such as the Convention on Biological Diversity, signed at the 1992 Rio Earth Summit, climate change agreements, wetland conservation etc; EU level action is often more effective than intervention at the level of Member State or regions.

Without EU legislation or standards, the relatively high environmental conditions that we enjoy today as compared with 1960-70s, along with the associated benefits to the environment, economy and society, might have been more difficult to achieve.

EU level intervention helps to maintain a level playing field and common approach between Member States. UK goods and services are produced within a framework that is largely consistent across the EU, thereby reducing the effect of potential economic disadvantages that might arise between Member States. In addition, an EU wide approach provides access to a far greater knowledge base and expertise, as well as a potentially greater source of capital. It also aids Member States in meeting common objectives and sharing good practice, provides greater scope for achieving synergy with other policies, and promotes mutual learning and European cohesion.

It is important for the UK Government to examine how the EU's powers to act in the areas conferred on it by the EU treaties are deployed in practice, as they impact at all levels of businesses across all sectors. Welsh Government wishes to ensure, in the interests of our economy, that National, European and International legislation and regulation provides a proportionate approach and minimises the regulatory, administrative and cost burdens on businesses whilst providing a level playing field in the global context.

### **Benefits of a common regulatory platform**

Our focus in Wales on sustainable economic growth is strongly aligned with the EU's strategic vision, and we are firmly committed to being an active and positive partner in the many devolved areas in which there are EU drivers that support our aspirations. EU framework directives provide a common platform for the application of regulatory controls, which focus on the end results that must be achieved by Member States. This type of approach is generally preferable to a more rigid and overly prescriptive alternative, in that it provides the consistency and certainty needed to encourage businesses to invest, ensures that the same high standard of environmental outcomes is achieved across all European nations whilst allowing each national authority to account for differing national situations in the design and deployment of implementation measures.



An example of the successful application of this approach is in the Water Framework Directive, with its focus on the achievement of broadly defined water quality goals through the development and implementation of catchment-specific water resources management plans. The REACH Regulation offers a further demonstration of the benefits afforded by common application of regulatory controls in that the establishment of a single point of chemicals registration (the European Chemicals Agency) means that businesses can trade freely within the EU in the confidence that restrictions on hazardous substances are broadly the same in each country.

Overall, it is our belief that the deployment of well designed, outcome-focused legislative frameworks at a European level is an effective driver for sustainable and inclusive economic growth. The package of measures that is set to deliver the 20-20-20 targets (a 20% reduction in EU greenhouse gas emissions from 1990 levels; raising the share of EU energy consumption produced from renewable resources to 20%; and a 20% improvement in the EU's energy efficiency) and de-carbonise the European economy in the forthcoming years will provide significant opportunities for the creation of green “jobs”.

The Welsh Government believes that action of this nature at a European level, when complemented by more localised policy initiatives to integrate social inclusion, climate change and the maintenance of healthy ecosystems, is the most effective way to deliver a sustainable economic growth agenda. We also believe that in acting with a common purpose alongside other Member States in tackling environmental issues, as well as climate change mitigation and adaptation, we are able to speak with a more powerful voice on the global stage, driving the development of international standards for the protection of the environment.

Our shared interest in tackling the challenge of climate change is clear and many of the other impacts associated with emissions to air and water across the EU member states of Europe are also transnational in their scale; therefore it is our view that the case for aligning national laws at the European level is a compelling one. Returning to the example of the Water Framework Directive, many rivers cross national borders and their catchments are similarly expansive. The Directive's catchment-based approach to addressing water resource issues requires member states to co-operate closely, an exercise that is facilitated by the existence of a common European framework.

However, in the interests of the EU making the most effective use of its legislative competence, it is our belief that Member States should be involved as much as possible in the process of drafting legislation and that the legislative process should ensure that differing national situations in the various member states are accounted for. Extensive engagement across all Member States offers the opportunity to draw upon a greater depth and breadth of expertise than is available at a national level,

greatly enhancing the ability of the legislative process to deliver the best result. In the event that the Court of Justice of the European Union interprets EU legislation in a manner that seems to be inconsistent with the intention of the legislature, then consideration should be given to the need for legislative amendments that deliver greater clarity.

EU Directives and guidance are not always clear and simple, leaving room for interpretation by Member States. However, it must also be acknowledged that prescription can have disadvantages e.g. one size doesn't fit all, loss of sovereignty/lack of subsidiarity; similarly, some Directives are not outcome based and clarity about the outcome that is desired is not clearly explained. However, a balance is needed and a level of prescription, processes and enforcement is needed to create cohesion and ensure environmental quality;

The amount of reporting against Directives is substantial and burdensome. There are opportunities for making this more efficient; also, it is often difficult for the general public to understand the benefits of Directives and there needs to be a more effective way of communicating this to the people of Europe. The EU should make more of an effort to raise awareness of the consequences of breaches through infraction i.e. taking money out of Wales and away from its service provision;

One final point is the challenge of ensuring that all Directives are joined up with the move to a more ecosystem approach, and that Directives (especially if prescriptive) avoid conflict with one another.

The consultation implies (especially Question 4.) that protecting the UK's wider economic interest and protecting the environment are competing interests. The Welsh Government considers that it is important to stress that it is *not* a case of "Environment or Economy"; the economy in the long term, depends on a healthy environment. The risk is that we fail to provide the environmental protection (or enhancement) necessary to underpin future economic activity and human health. It is also the case that in developing solutions to environmental challenges, new markets and jobs are created and the employment landscape is shaped around future economic drivers.

### **Sector specific observations**

The requirements and targets set in the Waste Framework Directive and Landfill Directive have resulted in a dramatic rise in UK recycling rates and drop in wastes landfilled – something that would probably not have been achieved by domestic policies; the 50% recycling target for household waste was set in the Waste Framework Directive and even higher national targets have been set for Wales in its

ambitious Waste Strategy. In addition, the Landfill Directive has helped tackle the gas emissions from landfill (for climate change mitigation) as well as setting standardised engineering controls across Europe;

The Waste Hierarchy approach has resulted in a shift from disposal of wastes to recovery and recycling, but this incremental approach has not provided the stimulus for the sea-change needed to prevent waste production;

EU competences have prevented wastes such as tyres and asbestos being landfilled. The intention to move these and other materials to recycling is positive; however it often results in perverse results. Legitimate recycling markets are often not in place to deal with the new waste stream that has been diverted from landfill which gives rise to stockpiling of waste or illegal waste dumping. This was demonstrated in the Fforestfach tyre fire in West Wales;

More should be done to invest in new technology and develop recycling markets and to demonstrate the benefits of resource efficiency to businesses - in the short term there is a cost impact but in the long term there is economic and environmental value to resource efficiency and developing a circular economy for waste.

### **Industrial Regulation and Air Quality**

Common environmental rules have allowed for a pooling of information, best practice and understanding of standards. This has produced positive results with regard to acid gases and hazardous/toxic emissions with evidence of improved air quality following positive action. An example of this is the Industrial Emissions Directive, which will have a significant impact on emissions to air.

There are still questions regarding consistency across the EU, and also in relation to whether the EU stance is stiffer than that of non-EU countries. This could make the UK or EU less attractive. The issue of consistency and flexibility is an issue. This is not helped by legal frameworks being driven by case law and a process for amending, revising or correcting EU Directives that is too slow. However, domestic processes may not be much better in this regard.

Common standards should avoid movement of activities to gain competitive edge, taking advantage of lesser regulation (or less effective regulation). The market will respond to the effectiveness (or geographic range) of the application of common standards – it is for others to decide if this is proper functioning (the market will simply respond).

Given the time it takes to revise legislation, too much prescription can lead to perverse outcomes, with no quick method to fix without breaking the law – and then case law could define the intent, rather than the policy makers. There is a need to be

absolutely clear on the intent (outcomes), and where legislation fits into the delivery of this;

The EU is also a powerful voice at international negotiations and key driver of international standards e.g. vehicle emissions. In terms of climate change adaptation, while largely delivered at the national or local level, the EU through the EU Adapt website and the work of the EEA provides valuable resources for comparing performance and identifying best practice. Other Directives, such as the Water Framework Directive, also indirectly contribute to enhancing environmental resilience – a key component of adaptation delivery;

Many air pollutants travel vast distances, thereby creating a potential for one country to negatively impact on the air quality of others. The EU can set air pollution limits at the EU level, and negotiate on behalf of the EU at a global level, i.e. the EU can ensure that the UK is not unduly affected by mainland Europe emissions;

## **Environmental Data & Information**

EU Legislation covering environmental data and information includes:-

- Environmental Information Regulations,
- Freedom of Information,
- Infrastructure for Spatial Information in the European Community,
- Public register requirements covered within various regulations.

Consequently our environmental data and information is most likely more accessible and readily available today than if we did not have European obligations. The benefits outweigh the costs / risks.

- Benefits of open data and information include:-
  - Right to self-protection – public know the risks they face,
  - More informed policy and decision making,
  - Transparent decision making,
  - Improved pollution prevention,
  - Trust in government and organisations,
  - Promoting collaborative working.
  - Stimulates research community
  - Improves awareness of local environmental issues and trends
  - Promotes a shared and accessible environmental evidence base
- Costs /risks of open data and information include:-
  - Resources for planning, reporting and correcting data,

- Public misunderstanding or misinterpretation,
- Risk of breaching commercial confidentiality and personal data,
- Threats to public security.

## **Birds and Habitats Directive**

All MS are required to submit regular reports to EC on implementation of the Birds and Habitats Directive, including reports on the conservation status of habitats and species. There is plenty of evidence from conservation science literature of the positive effects on biodiversity of protected areas, especially in terms of the physical benefits. While it can be difficult to directly assign these benefits specifically to EU legislation, there is enough evidence to suggest that without the EU legislation, Wales would not have the level of protection that is afforded to the Natura 2000 sites.

There has been considerable work done on social and economic benefits of biodiversity conservation e.g. The Economics of Ecosystems and Biodiversity Report [www.ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb\\_report.pdf](http://www.ec.europa.eu/environment/nature/biodiversity/economics/pdf/teeb_report.pdf), but again it's difficult to assign benefits (not to mention net benefits - i.e. net of costs) specifically to EU legislation. This may be more to do with the timescales involved in monitoring and evaluating these benefits which in the short term can be detrimental but in the longer term have sustainable benefits,

There does not seem to be any evidence that suggests the UK has been disadvantaged relative to other MS by EU biodiversity legislation. . Where there are or geographic differences between counties then tensions can surface. For example the UK does have a very high population density compared with other MS which has made it more challenging to designate Natura 2000 areas than in other countries.

However, different organisations interpret MS legislation to suit their outcomes. It is also confusing when some base decisions on MS legislation and others refer back to the original Directive e.g. with the Habitats Directive, the criteria for site selection were interpreted in different ways in different MS so there was initially inconsistency between states in the type and number of sites put forward.

The Implementation of the Birds and Habitats Directives are strongly based on scientific evidence (e.g. selection of protected sites, assessment of impacts). The

approach to risk/uncertainty in decision making is highly precautionary and this has been upheld and underlined by ECJ case law.

### **How can EU Competence be used more effectively?**

Using the Habitats Directive mechanism allowing development affecting Natura 2000 sites and protected species for "imperative reasons of over-riding public interest".

The Welsh Government may wish to re-consider the way in which we implement Article 6.3 and 6.4 of the Habitats Directive, in particular a greater willingness to invoke Article 6.4 where damage to sites cannot be ruled out under Article 6.3. We could engage with the EC and other MS more proactively on this issue. Article 6.4 is the key 'balancing' mechanism in the Directive and it should be used more, rather than seeing Natura 2000 sites as absolute 'no go areas', or underplaying the impacts and risks to sites from developments assessed under Article 6.3. This applies especially to renewable energy development and climate change adaptation proposals (e.g. flood defence).

The Welsh Government's natural resource management looks to maintain a balance between what the natural environment can provide in terms of economic and social benefits, but doing that in a sustainable way. EU regulations can provide a framework to underpin this management.

The UK environment and biodiversity would suffer, not benefit, from less EU action in these areas. In the current economic climate, there is a tendency to see the protection and enhancement of the environment as a low priority and to fail to take into account the long term importance of the environment to healthy economy/society, in the interests of short term growth. With all MS facing the same pressures, we need EU action on the environment and climate change now more than ever.

### **Future Challenges**

Carbon leakage is a critical future challenge (i.e. industries leaving the EU to manufacture in countries not covered by the EU ETS). To avoid carbon leakage, the EU provides susceptible industries with 100% free allocation of emission

allowances. Such an allocation does not sufficiently encourage the uptake of alternative energy or energy efficiency processes/technology.

Ensuring that EU Directives and policies assist in delivery of adaptation at the national and local scale is a key challenge. Although much action will be undertaken at the local scale EU Directives e.g. WFD and policies such as CAP have the potential to facilitate and enhance the delivery of adaptation measures.

## Summary

We firmly believe that although the EU is facing challenges in relation to continued integration there can be no doubt that everyone in Wales benefits directly from the UK's membership. Our Programme for Government commitments are strongly aligned with EU environment and climate change policy initiatives and we believe that a purposive approach to the development of EU legislation supports the delivery of those commitments in Wales.

## Whale and Dolphin Conservation (WDC)

**Q1** There are numerous benefits associated with developing and enforcing environmental law and policy at a European level. These include:

- the global nature of many environmental issues. Where Europe acts as a bloc it is often easier to lever global change than where countries act in isolation or in shifting alliances;
- the adoption of common standards in both environmental and economic competition terms in support of the EU's single market;
- the advantages of sharing resources; benefits and costs of policy initiatives between co-operating countries (clearly apparent in climate change);
- intended consistency across land boundaries, e.g. in Northern Ireland where EU legislation acts as a leveller in respect of differences in law and market values across the border;
- economies of scale which can be captured in some instances; and
- the trans-boundary nature of many environmental issues and natural resources, including migratory species, air pollution and marine conservation.

In practice, the EU has also helped crystallise Member State concerns about the environment around a common sense of direction and momentum in a way no single Member State could deliver.

Specific	Examples	from	WDC
1. Moray Firth bottlenose dolphin	Special Area of Conservation (SAC)	under the EU	

Habitats Directive  
Geographical Extent - Marine and UK  
How did the EU measure make a difference to the environment on the ground?  
Because of the EU Habitats Directive Natura designation, monitoring associated with the SAC means that we continue to understand the requirements of the small bottlenose dolphin population (~200 animals). In addition, greater evidence is required for decision making. Examples have included the field studies that resulted to inform a decision surrounding seismic surveys on the boundary of the SAC and, more recently, detailed assessment of cumulative impacts of activities occurring within SAC as a result of harbour and port developments, including for marine renewable energy. Greater assessment is undertaken throughout the range of the dolphins, down the east coast of Scotland, and not just within the SAC boundary. Were there any other impacts that should be noted? These might include both positive, e.g. more jobs, or negative, such as a major administrative burden. No doubt there has been greater administrative burden, as well as costs associated with field monitoring, but these are required to provide environmental certainty and so should be factored into development plans.

We believe that this SAC demonstrates that spatial protection can work well for mobile species, and does not have to be an unwieldy burden for development. A study was recently conducted by Aberdeen University to investigate the value of the dolphin population to the tourism industry in the local area. The results demonstrated that the total income from direct tourism expenditure in Scotland reliant solely on the presence of the east of Scotland bottlenose dolphin population is therefore considered to be at least £4 million, providing approximately 202 Full Time Equivalent jobs.

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David Lusseau<sup>1\*</sup>, Enrico Pirotta<sup>1</sup>, Carl Donovan<sup>2</sup>, Leslie New<sup>3</sup> 2013. THE POTENTIAL FOR POPULATION CONSEQUENCES OF DISTURBANCES TO BOTTLENOSE DOLPHINS CAUSED BY THE DEVELOPMENT AND OPERATION



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Available here:

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## 2. Strict protection and Favourable Conservation Status under the EU Habitats Directive

Geographical Extent - Marine and UK

How did the EU measure make a different to the environment on the ground?

Strict protection

All cetaceans are listed on Annex IV of the agreement, meaning that they are considered to be a species of community interest in need of strict protection. Within Article 12 Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV in their natural range, prohibiting: all forms of deliberate capture or killing of specimens of these species in the wild; deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; deliberate destruction or taking of eggs from the wild; and the deterioration or destruction of breeding sites or resting places. Member States are required to establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV. Furthermore in the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned. Yet evidence suggests that the current protection offered in UK waters may be ineffective and has recently been down-graded (Green et al., 2012). There is little judicial authority in relation to these requirements specifically addressing the “strict protection” of cetaceans, with only one case seemingly brought to date. In *Commission v. Ireland (Case C-183/05)*, infringement proceedings were brought for a series of alleged breaches of the Habitats Directive concerning an eclectic group of species, including cetaceans. In this respect two central complaints pertaining to cetaceans were raised by the Commission. Firstly, it was alleged that the Irish authorities had failed to establish a system of strict protection due to an absence of a national action plan for cetaceans and a failure to fulfil surveillance and monitoring obligations. Secondly, concerns were raised that a project to lay a gas pipeline in Broadhaven Bay involved the use of explosives, which, despite acknowledging that the sound created would have an adverse impact on cetaceans, was nonetheless authorised by the government without entering a derogation under

Article 16. The Irish authorities responded that a species action plan was “underway” and that monitoring projects were being conducted by conservation volunteers alongside more in-depth government studies in certain areas. Moreover, a national records database had since been established together with full adherence to the by-catch monitoring obligations prescribed under relevant fisheries legislation, while permission for seismic blasting had been granted in accordance with national rules. The European Court of Justice (ECJ) found Ireland to be in breach of its commitments in relation to Annex IV(a) cetaceans on both counts. The failure to establish species action plans, considered “an effective means of meeting the strict protection requirement under Article 12(1)”, was deemed to be a breach of the Directive. Particular criticism was also reserved for surveillance activities, considered while resources for marine conservation were “especially meagre” and wildlife rangers “focussed on terrestrial duties and do not have any meaningful seagoing capacity”.

Accordingly, the Court ruled that a system of strict protection had not been demonstrated. Furthermore, it was held that the national authorisation process for seismic surveying was too permissive, rendering breeding and resting sites for cetaceans “subject to disturbances and threats which the Irish rules do not make it possible to prevent”.

The UK government has been considering plans for seismic exploration and oil and gas development adjacent to and inside the SAC in the Moray Firth in NE Scotland which has bottlenose dolphins as one of its features. This, and a complaint to Europe on scallop dredging in the bottlenose dolphin SAC in Cardigan Bay, West Wales, is considered further in Green et al. (2012). Nonetheless action must be taken to meet the Directive’s requirements to ensure the favourable conservation status of populations of some cetaceans outside designated SACs as well as within them, and this will be predicated on having adequate data to be able to show this (Green et al., 2012).

Despite the requirement under Article 12 of the Habitats Directive, to establish a system of strict protection, there are little obvious robust and enforced mechanisms that would put a stop to all forms of deliberate capture or killing (e.g. bycatch); deliberate disturbance, particularly during the period of breeding, rearing, hibernation and migration (e.g. licensing, mitigating and limiting noisy activities such as seismic survey work within areas known to be important to cetaceans), nor measures to stop deterioration and destruction of breeding sites or resting places outwith SACs. There is an urgent need to define how “breeding sites or resting places” are applied for mobile marine species and to identify how one can begin to protect them. There has also been no attempt to define the meaning of ‘features ... major importance for wild fauna,,,’ and ‘linear and continuous structures’ within the marine environment under Article 10 of the Directive (Green et al., 2012). ‘Strict protection’ measures are currently piecemeal and sector specific in the UK and a number of challenges have been made regarding the effectiveness of the existing draft disturbance guidance (for English and Welsh waters, none currently exists for Scottish waters), as well as sector specific JNCC ‘best practise’ guidance

such as seismic survey and pile driving guidance (see, for example, Dolman, 2012; Dolman et al., 2011; Dolman et al., 2009; Parsons et al., 2009; Dolman et al., 2008; Parsons et al., 2008; Weir and Dolman, 2007) and there is no transparent overarching framework to assess overall levels of disturbance or injury and mortality to populations or management units. Currently no framework exists for assessing cumulative and synergistic impacts, whether disturbance, injury or mortality, at the appropriate scale. With a dramatic increase in offshore development planned in coming decades, it is essential that critical habitat is identified and protected so that these sites can be managed within the wider marine spatial planning framework.

#### Favourable Conservation Status

The ambition of the Habitats Directive with regard to Favourable Conservation Status is to improve the status of natural habitats and species in Europe through necessary conservation measures. Within the agreement these points pertaining to 'Conservation Status' are described as follows: "In the European territory of the Member States, natural habitats are continuing to deteriorate and an increasing number of wild species are seriously threatened; given that the threatened habitats and species form part of the Community's natural heritage and the threats to them are often of a transboundary nature, it is necessary to take measures at Community level in order to conserve them." "Conservation means a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status..."

"Favourable conservation status of a species means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations..." Therefore the definition of FCS is crucial to the mechanics of the directive and as such the agreement describes that the conservation status of any species will be taken as "favourable" when:

- 1) Population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats
- 2) The natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future
- 3) There is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis

Within Article 17 of the agreement Member States are required to monitor the conservation status of habitats and species covered by the Directive and to report their findings to the Commission every 6 years. Within the Directive this is described as;

'Member States shall undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2 with particular regard to priority natural habitat types and priority species.'

These are then assessed by the European Environment Agency (EEA) at two regional levels including all biogeographic regions (Marine Atlantic, Baltic, Black Sea, Macaronesian, and Mediterranean) and by each Member State (Evans and Arvela,

2012).

To provide an example, at the time of writing white-beaked dolphin FCS are listed as 'Unknown' throughout the Biogeographic regions it occurs (Marine Atlantic), and 'Unknown' throughout all member states besides a classification of 'Favourable' within the United Kingdom (Figure 1). White-beaked dolphins are an endemic species to the North Atlantic, with the majority of their core distribution areas within the NE around Western Europe and Scandinavia. Until recently little was known regarding the species life history, abundance, population dynamics and ecology. As such they have been included in many international conservation agreements in the blanket of 'small cetaceans' without much targeted research or conservation focus. At present the level of threat to white-beaked dolphins FCS in the NE Atlantic is not fully understood, though the identification of particular threats most common for the species appear clear (e.g. climate change, habitat and prey depletion, noise and chemical pollution). Therefore without clear evidence from extensive monitoring activity our primary means for the assessment of these threats is through expert opinion. Therefore, a suitable method to gain input from the white-beaked dolphin (and more general marine mammal) research and conservation practitioner community is required to provide much needed advice to global, regional and local management programmes for the species conservation. Assessments made by JNCC were based on a baseline of dedicated surveys undertaken in 1994 SCANS which generated information on summer distribution and abundance estimates for a range of species and/or the Cetacean Atlas. This was supplemented by data collected in 2005 during SCANS II and additional CODA survey work undertaken in 2007 off the continental shelf, as well as continued collection of strandings and bycatch data. WDC questioned a number of aspects of the JNCC approach to assessment of FCS and decision on Article 17 reporting during the recent public consultation. We believe that in order to assess current and future Favourable Conservation Status adequately, the use of a wider range of existing field data is required. Some other key points included 1) inappropriate thresholds for determining range for some species where a one month "snap shot" was used for describing the entire six year reporting period, 2) inconsistencies in data use, equating habitat to range where one is an ecological metric and the other is spatial (where estimations of habitat that are equal to range may provide unrealistically high assessments for the long-term viability of species habitats therefore unrealistically grading an overall favourable conservation status) and 3) incorrectly applying EU guidance to make assumptions of favourable habitat where population size is unknown. Consideration of all these points combined lead to discrepancies, uncertainties and a general lack of precaution in the resulting overall conservation assessment. A more considered approach, as there seems to be an ecological and data sampling division between shelf and non-shelf areas, would be to generate separate shelf and non-shelf models for all species, combining or considering separately where appropriate for each species. This would be valuable for discrete species with either known or suspected metapopulations or ecotypes, and would also be useful for

gaining clarity on the distribution both on and off the continental shelf for wide spread species.

Equating range to habitat and stating that this is favourable is likely to provide unrealistic overall assessments of a favourable conservation status. In particular further clarification on specific habitats should be identified where possible. Where this is not possible, particularly where the population is unknown, the overall assessment for habitat should be considered to be unknown. In some cases this would lead to a downgrading in the overall favourable conservation status to unknown.

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**Q2 3.** Application of the Habitats and Species Directive and the Lisbon Treaty to EU Policy in the International Whaling Commission (IWC) Geographical Extent - Marine and Global How did the EU measure make a difference to the environment on the ground? The Intervention of the EU has had a potentially negative impact for conservation

Historically the EU has left the position to be adopted within the International Whaling Commission (IWC) by the individual Member States who are parties to the International Convention on the Regulation of Whaling (ICRW) to their national parliaments.

The UK Government has long had a well-respected position at the IWC, having the support of the majority of NGOs and other pro-conservation governments for its strong stance of protecting whales within the IWC. However, in recent years, we would argue that the UK, and other pro-conservation countries, have been increasingly constrained by the actions of the EU Commission in exercising the views of the vast majority of the European public in their desire to see the implementation of the strict protection of whales as mandated by the Habitats and Species Directive. In a series of moves since 2007, the EU Commission has sought to argue that the protection of whales within the IWC is a matter of exclusive competency and so under the full control of the Commission. It originally argued this on the grounds that whales and dolphins '[a]s "Live animals", cetaceans fall within the scope of Annex 1 to the EC Treaty and are subjects to Articles 33 to 38 thereof', Churchill and Owen (2010) note that, 'The stance taken by the Commission in its 2007 policy document appears to have been carried through to a legislative proposal issued on the same date. The proposal in question was for [a] Council decision establishing the position to be adopted on behalf of the EC in relation to the International Convention for the regulation of Whaling. The Commission proposed that the decision be based on Article 37 EC (and inter alia 175(1) EC), stating that 'cetaceans fall within the scope of Annex 1 to the EC Treaty and are subject to Articles 33 to 38 thereof' (although not mentioning the 'Live animals' consideration). Importantly, it should be noted that the Council did in turn adopt a Decision, but this appears to have been solely on the basis of Article 175(1) EC to the exclusion of Article 37, indicating the Council rejected the Commission's proposed use of Article 37 EC', Churchill and Owen (2010) go onto note, that, 'In its proposal for a similar Decision in 2008, the Commission decided not to seek to base the measure on Article 37 EC... but the Commission was careful to state that the decision was 'without prejudice' to the EC's exclusive competence 'in the field of the resources of the sea...' ... and did 'not create a precedent for any future negotiations about the conservation and management of living aquatic resources falling under the [Basic Regulation]' Whilst we regard this as clear instruction from the Council that the issue is one of shared competence, being covered by Article 175(1) EC and further supported by Title I Article 4 of The Consolidated Version of The Treaty On The Functioning Of The European Union (Categories And Areas Of Union Competence), states that at 2. Shared competence between the Union and the Member States applies in the following principal areas: (e) environment...' we are concerned that someone, or some body, within the Commission appears to be still seeking to lay grounds for the applicability of Article 37 and therefore, by default, the control of DG Pêche.

This is doubly concerning as the actual Treaty only grants exclusive competency in certain limited cases. In respect to biological resources, these only apply under the strict provisions of the Common fisheries Policy (CFP), (Article 3 (1)(d) TFEU). Despite the expressed views of the Council, in reference to the 2009 Council Decision 7146/09 the Commission once again sought to undermine this position by the addition of a statement in Annex II that says ‘...the Commission would like to note that Article 37 of the Treaty has not been inserted as part of the operational legal basis of the decision for reasons of expediency on the light of discussions that took place in 2008. This is without prejudice...’ WDC would again question the reason for the Commission including the phrase, ‘...Article 37 of the Treaty has not been inserted as part of the operational legal basis of the decision for reasons of expediency...’[Emphasis added], as this seems to imply that the Council agreed with the Commission that Article 37 did apply, when their previous practice, and Council’s clearly stated legal grounds of the 2009 Council Decision (Annex1) refers to solely environmental considerations. This would seem to indicate that Council clearly did not regard the exclusion of Article 37 for ‘reasons of expediency’ as claimed by the Commission. When in early 2013 WDC requested the legal opinions of the Commission and Council Legal Services we were told that ‘these may not actually exist as documents and, if they did, would only be obtainable through a Freedom of Information request’. WDC is currently seeking to obtain these legal opinions.

The EU at IWC meetings  
Whilst attending IWC meetings the Commission’s representatives have sought to exercise their position as if they had sole competency. It should be noted that the EU is not a Member of the IWC and can only attend as an observer. Whilst the EU Commission has expressed a desire to join as a Member, there remains considerable legal uncertainty as to if this is even possible. Between 2009 and the present, WDC had been in regular correspondence with the Commission on the issue of EU decision making at international environmental fora. A lack of clarity had led to confusion at an earlier CITES meeting in Doha in 2009, when the Commission sought to prevent the UK and others from voting for a provision that would have seen stricter protection for Bluefin tuna. The Commission argued that as the EU had not had time to fully coordinate, then all Member States should abstain on the substantive vote. WDC understands that several Member States chose to exercise their rights to support the substantive proposal. The Commission's reaction was to threaten to fine the 'offending states'. WDC, noting that an important vote was due at the next meeting of the IWC, and concerned at the actions of the Commission in the CITES meeting, sought to clarify the voting rules under which the UK and others would have to operate at the IWC. In a letter to Commissioner Potočník (dated 8th June 2010), we noted that further to a meeting with DG Environment staff, 'Mr Miko explained that the Commission has no immediate answer to the voting dilemma that we highlighted to you in our first letter'. There appeared to be considerable confusion in the Commission. However, in the

same letter we noted our concerns that, '...a comment reported by Ms. Plank that some within the Commission may be arguing that the issue of whaling is one of exclusive competency. If this is the position of some elements in the Commission this may well be where this confusion on voting is originating...' WDC was especially concerned during this period because, some Parties and individuals within the IWC were seeking to adopt a measure that would overturn the moratorium on commercial whaling, Denmark was seeking to extend Greenlandic whaling to include new species and, to defacto endorse its developing commercial whaling activities.

WDC noted that, 'We continue to monitor very carefully the negotiations between the EU and the IWC with respect to the proposed 'deal' to lift the moratorium and endorse commercial whaling and are especially concerned that any moves by the EU to endorse this proposal could be incompatible with EU law. We also believe that a failure to oppose, by 'choosing' (even under instruction) to abstain may also place Member states in a position where the EU may need to infract all countries that so knowingly fail to uphold EU law.'

We were concerned that Denmark would support moves by whaling interests to use the ambiguity in EU voting procedures to orchestrate a vote on the moratorium, in which, the EU may have had to abstain, and so allow the measure to be adopted. At the time in question the Commission believed that the adoption of the Lisbon Treaty and its provisions for 'sincere cooperation', meant that if Member States, further to coordination, in the absence of a Common Position, could not reach consensus, then all Member States would have to abstain on any substantive measure under discussion at an international environmental meeting. This very scenario was encountered in 2010 when confronted by a vote at a special meeting of the IWC on the issue of aboriginal subsistence whaling (ASW). Denmark had applied for an increased quota for its Greenlandic whalers and was encountering strong opposition from other EU members. It sought to effectively nullify the opposing EU Member States position by invoking Declaration 25 (see below) and then seeking to block a consensus in how to proceed in the EU coordination meetings. Despite extensive discussions and briefings the EU Commission was willing to accept that the EU should abstain and defacto deliver the quota requested by Denmark, because the EU member state abstention would have led to a failure to block the proposal.

Since then the EU commission has accepted WDC's argument that voting on substantive issues is by qualified majority voting (QMV). This was confirmed in a telephone conversation between WDC and the Commission on the 6th March 2013. However, the Commission has sought to ensure at all such decisions are taken at Coreper, even when a Common Position has been adopted that allows for decisions to be taken on the spot at international environment meetings. The various EU Common Positions adopted to cover the majority of negotiating positions at the IWC by the EU member states has consistently allowed for such cooperation 'on the spot'. However, in 2012 at the annual meeting of the IWC in Panama, the Commission referred decisions back to Brussels, and insisted that no such decisions take place



'on the spot'.  
In our discussions with the Commission in March 2013, the Commission stated that they now believe that,

1. If member states are unable to co-ordinate on the spot then decisions can be referred to Coreper
2. QMV should be used (again they confirmed that Council Legal Services disagreed)
3. If a position is still unable to be established, and if it's an issue of 'exercised competency' then there is an 'absence of decision' and Member States should abstain

When challenged that such a situation could lead to a lack of action in conservation policy with respect EU law and previous decisions, the Commission stated that that this is about EU law and process and not actual effect. I.e. process appears to more important than the impact of a decision. The position of the competency of the EU and Member States with respect to the issue of the protection of whales and dolphins remains fluid in the mind of the EU Commission.

Were there any other impacts that should be noted? A lack of certainty has meant that EU Member States are reluctant to challenge moves by the EU Commission, and each time the Commission exercises competency, and the Member States refuse to challenge, it argues that it has acquired more competency on this issue. Thus, there is competency drift in the issue of environmental protection of species. If not addressed, the shared competency will have been eroded, not because this is the will of the European public, but because this is in the interests of the Commission itself.

Annex Denmark and Declaration 25- Declaration No. 25 was appended to the Final Act of the Intergovernmental Conference (IGC), which agreed the Treaty on European Union (Maastricht Treaty). It is on the "Representation of the Interests of the Overseas Countries and Territories Referred to in Article 227(3) and (5)(a) and (b) of the Treaty Establishing the European Community" [now Article 355 of the Treaty on the Functioning of the European Union]: The Conference, noting that in exceptional circumstances divergences may arise between the interests of the Union and those of the overseas countries and territories referred to in Article 227(3) and (5)(a) and (b), agrees that the Council will seek to reach a solution which accords with the position of the Union. However, in the event that this proves impossible, the Conference agrees that the Member State concerned may act separately in the interests of the said overseas countries and territories, without this affecting the Community's interests. The Member State concerned will give notice to the Council and the Commission where such a divergence of interests is likely to occur and, when separate action proves unavoidable, make it clear that it is acting in the interests of an overseas territory mentioned above. This declaration also applies to Macao and East Timor. "In practice, the Declaration has been used to further the interests of the Greenlandic people (non EU members) to the detriment of the

majority of EU citizens. Denmark and the EU Commission have applied differing methodologies for decision making within EU coordination depending on the situation at hand. Denmark has been allowed to participate in negotiations (beyond being at the table and actively engaging in policy debate and setting) whilst also indicating that it would invoke Declaration 25 to avoid being bound by the EU final decision. This has led to a failure of certainty of process that materially disadvantages the UK and others that oppose commercial whaling. Common Fisheries Policy. WDC shall seek to respond to the next semester consultation, but wishes to note that the EU's management of the CFP has been negative for some species of cetaceans

**Q3** Decision's made under the heading of Environment should continue to be a shared competency. The EU should continue to strive for harmonization for the most precautionary levels of protection of species and habitats. However, where the UK wishes to enact stricter measures both domestically and/or internationally, the EU should not seek to limit the UK from so doing.

**Q9** Greater cooperation and ongoing development of dynamic guidance on the implementation of EU environmental law and policy. It does sometimes feel like the laws are developed centrally and then the member states are left to implement and maintain their effectiveness with only the threat of legal action to force compliance. Member States do not normally actively seek to avoid implementation and the EU should recognize that it has a responsibility to assist states more in their ongoing attempts to live up to EU law and policy.

**Q10** The EU could seek to provide more advice to the UK and range states on cooperative ventures, especially in areas of trans-boundary measures. A lack of coherence in the application of the Habitats and Species Directive through national legislation can lead to the UK and other EU range states seeking to least disadvantage themselves by implementing minimum requirements, especially in areas such as the marine. Effective EU support for collective action in developing collaborative precautionary mechanisms will alleviate pressure on individual governments who may be concerned not to lose economic advantage or positioning relative to another EU party

**Q11** Once a base line for action is discussed, Member States should be allowed to implement stricter measures if they so wish, as long as this does not interfere with other primary EU or domestic law.

**Q12** Increased engagement with range states in developing management and monitoring processes before implementing primary or secondary legislation. I.e. understanding the intent to achieve specific or general outcomes and what these should be, may allow for the framing of domestic legislation which is increasingly fit for purpose, and robust to future demands

**Q13** Please see notes on the IWC above. Some international agreements do not have provisions for allowing a multimember body such as the EU to join and in such circumstances, attempts by the EU to create such provisions could dilute the intent of the agreement and cause individual member states from taking more precautionary and environmentally sustainable positions. Other agreements may have started with an environmental focus, but the EU Commission has sought to interpret the implementation of the agreement as a commercial matter. e.g CITES. Its primary function is to regulate trade in endangered species, and countries such as the UK have sought to use the Convention to further its desire to see better endangered species protection, but the Commission appears to have seen the Convention as a primary trade regulatory body and therefore increasingly a possibility of exercising exclusive competency. The UK is increasingly unable to form a coherent national domestic and international conservation policy for certain species in the face of the Commission insisting on exclusive competency. The Blue fin tuna is a case in point and the polar bear is another.

**Q15** Economic development goals will always appear to create a tension with environmental protection measures. The challenge is to recognize that certain economic opportunities may require further development of alternative approaches to exploitation, and that such evolutionary pressures can and should lead to new technologies and approaches that can meet both aims, without sacrificing our natural environment for the promise of an immediate economic short term return. The pursuit of environmentally sensitive approaches to engaging with the oceans can lead to economic advantages to UK and European businesses.

**Q18** Just to thank you for the opportunity to comment on this process and wish the Defra team all the best in taking the review forward. Please note that WDC was a contributor and signatory to the WCL Response to the Government's consultation on its Review of the Balance of Competences: Environment and Climate Change August 2013

## **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 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.

## **Wildfowl & Wetlands Trust (WWT)**

### **Background**

WWT welcomes the opportunity to contribute evidence to this review. WWT is a wetland conservation charity which runs nine wetland centres around the UK and manages their associated wetland reserves, the majority of which are designated as of international importance. We are one of the world's largest and most respected wetland conservation organisations working globally to safeguard and improve wetlands for wildlife and people. We engage in wildlife conservation projects and initiatives around the world with active projects in, for example, Madagascar, Cambodia and Bulgaria as well as involvement in UK based projects including The Great Crane Project.

Six of our UK sites are (at least in part) designated as Special Protected Areas (SPAs) under the Birds Directive, and four sites are (at least in part) designated as Special Areas of Conservation (SACs) under the Habitats Directive. Furthermore, six of these sites also benefit from recognition as globally important Ramsar sites. Additionally, all except one of our sites benefit from national level designation as Special Sites of Scientific Interest (SSSI) (or the devolved country equivalent status). These sites collectively protect significant proportions of both nationally and internationally protected wildlife such as Bewick's Swan, and a number of other Annex 1 listed priority species.

Our wetland centres each constitute major regional tourist attractions, whose success is linked to the quality of the wildlife that they contain. It is because of this, that we benefit from a membership of over 210,000 and our wetland centres have welcomed over twenty million people since WWT was established in 1946 by Sir Peter Scott. We currently welcome in excess of one million visitors per year.

Through consultations and other processes we engage in the development and implementation of a range of domestic and EU environmental policy and legislation to support the delivery of the conservation of wetlands for wildlife and people.

This response focuses on the impacts and benefits to WWT, and for wetlands in the UK more broadly, of specific areas of both domestic and EU policy and legislation in which we have direct experience. However, a thorough analysis of this would require more time and resources than we have been able to commit within the short time frame of this consultation, and our response is thus a relatively cursory analysis. It has proven extremely difficult in this time frame to tease out where different pieces of legislation, deployed at different levels (e.g. domestic or EU derived), have led to specific outcomes, and what the likely implications of different approaches might be. However we have been able to draw some conclusions which we hope constitute useful evidence. Due to these limitations, we can give you more information and feedback by submitting this response in an issue based format, rather than trying to

unpick each consultation question separately. I hope this will be helpful in your overall consideration of the matter

In summary, we consider the overall benefits of being a recipient of EU derived environmental legislation as very positive; this applies to WWT, our members and the wildlife our reserves support, and to the wetlands, their wildlife and people across the country.

No animals recognise political boundaries, and so EU regulations provide essential cohesion and commonality in approach across landscapes and migratory flyways. This results in a collective responsibility for the water, wetlands and ecosystem services shared by countries with land borders, and for the migratory wildlife species that visit the UK and other EU countries at different times of year, and the habitats that support them. This also undoubtedly results in cost-efficiencies in environmental protection overall.

We consider that EU environmental legislation, or EU legislation with an environmental component, generally requires a standard of environmental protection and sustainable management that we would consider to be a *minimum essential requirement*. EU environmental legislation provides a safeguard to ensure that individual national administrations cannot adopt short-term thinking and policies that could cause irrevocable harm to either biodiversity and habitats or the natural support systems that underpin human livelihoods in the long term. Such short-termism is more prevalent in periods of national or international economic hardship when the drive for business and economic development is high, and it is at just such times that the minimum standards required by EU legislation help to ensure that our biodiversity and natural support systems have the level of protection necessary to ensure a sustainable long-term future for wildlife and people. While the majority of environmental legislation in the UK is transposed from EU requirements, and there is thus no way of knowing what would have resulted from independent UK laws, we consider that domestic politics would not support the minimum standards that we and others expect in order to protect our environment.

### **The specific benefits and impacts of EU and domestic policies on the Wildfowl & Wetlands Trust:**

- **Environmental Impact Assessment (EIA)**

Application of the EU-derived Environmental Impact Assessment (EIA) approach has enabled us to scrutinise proposals for wind farms, for the purpose of ensuring that their potential impacts on migrating geese and swans are minimised. This has on the whole, resulted in better, more robust schemes that better safeguard these species, albeit that both developing and reviewing the EIAs requires detailed consideration by developers and conservationists alike. We do not think that this level of scrutiny or

transparency was or would be enabled by pre-existing domestic legislation. Moreover, the EIA Directive in principle facilitates a level playing field for the deployment of such schemes across the EU, though the outcome remains somewhat reliant on the views taken by the “Competent Authorities” undertaking “Appropriate Assessments” considering EIAs where the developments are close to Special Protection Areas (i.e. as part of the Habitats Regulations Assessment process), which may vary locally and internationally.

The requirement that EIAs should address cumulative (“in-combination”) effects is now proving useful, with cumulative effects increasingly included in environmental statements submitted with planning applications in recent years; indeed, in one case two potential sources of collision risk (power-lines and wind farms) were considered. It also provides safeguards to ensure that, wherever a species is migrating through the EU, schemes likely to affect them benefit from the same level of detailed and public scrutiny. Cumulative effects of schemes internationally, along migration bird routes, have not yet (to the best of our knowledge) been included to any extent in EIAs for UK developments (which retain a local or national focus), although the EU-wide nature of the EIA approach provides a framework for doing so, and this may become best practice in the future.

- **The Habitats and Birds Directives**

The more proportionate level of protection offered by either SAC or SPA status, as opposed to prior existing national level designations, has ensured that WWT’s UK based wetland reserves and other important wetland habitats have been better protected from inappropriate development – protecting both their wildlife, and simultaneously our business and member interests. Many of our sites came into our custodianship during the 1970s as SSSIs, and sometimes with a level of pre-existing threat associated with them. Over time, and during which much EU based environmental legislation has been transposed (some actively led by the UK), we have seen some of this direct threat tail off, though this may in part be due the additional protection offered by our custodianship. Other threats have however increased, such as those arising from the increased isolation of our wetlands, and functional damage resulting from, for example, ongoing development in the floodplain. This is mostly driven by domestic planning policy which is national, not EU competence, so can miss the wider environmental context afforded by EU legislation. It is worth noting, that threats to unprotected wetlands continue unabated. Having said this, at least one of our SPAs is still suffering ongoing direct damage from flood waters (our Welney reserve), though at least its status allows for adequate compensation to be secured where under previous domestic legislation this would not have been possible. EU legislation has therefore ensured compensation for the loss of this valuable wader habitat is put in place for future generations to enjoy in what is otherwise a challenging area to attract tourists to.

The Birds Directive is particularly relevant to our work on Greenland White-fronted Geese, and the Common Scoter, both Annex 1 species. The designation of SPAs and SACs right across the EU has ensured that species like these gain equivalent attention and protection, at least theoretically, in every part of their range. The resultant network of sites ensures an important backstop exists, especially pertinent where other governments across the EU are weak or ineffective in protecting these natural assets. EU competence helps the UK to ensure value for money for domestic species protection in the UK, by providing legal leverage to stop other countries undermining that protection elsewhere along species migratory routes.

The network of SPAs and SACs have demonstrably delivered conservation outcomes for Annex 1 species across abiding countries in a way that combinations of member states domestic legislation would not have enabled and which is not found outside of the EU. This case is eloquently and robustly presented in a paper by Donald et al 2007. The Birds and Habitats Directives have also facilitated the development of clear and long term direction for species conservation effort across the EU, one which transcends national political timeframes and outlooks, and which provides for more vigorous implementation and the development of common monitoring standards. It is also important to note, that these Directives have also fostered the pooling of best practice, and engendered collaboration between different players in different member state in relation to transnational species.

The development of the Natura 2000 network of sites (Nat2k), made up from the SACs and SPAs, has also encouraged EU-wide landscape scale thinking - the consideration of the interconnectivity and ecological coherence between sites right across the EU. This has been critical in enabling holistic conservation management to take place that considers landscape context, and led to the development of many large-scale restorative agendas across the EU (e.g. the Pan European Ecological Network).

WWT is also undertaking work in partnership with the Environment Agency to create intertidal habitat including salt marsh, via a managed realignment scheme on the Steart Peninsula in Somerset. This habitat is being created to compensate for habitat loss resulting from coastal squeeze, required by the Habitats Directive. This is one of the largest managed realignment projects in the UK and will provide multiple benefits in the area, as well as being important habitat for wildlife. We estimate that the overall scheme will provide a benefit of between £491,000 and £913,000 in comparison to the existing habitat (Du Silva 2012).

As well as environmental benefits, the Birds and Habitats Directives also provide economic benefits for example directly from tourism by providing high quality natural attractions, and indirectly from the provision of ecosystem services. WWT's sustainability is dependent on tourism, and would arguably struggle to attract high visitation numbers without the EU level protection offered to its sites. It has been calculated that the tourism value of N2K sites in Europe is worth €9–20 billion/year in



2006 and provides up to 2 million FTE jobs (15% of all FTE jobs in the tourism sector in 2006).

[www.ec.europa.eu/environment/nature/natura2000/financing/docs/Economic%20Benefits%20Factsheet.pdf](http://www.ec.europa.eu/environment/nature/natura2000/financing/docs/Economic%20Benefits%20Factsheet.pdf)

- **The Water Framework Directive**

Our wetland reserves and their surrounding landscapes suffer detrimentally from the effects of a range of pollutants, originating from both point and diffuse origins. Some also suffer from the effects of over abstraction, all from the effects of invasive non-native species, and many from the effects of extensive hydrological modifications. The outlook for many of our sites upon us gaining ownership was relatively dire in this context. During the 80s and 90s domestic policies gradually facilitated an improvement in the chemical status of the waters associated with them, although often the wildlife value remained suppressed. A critical driver for addressing these residual problems and for improving the ecological status of these wetlands was the Water Framework Directive (WFD). This has moved domestic obligations on from achieving purely chemically based improvements, towards achieving more holistic and ecologically relevant improvements. The WFD is the only tool we see that will drive significant change in land management practices to ensure our and other wetlands can improve significantly over time, although there is always the prospect and pressure for derogations to take place. The benefits of delivering good ecological status for wetlands classified under the WFD in the UK will be vast (see: [www.pjmeconomics.co.uk/wp-content/uploads/2012/07/Assessment-of-non-market-benefits-of-the-water-framework-directive-for-households-in-england-and-Wales1.pdf](http://www.pjmeconomics.co.uk/wp-content/uploads/2012/07/Assessment-of-non-market-benefits-of-the-water-framework-directive-for-households-in-england-and-Wales1.pdf)), despite the investment that will be required. In addition to supporting a suite of wildlife which enables WWT to attract visitors and engage them in our conservation messages, healthy wetlands are excellent places for recreation and for general human health and wellbeing. High quality wetlands are also better able to supply and support other ecosystem services like flood water mitigation and help to underpin and deliver water security.

Another benefit facilitated entirely by the WFD, has been that of ingraining the catchment based approach in the UK. Many of the issues that affect our wetlands have their origins and solutions in the actions of broader stakeholder communities who live and work across the catchment in which our sites sit. We do not believe that our government would have necessarily recognised the potential, and invested in this approach, without the stimulus provided by the WFD.

- **Invasive Non-Native Species (INNS)**

Every one of WWT's wetland reserves suffers from the impacts of invasive non-native species (INNS); species like Water Primrose, New Zealand Pigmy Weed and Water Fern. The UK's biodiversity is significantly impacted by INNS, which displace native species and can also cause economic damage, recently calculated as being

at least £1.7 Billion per year across the UK (Williams et al 2010). INNS are recognised as a nationally significant water management issue under the WFD, and are likely to prevent a good proportion of water bodies from attaining good ecological status.

INNS affect every country in Europe, recently estimated to cost €12billion Euros a year to manage (European Environment Agency 2012). Effectively tackling INNS requires a truly global outlook, and therefore by necessity needs coordinated action in order to prevent their spread between countries which are either geographically linked, or linked by trade routes. Legislative action to combat INNS in the UK has been very slow (a ban on sale of damaging aquatic plants took seven years to negotiate) and there are gaps in our approach (for example a lack of pathway analysis) typical of having taking an inward facing approach, leaving us vulnerable to further invasion. However, the GB strategy developed to tackle INNS has many merits.

It is abundantly obvious that the problem cannot be dealt with through domestic channels alone, since the entry pressure from species moving across Europe and in through neighbouring states is too great; INNS have no regard for country boundaries. Successfully addressing the issue requires all countries to take similar action – this is both pragmatic and fair, and will save money for the UK tax payer, and eventually for WWT who currently spend large amounts of staff time and many thousands of pounds each year managing these species. To this end, an EU legislative instrument dedicated to addressing the impacts of alien species has been in development for a number of years and will be released from the Commission shortly. We believe that this proposal has received tacit support from Defra Ministers due to the logic of the tackling the problem in this manner, and the obligations that will be placed on other countries currently acting as vectors for species invading the UK.

- **The Severn Estuary**

Our Head Quarters at Slimbridge lie on the banks of the Severn Estuary, an area which has received continuous speculation over its suitability for a large barrage scheme. The designation of this estuary as both an SPA and SAC has enabled us, and others, to ensure that the value of the estuary is taken into account throughout the debate, and through the various feasibility studies that have taken place. These designations have also helped provide clarity on what constitutes ‘sustainable development’ in the estuary, and levels and types of compensation that would be socially and environmentally fair, and importantly legally required were a scheme to go ahead. We believe that a reliance on purely domestic legislation in this case, would in all likelihood lead to consent being given for an inappropriate scheme and a failure to recognise the many benefits that important sites such as the Severn Estuary deliver to the whole of EU society.

- **Lead poisoning**

Only a small proportion of lead gunshot hits target animals with the majority falling into and contaminating the wetlands and terrestrial habitats where it is used. It can then be ingested by waterbirds and terrestrial birds, causing poisoning. Mortality and morbidity from this source has been recognised for more than a century. The large and widespread nature of this problem in waterbirds (first recognised in the USA and UK in the middle of the 19<sup>th</sup> century) has resulted in bans on the use of lead gunshot and its replacement with non-toxic alternatives in many countries. In the UK countries and many other EU countries action to replace lead with non-toxic alternatives was stimulated by The Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA). Developed under the framework of the Convention on Migratory Species (**CMS**), AEWA is an intergovernmental treaty dedicated to the conservation of migratory waterbirds and their habitats across Africa, Europe, the Middle East, Central Asia, Greenland and the Canadian Archipelago. **Resolution 1.14** of the First Meeting of the Parties specifically states that *Parties shall endeavour to phase out the use of lead shot in wetlands by the year 2000*. The UK has been a contracting party to AEWA since 1999, and the EU since 2005.

Today, not only is lead ammunition (gunshot but also bullets) known to cause suffering and death in many wildfowl and other birds, it is also considered to present potential health risks to people, especially children and pregnant women, that frequently eat game meat shot with lead, especially that from small game (e.g. gamebirds). In 2007, the European Commission requested the European Food Safety Authority (EFSA) to produce a scientific opinion on the risks to human health related to the presence of lead in foodstuffs, including an exposure assessment for dietary lead for specific groups of the population, including infants and children, and people following specific diets. EFSA included an analysis of risks to people that regularly eat game meat and their analyses indicated that the possibility of negative effects on health could not be excluded for some adult consumers of game meat, because some of these consumers could incur an increased risk of cardiovascular and nephrotoxic effects as a result of exposure to lead (EFSA 2010). The EFSA analysis did not evaluate the impacts of game consumption on children, the most vulnerable group, or evaluate the potential effects of eating more than one meal of game meat per week. The Commission has not yet responded to this scientific opinion, although several EU States (including Germany, Spain, Italy and the UK) have subsequently undertaken their own risk assessments and produced associated health guidance (AESAN 2012; BfR 2011; FSA 2012).

These types of issues are ‘*One Health*’ issues. Lead from ammunition contaminates the environment and affects wildlife, domestic animals and humans; holistic solutions are needed to tackle these. It is therefore appropriate that guidance and where necessary regulation should be based upon the best science available and coordinated in an integrated way by competent authorities at a multinational level.

The EU has a competent body - EFSA - who can pull together evidence from across the Community in an independent way with the cost being spread across EU states, which means better value for UK taxpayers. Health protection regarding global contaminants is often dealt with through international accords and agreements and this helps to ensure much needed progress in advancing the health both of the environment and vulnerable groups like children. We therefore believe that, while much remains to be done on this issue, our membership of the EU and of multilateral environmental agreements like AEWa have resulted in environmental improvements greater than would have been achieved in the absence of the stimulus that they have provided.

- **Common Agricultural Policy**

Following its initiation in 1962, the Common Agricultural Policy (CAP) promoted more efficient agriculture - generally 'agricultural intensification' - across the EU and resulted in a simplification of the landscape, more specialised systems and considerable loss of wildlife (Pain & Pienkowski 1997; State of Nature 2013; UK Farmland Bird Indicator of sustainable development <http://sd.defra.gov.uk/new-sd-indicators/>). As the CAP has been reformed over time, and especially with the development of the 'Agri-environment Regulation' which accompanied the 1992 CAP reforms, progress has been made towards a policy which better integrates food production, rural development and environmental protection. Although so far agri-environment regulations have helped to increase populations of some farmland species, farmland wildlife overall has not recovered, possibly due to limited uptake of the most effective agri-environment options, and because available funding is inadequate. Nonetheless, although inadequate to meet environmental needs, the agri-environment scheme funding available is vitally important in improving agricultural land to benefit wildlife and provide public goods; this includes improving water quality which benefits wetlands, wildlife and people. Agri-environment schemes not only have the potential to improve aquatic habitats in general, but in a country where around 95% of all wetlands have been lost, can also help reverse this trend by funding their creation. WWT receives funding from agri-environment schemes, and this allows us and our tenant farmers to manage agricultural land sensitively for the benefit of wetland wildlife. We believe however, that these schemes could be better targeted to deliver environmental benefits and this will be increasingly needed to face future challenges and reducing budgets.

- **Funding for conservation work**

Our membership of the EU and adoption of EU environmental legislation has facilitated access to a range of funding sources that can deliver both UK and EU-wide based wildlife conservation work and facilitates mutually beneficial expertise sharing. By way of an example, this includes results being currently delivered through our Red-breasted Goose project in Bulgaria (funded by Life +).

## Conclusion

In summary, we see primarily benefits for WWT and for wetland wildlife across the UK and beyond that accrues from obligations under the range of EU environmental legislation that has driven the domestic agenda over the past few decades. These are benefits for business, benefits for nature, and an enhanced recognition that our natural capital delivers social and economic benefits for the people of the UK. We believe that such an approach better enables us to embed resilience to future challenges, such as those associated with INNS and climate change.

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### **Wilson, Dr David C**

I comment from the perspective of a senior waste and resources management professional, who started work in the sector just as the first legislation on environmental control was being enacted in 1974, and who has spent all of my career as a consultant, advising governments, cities, businesses and international organisations all around the world on policy, strategy and the underpinning evidence for both municipal solid waste management and hazardous waste management. My work has been and continues to be split roughly 50:50 between UK and the EU on one hand and developing and emerging economies on the other.

The waste industry as we know it is the creation of regulation – if the regulations are unclear or weak or poorly enforced or uneven across the EU, then the legitimate waste industry will be undermined by unfair competition from cheaper, barely legal or plain criminal operators. The current waste management regulations are generally good, fit for purpose and proportionate; and their consistency under EU Directives ensures a level playing field across Europe. They do need clear interpretation and strong enforcement by a well-resourced regulator, which is an area where improvement is needed.

So I am 100% behind the current system where strong and consistent regulations are set at the EU level.

Dr David C. Wilson MBE

Independent Waste and Resources Management Consultant

Visiting Professor in Waste Management at Imperial College, London

### **Wine and Spirit Trade Association**

The Wine and Spirit Trade Association represents the interests of the UK wine sector and is closely involved with trade policy development at EU and global levels.

We have recently submitted a discussion paper to our European trade association on Environmental issues which has widespread support.

Its conclusions are as follows:

*“Whereas ‘greening’ the planet is a laudable objective for government:*

- ‘Greening’ the industry should not be a competitive issue in that self interest at economic operator level should be the driver: this is well understood by most retailers.*
- If there are to be targets, they should be set at national (not at EU) level as there are huge differences between regions.*
- There is a clear link between improving economic performance and enhancing sustainability. Most economic operators understand the environment in which they operate far better than legislators. The trick will be for officials/extension workers/auditors etc. operating at national/inter-professional body level to encourage businesses to improve their economic performance. If this is successful, enhanced sustainability will follow at local level.*
- The wine sector has already done a huge amount of work with a view to setting its own parameters for sustainability and for facilitating international trade of products made by an industry that is already intrinsically green.*
- With regard to concerns about barriers to trade, by far the simplest approach would be to seek equivalence between standards already in use in different jurisdictions. This process could be coordinated at Commission level.*

*[The European trade federation for wine] could make a useful contribution by championing the practicality of implementing a flexible ‘bottom up approach’. It could develop simple guidelines for SMEs (no more than 4 pages) with links to more complex LCA documents that might be of more interest to larger companies. These could be used as the basis for individual jurisdictions to encourage wineries (particularly SMEs) and transporters within their territories to become more efficient and therefore more environmentally friendly.*

*In essence, the rationale for keeping data and for determining KPIs should be firmly linked to the opportunity to enhance economic performance; their collection and reporting should not be a burden on economic operators, and a declaration could be included with the submission of annual accounts.”*

## **WRAP (the Waste and Resources Action Programme)**

### **Advantages and disadvantages**

1. What evidence is there that EU competence in the area of environment and/or climate change has:

- i. benefited the UK / your sector?
- ii. disadvantaged the UK / your sector?

### **WRAP response:**

I work for WRAP (the Waste and Resources Action Programme, see [www.wrap.org.uk](http://www.wrap.org.uk)), which delivers waste and resource efficiency actions on behalf of the four governments across the UK, and more widely. The greatest step-change in UK waste policy took place as a consequence of Waste Strategy 2000, published by DETR in May 2000. This was a direct response to the passing of the Landfill Directive 1999, and the consequent need to divert significant proportions of the UK's biodegradable municipal waste from landfill. Given the environmental and economic benefits that have resulted from the drive for greater resource efficiency that followed this change, it would appear that EU competence in the area of waste policy has been a benefit to the UK in this regard. In addition, it is important to recognise that much of the market for waste destined for recycling is wider than a single country. Having EU-wide rules to deal with transfrontier shipments of waste is a clear benefit to everyone who wishes waste to be recycled as efficiently and cost-effectively as possible.

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

2. 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?

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

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

4. 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?



## **Current legislation**

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

- i. focused on outcomes (results)?
- ii. based on an assessment of risk and scientific evidence?

### **WRAP response:**

The principal targets in the revised EU Waste Framework Directive of 2008 are concerned with outcomes: they call for a minimum 50% recycling level for household and related waste by 2020, and a minimum 70% recovery level for construction and demolition waste by 2020. The process for incorporating assessments of risk and scientific evidence into EU policymaking could be strengthened, just as it could at UK level.

## **Doing things differently**

6. 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?)

### **WRAP response:**

Finding more effective ways to develop EU policy proposals and impact assessments would certainly be helpful, just as it would at UK level. It would be helpful if the European Commission were better able to consider non-legislative alternative solutions to issues (e.g. voluntary agreements) in parallel with legislation.

7. How far do you think the UK might benefit from the EU taking:

- i. More action on the environment/climate change?
- ii. Less action on the environment/climate change?

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

9. a. 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?

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

## **Future challenges and opportunities**

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

b. 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?

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

### **Anything else?**

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

## **WWF**

### **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 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>581</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 opposed to the Member State level, is necessary. These reasons can be broadly summarised as follows<sup>582</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.

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<sup>581</sup> 2013 (IEEP) A Report on the Influence of EU Policies on the Environment (attached)  
[ [www.ieep.eu/assets/1230/Final\\_Report\\_-\\_Influence\\_of\\_EU\\_Policies\\_on\\_the\\_Environment.pdf](http://www.ieep.eu/assets/1230/Final_Report_-_Influence_of_EU_Policies_on_the_Environment.pdf) ]

<sup>582</sup> IEEP Report, s. 2

- 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), 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>583</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>584</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>585</sup>. Our own evidence also notes a slightly more nuanced position with regard to the International Whaling Commission<sup>586</sup> and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>587</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>588</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

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583 EC, 2013a  
584 EC, 2011a  
585 IEEP Report, Executive Summary.  
586 See paragraph 29 of this response  
587 See paragraphs 45-47 of this response  
588 IEEP Report, section 5.2

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>589</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 territorial and consumption emissions, and that there was not under-reporting of the total carbon 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>590</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>591</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

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<sup>589</sup> See [www.theccc.org.uk/wp-content/uploads/2013/04/CF-C-Summary-Rep-web1.pdf](http://www.theccc.org.uk/wp-content/uploads/2013/04/CF-C-Summary-Rep-web1.pdf)  
<sup>590</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>591</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: [www.publications.parliament.uk/pa/cm201012/cmselect/cmenergy/1476/1476.pdf](http://www.publications.parliament.uk/pa/cm201012/cmselect/cmenergy/1476/1476.pdf)

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>592</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 carbon floor price under the condition that compensatory measures were introduced at the same time<sup>593</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>594</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

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<sup>592</sup> Skjærseth, J.B. & Wettestad, J. (2008) *EU Emissions Trading: Initiation, Decision-making and Implementation*. Aldershot, Ashgate

<sup>593</sup> Ares, E. (2013) *Carbon Price Floor*, House of Commons Library.

<sup>594</sup> Clark, P & Tighe, C. (2013) *UK business attacks EU carbon move*, Financial Times, 17 April 2013. See : [www.ft.com/cms/s/0/652c2932-a77d-11e2-9fbc-00144feabdc0.html#axzz2YR9p1bnG](http://www.ft.com/cms/s/0/652c2932-a77d-11e2-9fbc-00144feabdc0.html#axzz2YR9p1bnG)



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>595</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,

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<sup>595</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

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 sharp decline in carbon intensive plants such as coal (-12.7GW) and fuel oil power stations (-17.4GW).<sup>596</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>597</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>598</sup>.

### **Protection of the Marine environment**<sup>599</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

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<sup>596</sup> Wind in Power, 2012 European Statistics, EWEA, February 2013: [www.ewea.org/statistics/](http://www.ewea.org/statistics/)

<sup>597</sup> [www.roadmap2050.eu/downloads](http://www.roadmap2050.eu/downloads)

<sup>598</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>599</sup> IEEP Report, s. 4.1.2

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 replacement. The original 1976 Directive has since been repealed by a 2006 Directive<sup>600</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>601</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>602</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>603</sup> in which it was held that the Habitats Directive<sup>604</sup> applies in the offshore marine environment<sup>605</sup>, the UK

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<sup>600</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>601</sup> Council Directive of 21 May 1991 concerning urban waste water treatment (91/271/EEC)

<sup>602</sup> See [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/141697/rwq-ind-sus-2009-resultsv2.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141697/rwq-ind-sus-2009-resultsv2.pdf)

<sup>603</sup> *R v Secretary of State for Trade and Industry and others, ex parte Greenpeace Ltd No.2* [2002] Env LR 221

<sup>604</sup> Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora

has designated 107 Special Areas of Conservation (SACs) with marine components (covering 7.6% of the UK sea area<sup>606</sup>) and classified 107 Special Protection Areas (SPAs) with marine components<sup>607</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>608</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>609</sup>.

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

32. The Marine Strategy Framework Directive<sup>610</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 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

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<sup>605</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>606</sup> See [www.jncc.defra.gov.uk/page-1445](http://www.jncc.defra.gov.uk/page-1445)

<sup>607</sup> See [www.jncc.defra.gov.uk/page-1414](http://www.jncc.defra.gov.uk/page-1414)

<sup>608</sup> Baldock, D. *et al* (IEEP) forthcoming 2013.

<sup>609</sup> *Ibid*

<sup>610</sup> Directive 2008/56/EC on establishing a framework for community action in the field of marine environmental policy

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>611</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>612</sup>**

36. Currently, the most important item of EU water law is the Water Framework Directive<sup>613</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

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<sup>611</sup> [www.celticseaspartnership.eu](http://www.celticseaspartnership.eu)

<sup>612</sup> IEEP Report, s.5.3

<sup>613</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

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 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>614</sup>**

41. WWF has supported the development, adoption, implementation and enforcement of the Nature Directives since the evolution of the Birds<sup>615</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>616</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

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<sup>614</sup> IEEP Report, s. 5.4

<sup>615</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>616</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



2000 network alone) is between €200 and €300 billion per year<sup>617</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>618</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:

- 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>619</sup>. It is estimated that England and Wales lost 97% of enclosed semi-natural grasslands between 1930 and 1984<sup>620</sup> and the Farmland Bird Index – a measure of the state of biodiversity on agricultural lands – declined by 43% between 1970 and 1998<sup>621</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>622</sup>. The 2012 Government Review of the Habitats and

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<sup>617</sup> See "Estimating the Overall Economic Value of the Benefits provided by the Natura 2000 Network" (2013) available at [www.ec.europa.eu/environment/nature/natura2000/financing/](http://www.ec.europa.eu/environment/nature/natura2000/financing/) and 'Assessing Socio-economic Benefits of Natura 2000 – a Toolkit for Practitioners' (September 2009 Edition) [www.ec.europa.eu/environment/nature/natura2000/financing/docs/benefits\\_toolkit.pdf](http://www.ec.europa.eu/environment/nature/natura2000/financing/docs/benefits_toolkit.pdf)

<sup>618</sup> UK National Ecosystem Assessment Technical Report (2011) (Chapter 5: Broad Habitats) available at: <http://uknea.unep-wcmc.org/LinkClick.aspx?fileticket=CZHaB2%2FJKIo%3D&tabid=82>

<sup>619</sup> Defra (2011) *The Natural Choice – Securing the Value of Nature*. Available at [www.official-documents.gov.uk/document/cm80/8082/8082.pdf](http://www.official-documents.gov.uk/document/cm80/8082/8082.pdf)

<sup>620</sup> UK National Ecosystem Assessment (2011) Synthesis Report – see Defra Archive [www.archive.defra.gov.uk/environment/natural/documents/UKNEA\\_SynthesisReport.pdf](http://www.archive.defra.gov.uk/environment/natural/documents/UKNEA_SynthesisReport.pdf)

<sup>621</sup> *Ibid*

<sup>622</sup> Davidson Review on implementation of EU legislation (2006). Commissioned by Department for Business, Innovation and Skills. [www.bis.gov.uk/files/file44583.pdf](http://www.bis.gov.uk/files/file44583.pdf)

Birds Directives<sup>623</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>624</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>625</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 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.

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<sup>623</sup> HM Government (2012) Report of the Habitats and Wild Birds Directives Implementation Review. Department for Environment, Food & Rural Affairs. [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)

<sup>624</sup> *Ibid*

<sup>625</sup> *Ibid*



## **Access to Environmental Justice<sup>626</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>627</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>628</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

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<sup>626</sup> IEEP Report, s. 4.1.4

<sup>627</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>628</sup> Comprising WWF, Friends of the Earth, RSPB, Greenpeace, CPRE, ELF and Capacity Global

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 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 CO2 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>629</sup>. However, we would highlight that in 2012 the CBI<sup>630</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>631</sup>. The CBI has proposed a similar figure.

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<sup>629</sup> IEEP Report, s. 4.3

<sup>630</sup> CBI (2012) The colour of growth: Maximising the potential of green business, [www.cbi.org.uk/media/1552876/energy\\_climatechangerpt\\_web.pdf](http://www.cbi.org.uk/media/1552876/energy_climatechangerpt_web.pdf)

<sup>631</sup> Department for Business, Innovation and Skills, (2013) Low carbon and environmental goods and services, Report 2011/12, [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](http://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)

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>632</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>633</sup>.
57. The UK's natural environment supports almost 750,000 full-time equivalent (FTE) jobs and £27.5 billion economic output<sup>634</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>635</sup>. In Scotland, it was estimated that activities and outputs dependent on the 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>636</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>637</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>638</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.

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<sup>632</sup> BIOIS (2011) *Implementing EU waste legislation for green growth, Final report* – European Commission, DG Environment.

<sup>633</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: [www.foe.co.uk/resource/reports/jobs\\_recycling.pdf](http://www.foe.co.uk/resource/reports/jobs_recycling.pdf)

<sup>634</sup> RSPB (2011b). *RSPB reserves and local economies*. RSPB, The Lodge, Sandy.

<sup>635</sup> RSPB (2011a) *Natural Foundations: Conservation and local employment in the UK*. RSPB, The Lodge, Sandy

<sup>636</sup> SNH (2009) *Valuing our Environment*. Scottish Natural Heritage

<sup>637</sup> GHK Consulting (2004) *Revealing the value of the natural environment in England*, DEFRA

<sup>638</sup> *Ibid*

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>639</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>640</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?*

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.

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<sup>639</sup> Defra (2007). The Air Quality Strategy for England, Scotland, Wales and Northern Ireland  
<sup>640</sup> Defra (2010). Valuing the Overall Impact of Air Pollution.  
[www.archive.defra.gov.uk/environment/quality/air/airquality/panels/igcb/documents/100303-aq-valuing-impacts.pdf](http://www.archive.defra.gov.uk/environment/quality/air/airquality/panels/igcb/documents/100303-aq-valuing-impacts.pdf)

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>641</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>642</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.

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<sup>641</sup> Convention on the Conservation of European Wildlife and Natural Habitats - Done at Bern, Switzerland in 1979

<sup>642</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>

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 annum<sup>643</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>644</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>645</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>646</sup>.

Good Environmental Status is determined by reference to 11 qualitative descriptors (which may all be trans-boundary in nature) relating to:

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<sup>643</sup> *Supra*, n.37

<sup>644</sup> *Ibid*

<sup>645</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>646</sup> Article 1(1) MSFD

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>647</sup> in order to maintain or restore them to “*Favourable Conservation Status*” throughout their natural range<sup>648</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?)*

*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

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<sup>647</sup> Article 2(1) Habitats Directive

<sup>648</sup> *Ibid*, Article 2(2)



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>649</sup>. A current consultation exercise on measures to improve access to environmental justice is being conducted in a similar manner<sup>650</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.

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<sup>649</sup> See [www.ec.europa.eu/environment/consultations/eia.htm](http://www.ec.europa.eu/environment/consultations/eia.htm)

<sup>650</sup> See [www.ec.europa.eu/environment/consultations/access\\_justice\\_en.htm](http://www.ec.europa.eu/environment/consultations/access_justice_en.htm)



- 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 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>651</sup>, and therefore they have been identified as one of the 6 targets to focus on within the EU 2020 Biodiversity Strategy<sup>652</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>653</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

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651 See [www.millenniumassessment.org/en/index.aspx](http://www.millenniumassessment.org/en/index.aspx)

652 See [www.ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm](http://www.ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm)

653 Towards and EU Strategy on Invasive Species. Com(2008) 789 final

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>654</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 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 Lichenstein) 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>655</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.

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<sup>654</sup>

[www.ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm](http://www.ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm)

<sup>655</sup>

OJ No L 1, 3.1.1994

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>656</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>657</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>658</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>659</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>660</sup>. Parties are expected to adopt the full body of the *acquis communautaire* relating to the internal market in their national law<sup>661</sup>. The objectives relating to the environment in the EEA Agreement<sup>662</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>663</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.

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>664</sup>. The EEA

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<sup>656</sup> EFTA, 2013a

<sup>657</sup> EFTA, 2013b

<sup>658</sup> EFTA, 2013c

<sup>659</sup> EFTA, 2012

<sup>660</sup> Art. 7 EEA Agreement

<sup>661</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>662</sup> Article 73

<sup>663</sup> EEA Agreement, Annex XX – Environment, 15/6/2013, [www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex20.pdf](http://www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex20.pdf)

<sup>664</sup> EFTA, 2013d

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>665</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>666</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:

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<sup>665</sup> EFTA, 2007  
<sup>666</sup> EFTA Annual Report 2012,  
<http://www.efta.int/~media/Files/Publications/Annual%20Report/annual-report-2012.pdf#page=30>

- 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 into law (including any future laws that are agreed among EU Member States<sup>667</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>668</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>669</sup>**

85. As the IEEP report discusses the basis of Switzerland's economic and trade relations with the EU<sup>670</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

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<sup>667</sup> Centre for European Reform (2012) Britain should not go Swiss, [www.cer.org.uk/insights/britain-should-not-go-swiss](http://www.cer.org.uk/insights/britain-should-not-go-swiss)

<sup>668</sup> EFTA, 2010

<sup>669</sup> IEEP Report, s.6.4

<sup>670</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 [www.eeas.europa.eu/switzerland/index\\_en.htm](http://www.eeas.europa.eu/switzerland/index_en.htm))

international, including EU, legislation<sup>671</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>672</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.
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

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<sup>671</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: [www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/writev/futunion/feu08.htm](http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/writev/futunion/feu08.htm)

<sup>672</sup> *Ibid*

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)**

10th August 2013

### **WWF annex document to evidence –**

#### **WWF UK response to the Defra Review of the Implementation of the Habitats and Birds Directives in England**

### **INTRODUCTION**



1. This is WWF’s response to Defra’s review of the implementation of the EU Habitats and Birds Directives (the ‘Nature Directives’) in England announced in the Chancellor’s Autumn Statement on 29th November 2011.

2. WWF is at the heart of global efforts to safeguard the natural world, tackle climate change and enable people to use their fair share of natural resources. We work with communities, business and governments in over 100 countries to help people and nature thrive.

3. WWF welcomes the opportunity to respond to this review. We are pleased to contribute to the High Level Advisory Group and the various stakeholder workshops and challenge panels that are being held in the course of the review.

4. WWF has supported the development, implementation and enforcement of the Nature Directives for over 25 years. We have provided grant-in-aid to UK NGOs to buy and manage thousands of hectares of Natura 2000 land. As part of a pan-European ‘Endangered Spaces’ campaign, we were largely responsible for doubling the UK list of terrestrial SACs from 300 to just over 600 and we have taken cases establishing important legal precedents at the EU and UK level. Our work in this area continues in the marine environment.

5. The terms of reference confirm<sup>673</sup> that the purpose of the review is to “focus on obligations affecting the authorisation process for proposed development, with a view to reducing unnecessary burdens on businesses while maintaining the integrity of the purpose of the directives”. This suggests that complying with the requirements of the Nature Directives as part of the planning process is preventing development and creating unnecessary burdens for developers. WWF considers that this is not the case in practice.

6. Moreover, it raises two key issues. Firstly, the review appears to be taking place in the absence of any clear definition of a ‘problem’. What is meant by ‘unnecessary burdens’, by whom are they suffered and are they proportionate to the responsibilities and benefits the Nature Directives bring? None of these questions have been addressed in the terms of reference or the issues outlined within the six workstreams to be addressed through the review. Furthermore, the statistics suggest a wholly different picture. Over 80% of planning applications are approved<sup>674</sup> and claims that delays cost £3bn a year are unsubstantiated<sup>675</sup>. Natural England figures suggest that of the 26,500 land use consultations received by them annually, less than 0.5% result in an objection by NE under the Habitats Regulations.

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<sup>673</sup> Available at <http://www.defra.gov.uk/rural/protected/habitats-wildbirds-review/>

<sup>674</sup> Department for Communities and Local Government – Planning Application Statistics

<sup>675</sup> See RTPi information on Planning Myths <http://www.rtpi.org.uk/item/4803&ap=1>

7. Thus, the suggestion by the Chancellor that EU rules on habitats impose 'ridiculous' costs on business are not just unhelpful framing, they contradict independent analysis of the economic impacts of EU legislation in the UK.<sup>676</sup> These laws have not been a hindrance to our economic prosperity in the past; nor will they in the future. However, our quality of life will be poorer if we lose precious places and species for ever in pursuit of short-term goals - or to give credence to the view that a small number of 'causes celebres' are indicative of a widespread problem.

## THE IMPORTANCE OF THE NATURE DIRECTIVES

8. Together, the Nature Directives provide invaluable protection for our rarest and most threatened habitats and species. In doing so, they 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 by the IEEP 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>677</sup>. In the UK, our peatlands hold 40% of soil carbon (5 billion tonnes) and are the source of 70% of our drinking water.

9. In 2001, the EU Heads of State agreed to a biodiversity target under which, by 2010, the EU should have halted the loss of biodiversity within its own territory and beyond. That it had failed to do so was very clear by 2010 – the International Year of Biodiversity. The principal reasons in the EU for this failure are well known: (i) implementation of the Nature Directives, the backbone of EU nature conservation policy, is still incomplete; and (ii) a widespread failure to integrate conservation and the management of biodiversity into other policies.

10. Effective implementation of the Nature Directives will be required if we are to meet our international biodiversity commitments, including Aichi targets 11 and 12 agreed as part of the CBD Strategic Plan at Nagoya in 2010. This review is also being conducted in advance of the Rio+20 United Nations Conference on Sustainable Development in Brazil in June 2012. WWF urges Defra to use this review as an opportunity to assess and improve how government policy and practice can address the significant challenges we meet in achieving these goals.

11. 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

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<sup>676</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>677</sup> 5 See IEEP (2011) "Estimating the Overall Economic Value of the Benefits provided by the Natura 2000 Network". Available at [http://circa.europa.eu/Public/irc/env/financing\\_natura/library?l=/benefits\\_natura\\_2000/estimating\\_benefits/project\\_reports/2000\\_benefits\\_main/EN\\_1.0\\_&a=d](http://circa.europa.eu/Public/irc/env/financing_natura/library?l=/benefits_natura_2000/estimating_benefits/project_reports/2000_benefits_main/EN_1.0_&a=d) 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)

of 390 priority habitats were in decline<sup>678</sup>. We have lost 97% of the UK's semi-natural grasslands and 99% of our fens. We clearly need concerted action (as opposed to any dilution in approach) if the UK is to meet its domestic and international targets.

12. In seeking improvements to the implementation of the Nature Directives, WWF believes Defra should be looking to support: (i) an accelerated programme of data collection and analysis, especially in the marine environment; (ii) the effective implementation of marine spatial planning; (iii) wide stakeholder collaboration in pursuit of long-term economic growth as part of a wider goal of achieving sustainable development; and (iv) clear guidance for decision-makers in the marine and terrestrial environments to underpin robust, lawful planning decisions. This will reflect the commitment in Natural Choice, the White paper on the natural environment, to pass on to future generations a natural environment that is in a better state than the one we inherited.

13. WWF's submissions are structured to reflect the six workstream areas identified by Defra in the review.

#### **WORKSTREAM 1 - LEGISLATIVE INTERPRETATIONS**

14. The Habitats Regulations 2010 consolidate the various amendments made to the 1994 Regulations in respect of England and Wales and the Offshore Marine Regulations 2007 (as amended) cover UK offshore waters.

15. The key provisions of the Habitats Directive relating to Natura 2000 sites are Articles 4-5 (identification and designation of SACs) and 6 (protection). These provisions appear to have been transposed adequately into domestic law – partly because the UK enacted a fairly literal transposition of the Directive and also because a number of deficiencies identified by the Court of Justice of the European Union (CJEU) have subsequently been addressed<sup>679</sup>.

16. The only historical example of 'gold-plating' WWF is aware of is 1990s secondary legislation confirming that candidate SACs, SPAs and Ramsar sites shall be afforded the same degree of protection under Article 6 of the Directive as designated sites. However, this undertaking (in relation to Natura 2000 sites at least) has been effectively established by the CJEU in Cases C-117/03, *Commission v Italy* ("Dragaggi") and C-244/05 ("Bund Naturschutz in Bayern eV"). These cases confirm that Member States are required to take appropriate protective measures in relation to candidate Natura 2000 sites before they are formally added to the list of Sites of Community Importance held by the Commission.

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<sup>678</sup> Biodiversity 2020: A strategy for England's wildlife and ecosystem services

<sup>679</sup> See case C-06/04, *Commission v UK* discussed in the review of EU case-law

17. With the exception of the marine environment, our experience of working with European Protected Species (EPS) is somewhat limited. WWF therefore supports the submissions made by Wildlife and Countryside Link (Link) and other NGOs, with whom we have been working closely during the course of this review, in this respect.

18. However, in general terms, the key provisions of the Habitats Directive relating to EPS are found in Articles 12 (animals), 13 (plants) and 16 (derogations). Again, these provisions have, in general, been transposed adequately for the reasons outlined above<sup>680</sup>. WWF is not aware of any gold-plating in respect of the species provisions of the Directive. Indeed, we have been made aware of three legal deficiencies<sup>681</sup>. The first concerns the requirement to take requisite measures to establish a system of strict protection for animals listed in Annex IV(a) of the Directive, prohibiting (inter alia), the deterioration or destruction of their breeding sites or resting places under Article 12(1)(d) of the Directive. Regulation 9(5) of the Conservation Regulations 2010 restricts this requirement to a series of criminal offences. Settled case-law of the CJEU suggests that the implementation of Article 12(1) merely by way of domestic criminal offences may not be sufficient<sup>682</sup> as it cannot be said, alone, to amount to “the adoption of coherent and coordinated measures of a preventative nature”.

19. The same deficiency applies in relation to plants listed on Annex IV(b) of the Directive. Article 13(1) requires Member States to take requisite measures to establish a system of strict protection for plants listed in Annex IV(b), prohibiting (inter alia) the deliberate picking, collecting, cutting, uprooting, or destruction of such plants in their natural range in the wild. The Conservation Regulations 2010 contain no specific implementation of the general obligation to “take requisite measures”.

20. Thirdly, there have been many revisions to UK laws in recent years, with the effect that they now fail to provide a comprehensive and ecologically sound structure to ensure the long term ‘favourable conservation status’ of cetaceans. A suite of improvements are needed but, as a priority, ‘recklessness’ needs to be reinstated into the Habitats Regulations and the Wildlife and Countryside Act 1981, to make it an offence to deliberately or ‘recklessly’ capture, kill, disturb, or trade in an animal of European protected species which includes all dolphins, whales and porpoises. Changes are also required within the Regulations to allow the prohibition of the deterioration or destruction of breeding and resting sites to be defined and enforced with regard to mobile marine species.

## **Analysis of EU and UK case-law on the implementation of the Directive**

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<sup>680</sup> See case C-06/04, *Commission v UK* discussed in the review of EU case-law

<sup>681</sup> We refer to submissions made by the RSPB and WDCA in respect of the comments made in paragraphs 18-20

<sup>682</sup> See Case C-383/09, *Commission v France* (the “European Hamster case”) discussed in the review of case-law

21. We are fortunate to benefit from nearly twenty years of case-law on the Nature Directives arising from the CJEU and domestic courts. A brief analysis of the most important cases establishing binding legal precedents across the EU is attached as Annex I and an analysis of the relevant UK case-law can be found in Annex II. We list below the main legal precedents arising that are of relevance to this review:

### **General principles**

- Member States are under a duty to ensure that transposing measures are clear and precise (C-98/03, Commission v Germany);
- The provisions of Directives must be implemented with unquestionable binding force, and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (C-415/01, Commission v Belgium);
- Transposition does not have to be ‘word for word’ in an express legal provision, however, a general legal context is sufficient only if it ensures the full application of the Directive (C-247/85, Commission v Belgium; C-252/85, Commission v France; C-118/94, Italy – “Regione veneto”); and
- The Habitats Directive has direct effect in the UK (R v Secretary of State for Trade & Industry & Ors, ex parte Greenpeace Ltd).

### **Designation of Natura 2000 sites**

- Member States may not take account of the economic requirements when choosing and defining the boundaries of Special Protection Areas (C-44/95, United Kingdom – “Lappel Bank”)
- Member States may not take account of economic, social and cultural requirements or regional and local characteristics when selecting and defining the boundaries of Special Areas of Conservation (C-71/99, Commission v Germany, C-220/99, Commission v France, C-371/98, United Kingdom – “First Corporate Shipping”; C-67/99, Commission v Ireland, C-226/08, Stadt Papenburg v Bundesrepublik Deutschland);
- Member States may not reduce the surface area of Natura 2000 sites, or alter their boundaries, unless the excluded areas are no longer the most suitable territories for the conservation of habitats and species listed on the Habitats and Birds Directives (C-191/05, Commission v Portugal, C-57/89, Commission v Germany – “Leybucht dykes”); and
- The provisions of the Habitats Directive apply to the UK Continental shelf and superjacent waters up to a limit of 200 miles from the basis from which the territorial sea was measured (R v Secretary of State for Trade & Industry & Ors, ex parte Greenpeace Ltd).

## **Protection of Natura 2000 sites – Article 6**

- Member States must take appropriate steps to avoid, inter alia, deterioration of habitats, not only in areas classified as SPAs, but also in areas which are the most suitable for the conservation of wild birds, even if they have not been classified as SPAs provided that they merit such classification (C-96/98, Commission v France – “Poitevan Marsh”, C-388/05, Commission v Italy, C-418/04 – Commission v Ireland);
- While the protective measures prescribed in Article 6(2) to (4) of the Habitats Directive are required only as regards sites which are on the list of sites selected as sites of Community importance adopted by the Commission, Member States are required to take appropriate protective measures for the purpose of safeguarding the relevant ecological interest which [candidate] sites have at national level (C-117/03, Italy – “Dragaggi”).
- In particular, Member States cannot authorise interventions which may pose the risk of seriously compromising their ecological characteristics. This is particularly the case when an intervention poses the risk of either significantly reducing the area of a site, the loss of priority species, or the destruction of the site or its representative characteristics (C-244/05 – “Bund Naturschutz in Bayern eV”);
- Member States are obliged to avoid the deterioration of natural habitats and the habitats of species. Article 6(2) of the Habitats Directive encompasses measures intended to avoid external man-caused impairment **and** disturbance and measures to prevent natural developments that may cause the conservation status of species and habitats in SACs to deteriorate (C-6/04, Commission v United Kingdom);

## **Assessment of plans or projects affecting Natura 2000 sites – Article 6(3)**

- Member States can only authorise a plan or project not directly connected with, or necessary to, the management of the site but likely to have a significant effect thereon after having ascertained, by means of an appropriate assessment, that it will not adversely affect the integrity of the site (C-127/02– “Waddensee”);
- The Habitats Directive does not define the terms ‘plan’ or ‘project’. However, the definition of ‘project’ in the EIA Directive (“the execution of construction works or of other installations or schemes, - other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources”) is relevant to defining the concept of plan or project in the Habitats Directive C-127/02– (“Waddensee”);

- Activities that have been carried on periodically for several years and for which an annual licence is required are capable of being defined as a 'plan' or a 'project' within the meaning of the Habitats Directive C-127/02– (“Waddensee”);
- Other activities not connected with, or necessary to, the management of a Natura 2000 site but which were already authorised under national law before the expiry of the time-limit for transposing the Directive must - to the extent that they constitute a project and are likely to have a significant effect on a Natura 2000 site - undergo an assessment of their implications for that site pursuant to those provisions when included in the list of sites of Community importance (C-226/08, Stadt Papenburg v Bundesrepublik Deutschland);
- The Habitats Directive does not distinguish between measures taken outside or inside a protected site with respect to the requirement to conduct an appropriate assessment (98/03, Commission v Germany);
- In accordance with the precautionary principle, the requirement for an appropriate assessment of the implications of a plan or project is conditional on its being **likely** to have a significant effect on the site (C-127/02– (“Waddensee”));
- Where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site's conservation objectives, it must be considered likely to have a significant effect on that site (C-127/02– (“Waddensee”));
- Prior to approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the **light of the best scientific knowledge in the field** (C-127/02 - (“Waddensee”));
- Member States cannot exclude certain categories of project from assessment (C-98/03, Commission v Germany, C-6/04, Commission v United Kingdom, C-241/08, Commission v France and C-538/09, Commission v Belgium);
- Article 6(3) of the Habitats Directive does not define any particular method for carrying out an appropriate assessment. However, it must **precede** approval and take into account any **cumulative effects** which result from the combination of that plan or project with other plans or projects in view of the site's conservation objectives (C-127/02 – (“Waddensee”), C-304/05, Commission v Italy, C-404/09, Commission v Spain);
- Member States may only approve a plan or project after having made sure that it will not adversely affect the integrity of that site. Where doubt remains as to the absence of adverse effects on the integrity of the site linked to the

plan or project being considered, the competent authority must refuse authorisation (C-127/02 – (“Waddensee”), C-209/02, Commission v. Austria – “Wörschacher Moos”);

- Mitigation measures can be considered at the screening stage (R (on the application of Hart District Council) v Secretary of State for Communities & Local Government & Ors);
- A plan or project is that which is the subject matter of an application (WWF-UK & RSPB v Secretary of State for Scotland<sup>683</sup>);
- The words ‘plan’ and ‘project’ are to be given a very broad definition and Article 6(3) should be interpreted in light of its broad objective – a high level of protection for the environment – and that it integrated the precautionary principle (R (on the application of Akester and another (on behalf of the Lymington River Association)) v Department for the Environment, Food and Rural Affairs and another<sup>684</sup>; and
- There is no distinction between direct (intended) effects of an activity and indirect side effects - the question is whether the activity gives rise to a risk of adverse effects (Wightlink, as above).

#### **Alternative solutions – Article 6(4)**

- The derogations set out in Article 6(4) of the Habitats Directive must be interpreted strictly. Thus, the implementation of a plan or project under Article 6(4) of the Habitats Directive is, inter alia, subject to the condition that the **absence of alternative solutions** be demonstrated (C-239/04, Commission v Portugal – “Castro Verde”);

#### **Surveillance**

- The surveillance obligation is fundamental to the effectiveness of the Habitats Directive and must be transposed in a detailed, clear and precise manner (C-06/04, Commission v United Kingdom).

#### **Protection of species**

- Articles 12(1)(b) and (d) of the Habitats Directive require measures to establish a system of strict protection for the animal species listed in Annex IV(a) of the Directive in their natural habitats, prohibiting the deliberate disturbance of those species, particularly during the period of breeding,

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<sup>683</sup> (1999) LTL 12/12/99

<sup>684</sup> [2010] EWHC 232 (Admin)



rearing, hibernation and migration, and the deterioration or destruction of breeding sites or resting places (C-103/00, Commission v. Greece – “Caretta caretta on Zakynthos”, C-383/09, Commission v France – the “European hamster case”);

- The acts referred to in Article 12(1)(d) of the Directive include non-deliberate acts (C-98/03, Commission v Germany; Case C-06/04, Commission v United Kingdom);
- For the condition as to ‘deliberate’ action in Article 12(1)(a) of the directive to be met, it must be proven that the author of the act intended the capture or killing of a specimen belonging to a protected animal species or, at the very least, accepted the possibility of such capture or killing (C-22/04, Commission v Spain);
- Under Article 12(4) of the Habitats Directive, Member States are required to establish a monitoring system in respect of the incidental capture and killing of certain animal species (C-06/04, Commission v United Kingdom);
- Article 15 of the Habitats Directive imposes a general obligation designed to prohibit the use of all indiscriminate means of capture or killing of the species of wild fauna concerned (C-06/04, Commission v United Kingdom);
- Article 16 of the Habitats Directive defines in a precise manner the circumstances in which Member States may derogate from Articles 12, 13, 14 and 15(a) and (b) thereof, so that Article 16 must be interpreted **restrictively** ((C-06/04, Commission v United Kingdom);
- Planning permission for a proposal cannot be granted pending information regarding the potential impact on European Protected Species (EPS) as the decision-maker cannot rationally conclude that there are no significant nature conservation issues until it has the relevant data before it (R v Cornwall County Council, ex parte Hardy);
- When dealing with cases where a European protected species may be affected, a planning authority has a statutory duty to have regard to the requirements of the Habitats Directive in the exercise of its functions (R (on the application of Simon Woolley) v Cheshire East Borough Council & Millenium Estates Ltd);
- The focus of Article 12(1) of the Habitats Directive is on the conservation of the species as a whole, not specimens of the species (Morge v Hampshire County Council); and
- Activity during periods of breeding, rearing, hibernation and migration are more likely to constitute disturbance. Rare and declining species are likely to

be more sensitive, so the effect on smaller numbers might trigger the disturbance threshold. A judgment must be made as to whether the impact of the activity is “sufficient” to amount to be “harmful” to the species (Morge, as above);

22. The cumulative impacts of these judgments in relation to this review are discussed in the concluding remarks. However, two points are immediately apparent. First, many aspects of the process covering the identification, designation and protection of sites have already been tested in the CJEU, affording much less scope for interpretation than may have been assumed in this review. Second, the UK is not implementing the Directive any ‘better’ than other Member States. Some significant deficiencies have been rectified as a result of infraction proceedings, however, inadequacies still remain. Moreover, some Member States have taken a much stricter approach. For example, in Case C-02/10 (*Azienda Agro-Zootecnica Franchini Sarl, Eolica di Altamura Srl v Regione Puglia*), the CJEU held (subject to the view of the Italian courts) that Regulations requiring commercial applications for wind turbines on Natura 2000 sites be refused without assessment were not in breach of EU law, providing the principles of non-discrimination and proportionality are respected.

23. This is not to say that elements of the Directive and its implementation are necessarily set in aspic. One area in which debate might focus is the threshold for determining whether a plan or a project that may result in damage to a Natura 2000 site or protected species may lawfully proceed. The IROPI test has generally (and rightly) been accorded a high threshold in the UK. However, it is conceivable that some schemes which may not have met this test in the past, may now do so because the public benefits they represent in terms of CO2 reduction (and consequential amelioration in terms of climate change) outweigh the potential damage to a Natura 2000 site or disturbance to a species listed on Annex IVa of the Directive. However, it is impossible to predict, in the generality, which schemes may fall into that category – proposals will need to be examined on a case by case basis so that a careful and informed judgment can be made by competent authorities.

24. Similarly, there may be some scope for making the processes around Environmental Impact Assessment and Appropriate Assessment more integrated. However, it must be remembered that while there are common elements to both processes, the assessments serve very distinct purposes. In the case of EIA, the purpose of the Environmental Statement is to identify, describe and assess the direct and indirect effects of a project on a wide range of factors, including human beings, flora and fauna, soil, water, air, climate, the landscape and cultural heritage. The purpose of an appropriate assessment is much narrower, being to assess the implications of the plan or project for the Natura 2000 site in view of its conservation objectives. Thus, while there is scope for clarifying the procedure to reduce repetition around data gathering and analysis, there will still need to be separate conclusions to fulfil discrete legislative requirements.

## The Localism Act and National Planning Policy Framework (NPPF)

25. WWF has been engaged as a key stakeholder in the development of the Localism Act 2011 and the NPPF. One of our concerns has been that the reforms to the planning system must not undermine the fundamental role that planning plays in achieving sustainable development. The NPPF will establish a presumption in favour of sustainable development. We have expressed concerns regarding the parameters of the presumption and also the proposed definitions of sustainable development<sup>685</sup>. A key question for this review is the interplay between the application of the presumption and the requirements of the Nature Directives, in particular if, and how, the presumption will operate alongside the IROPI test. We have heard suggestions that if a development could receive the benefit of the presumption, that it should also be taken to meet IROPI. We would welcome clarification from Defra on this point<sup>686</sup>.

26. WWF supports the current restriction on the application of the presumption, i.e. that it will not apply to a development likely to have significant effects on Natura 2000 sites. We strongly believe that proposed developments in, or near, Natura 2000 sites must be thoroughly examined on a case by case basis in order to establish whether or not they can be permitted. Any application of a general presumption in favour of development may result in failure to comply with the Nature Directives and significant damage to protected sites or species. We urge Defra and DCLG to retain the current limitation to the application of the presumption as it applies to Natura 2000 sites.

27. A key concern arising from the planning reforms, and the forthcoming National NPPF in particular, is the impacts arising from the consolidation and/or cancellation of a very substantial amount of planning guidance. The previous body of RPGs, PPGs, PPSs and Circulars evolved over several decades in response to the desire to make the planning process as clear, robust, certain and transparent as possible. The importance of up to date and unambiguous guidance is recognised by many stakeholders, including the Local Government Association, and has been reinforced by the CJEU and domestic courts<sup>687</sup>. Whilst we recognise the benefits of consolidating and revising where necessary, we fear that the decision to strip away the vast majority of this guidance will undermine the decision-making process causing confusion, delay and, contrary to the desired effect, more cautious decision-making as LPAs default to refusal. This, in itself, is likely to prompt lengthy and expensive appeals and legal challenges.

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<sup>685</sup> Our concerns have been highlighted in our submissions to DCLG as part of the public consultation on the draft NPPF, as well as written and oral evidence submitted to the inquiries undertaken by the Communities and Local Government Select Committee and the Environmental Audit Committee. These submissions can be provided upon request

<sup>686</sup> We would also welcome clarification on the interplay between IROPI and the status that is afforded to projects that are specified in the National Infrastructure Plan and/or National Policy Statements

<sup>687</sup> see *Morgue* (referring to the value of EU Guidance on the Habitats Directive, *R (on the Application of Bown) v Secretary of State for Transport* (referring to the need to update PPG 9 (Nature Conservation)) and *R (on the application of Simon Woolley) v Cheshire East Borough Council & Millenium Estates Ltd* (referring to the value of ODPM Circular 06/06)

28. We urge Defra to engage in the review of environmental planning guidance to ensure that it continues to be clear, robust and helpful. In addition, we believe it would be beneficial for the Government to confirm that decision-makers should continue to follow the body of EU guidance on the Nature Directives on the Commission's website.

#### Compensatory measures – Article 6(4)

29. One area in which the CJEU has not yet been invited to adjudicate is the provision of compensatory measures under Article 6(4) of the Habitats Directive. In the event that a plan or project may be carried out for imperative reasons of overriding public interest (IROPI), Article 6(4) requires Member States to “take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected” and to “inform the Commission of the compensatory measures adopted”.

30. The concepts underlying Natura 2000 and its coherence are reasonably straightforward, as is the interplay between Member State and Commission. Both Member States and the Commission play a critical part in the process of building a coherent Natura 2000 network. Member States are required to propose habitats “in proportion to the representation within their territory of the natural habitat types”<sup>688</sup>; they are to do so by proposing a list on the basis of the criteria set out in Stage 1 of Annex III, for both habitats and species. By way of response (i.e. Stage 2 of Annex III), the Commission makes an assessment of the Community importance of the site. It examines not only its national importance but also its role in the bio-geographical regions concerned and its relation to migration routes and neighbouring ecosystems in other Member States.

31. The result, as and when the Member State designates the site as a SAC is that the site becomes part of the Community network. Its status there, usually reflecting a mixture of designated habitats and designated species, is to aid that coherence.

32. The concept of coherence can be found in the recitals to the Directive (twice), and in the objective set out in Article 3(1) to create a “coherent ecological European network,” supported by Article 6(4). As the Commission states in 2007 Guidance<sup>689</sup>, “Article 6(4) requires to protect the overall coherence of Natura 2000. Thus, the Directive presumes that the “original” network has been coherent. If the exception regime is used, the situation must be corrected so that the coherence is fully restored.”

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<sup>688</sup> 16 Article3(2) Habitats Directive

<sup>689</sup> European Commission (2007) Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC, page 12, available at: [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/guidance\\_art6\\_4\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/guidance_art6_4_en.pdf)

33. There have been a number of cases in which the Commission has been requested to provide an opinion to Member States regarding the requirements of the Nature Directives, and in particular the adequacy of proposed compensatory measures<sup>690</sup>. In these cases, the opinion of the Commission was integral to the project receiving permission. In providing support for the compensatory measures proposed, the EC must, among other things, be satisfied that there are no alternatives to the proposed project, that the test of IROPI has been met and that the overall coherence of the Natura 2000 network would not be compromised.

34. There are also many European case studies which demonstrate the importance of developing a comprehensive package of compensatory measures to enable large, strategically important infrastructure projects to proceed – or where the development has stalled because this has not been done<sup>691</sup>. Key attributes of compensatory measures include: (1) the full and proper understanding of the impacts (aided by robust environmental assessments) that must be compensated for; (2) early stakeholder engagement to aid collaboration, cooperation and wide agreement on the measures; (3) measures that at least replace that which is lost (but a net benefit for biodiversity will be favourable) and are in addition to existing conservation measures; (4) taking into account uncertainties and developing long term monitoring and evaluation programmes with regular reporting and review.

35. A report produced for the Sustainable Development Commission (SDC) in 2010, as part of the Feasibility Study into Tidal Power in the Severn Estuary, discussed the possibility of a new approach to compensation using “equal value ecological compensation<sup>692</sup>”. Broadly speaking, the report advised that if tidal power proposals in the Severn Estuary were to adversely affect Natura 2000 sites to the degree that traditional ‘like-for-like’ compensation measures would be implausible, it would be possible to compensate for those impacts by providing compensatory measures which were of “Equal Value” to those that would be lost.

36. WWF and a coalition of NGOs sought advice from Queens Counsel on this issue (Annex III). This advice confirmed that “Equal Value” compensation, as formulated in the report, is not lawful and that if the UK were to proceed with a tidal power option in the Severn Estuary that would result in the extinction of an Annex II species in the UK and the widespread, significant, and irreversible loss of Annex I habitats (some of which could not be re-created) this would result, unequivocally, in a breach of the

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<sup>690</sup> See for example the cases of the Maasvlakte Port 2 in Rotterdam, Netherlands and the La Breña Dam, Spain both covered in Table 2 of Annex IV attached to this response

<sup>691</sup> See for example the cases of the Bothnia Line, Sweden; Maasvlakte Port 2, Netherlands; La Breña Dam, Spain; Via Baltica, Poland; A4 Highway, Poland; Deurganck Dock Port of Antwerp, Belgium; the Natura 2000 and Water Framework Directive monitoring systems, Denmark; Port of Saaremaa, Estonia (all included in Annex IV)

<sup>692</sup> Treweek, J. (2010). “Severn Tidal Power Equal Value Investigation”. Available from the [then] Sustainable Development Commission

letter and spirit of the Directive, as well as Guidance published by the Commission concerning its implementation.

37. In terms of compensatory measures more generally, the legal advice identified a number of relevant issues in the context of this review:

- There is nothing in the Habitats Directive to support the principle of equal value;
- The European Commission has not accepted compensatory measures in any form other than the same as, or similar to, that which has been destroyed (see Baden<sup>693</sup>);
- The Commission Guidance is to like effect;
- Compensatory measures in respect of which the Commission has published an opinion generally include the provision of at least three times as much (and often significantly more) habitat than will be lost;
- Consideration of conservation status at the level of the Atlantic bio-geographic region, whilst playing a part in the original Natura 2000 site selection, would not by itself be sufficient, as this would be ignoring the reasons as to why the particular sites in question warranted being made part of the network;
- The notion of providing compensation on an Atlantic bio-geographic scale is practically unworkable under the Directive. The Directive does not enable the Commission to direct that compensation take place in other member states, nor are Member States entitled to discharge their obligations elsewhere in the European Union;
- There is no legal competence under the Directive (or elsewhere) for Member States to take action in other Member States. Thus, the supposition that it is wholly acceptable for the majority of the UK population of a species (the Allis Shad in the case of the Severn estuary) to be destroyed on the basis that there are much larger populations elsewhere in the EU which may be capable of improvement, is unlawful.

38. WWF urges Defra to ensure this review does not prompt further research into the “equal value” concept and to confirm that compensatory measures must be achieved in a ‘like-for-like’ manner, as required under the Directive and EU guidance.

## WORKSTREAM 2 - DATA AND EVIDENCE

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<sup>693</sup> See legal opinion attached as Annex III, paragraph 41

39. While the Natura 2000 process was originally intended to be complete by 2004, there have been considerable delays. The majority of the terrestrial and coastal UK Natura 2000 network is complete. As of January 2011, 7.2% of the UK has been designated as a Natura 2000 site (representing, in fact, the smallest proportion of land area designated by any EU Member State<sup>694</sup>).

40. The acute lack of data on species and habitats in the marine environment is proving a persistent challenge. There are currently 96 Special Areas of Conservation (SACs) with marine components covering 4.8% of the UK sea area. 84 are completely in inshore waters, 10 are completely in offshore waters and there are two sites which straddle the interface. There are currently 107 Special Protection Areas (SPAs) with marine components, but only three of these are entirely marine. Together with SACs, one Marine Conservation Zone and two Marine Nature Reserves, these designations currently protect only 5.6% of UK waters.

41. In addition to designated sites, there are a number of Natura 2000 sites in the 'pipeline', including three possible SACs (Pisces Reef Complex and Croker Carbonate Slabs in the Irish Sea and Wight-Barfleur Reef in the English Channel) and one offshore draft SAC (Hatton Bank off north-western Scotland).

42. There are a number of UK marine habitats and species for which the European Commission has stated that additional SACs must be designated. These include the harbour porpoise, sea lamprey, river lamprey, bottle-nose dolphin and the harbour seal. Of these, the harbour porpoise poses the biggest challenge – principally because data is scarce but also because the need to encompass areas representing the physical or biological factors necessary to their reproduction<sup>695</sup> will necessitate sites much larger than their terrestrial counterparts.

43. If the UK is to complete the identification and designation of a suite of marine Natura 2000 sites - even by 2020 - it is clear that a period of accelerated data collection and analysis is needed across the EU, and in the UK, in particular.

44. The EU case-law reviewed above confirms that these remaining sites must be identified on the basis of ecological criteria alone and that, pending formal acceptance onto the list of sites selected as Site of Community Importance, Member States are required to take appropriate protective measures for the purpose of safeguarding their relevant ecological interests. The following workstream highlights the need for numerous stakeholders to work together to meet this challenge.

45. Many of the case-studies we examined demonstrate the importance of accurate and comprehensive data and evidence in the planning process. This is particularly

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<sup>694</sup> European Commission 'Natura 2000 snapshot, January 2011  
<http://ec.europa.eu/environment/nature/natura2000/barometer/docs/n2000.pdf>

<sup>695</sup> Article 4(1) Habitats Directive

pertinent to understanding potential impacts and consequently being able to assess alternatives or develop mitigation and compensation measures that fully address the impacts. Where environmental assessments have not been properly undertaken, this has often led to objections and legal challenges to the proposed development resulting in increased costs and delays for the developer and planning authority – not only in dealing with the challenge, but also in have to pause projects, repeat assessments and re-submit documents<sup>696</sup>.

46. Where there is a lack of data and evidence, such as in the marine environment, the treatment of uncertainties is particularly important, especially in undertaking environmental assessments. The development and management of databases and monitoring programmes have proven useful in other EU Member States to aid management of sites, as well as reducing uncertainty in planning through the early screening of likely impacts and long term learning on whether predicted impacts actually occur in practice. Some beneficial elements of these cases include: (1) a central body/organisation established for the purpose of data collection and monitoring; (2) a participative approach, including key stakeholders, to data collection; (3) the development of a robust monitoring programme approved with the planning permission; and (4) the use of experts and the maintenance of an expert database<sup>697</sup>.

## **WORKSTREAM 3 - PROCESS**

### **The importance of spatial planning in the marine environment**

47. WWF is mindful that this review may have been (at least in part) prompted by concerns that development in the marine environment, particularly with regard to the development of marine renewables, will be delayed as a result of existing or proposed Natura 2000 sites in the coastal and offshore environments.

48. WWF lobbied for the Marine and Coastal Access Bill to include a strong marine planning element and this was successfully included in the 2009 Act. WWF is also supportive of an EU-level draft Directive, recognising the potential for Marine Spatial Planning (MSP) to guide development proposals towards appropriate locations and ensure consistency of application across the EU. WWF strongly supports the use of MSP as a process to allow for the identification and proper management of competing and complementary uses of the sea<sup>698</sup>. The application of MSP to plan

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<sup>696</sup> See, for example, the cases of Port of Saaremaa, Estonia; Deurganck Dock, Port of Antwerp, Belgium; A4 Highway, Poland; Via Baltica, Poland; Kresna Gorge, Bulgaria in Annex IV

<sup>697</sup> See for example the cases of Krkonose Mountains SCI, Czech Republic; Barycz River Valley, Poland; Expert System in Czech Republic; the Natura 2000 and Water Framework Directive monitoring system in Denmark; Database of species and Habitats in Netherlands; Document d'Objectifs approach, France; Siberian Flying Squirrel, Finland; Duerganck Dock, Port of Antwerp, Belgium; La Breña Dam, Spain; Maasvlakte Port 2, Netherlands in Annex IV

<sup>698</sup> See, for example, the River Elbe and Port of Hamburg case study in Annex IV (number 29)



and regulate all human uses of the sea and protect marine ecosystems should allow for the early identification of conflicts and the resolution of these through collaborative policy development. In addition, it should provide for the better collection and use of data in the marine environment, as well as long term monitoring of impacts arising from human uses.

49. For example, the European Wind Energy Association's EU-funded project SEANERGY2020<sup>699</sup> is developing policy recommendations on marine spatial planning and offshore wind power. Equally, BirdLife partners are engaging in a project to enable strategic planning for biodiversity friendly offshore energy exploitation in the Atlantic.

### **Terrestrial environment**

50. WWF recognises that early engagement and 'front-loading' of processes within the planning system can help to avoid subsequent delays and costs for developers. Ideally, Environmental Impact Assessments and Appropriate Assessments should be started at the same time as project specifications are being designed, including early and effective stakeholder engagement, to help resolve conflicts and avoid objections to the proposed development. The Localism Act 2011 introduces a new requirement for pre-application consultation in relation to major developments that will be prescribed under a new Order. WWF supports this requirement and suggests that consideration could be given to applying this requirement more widely.

### **WORKSTREAM 4 – COMMUNICATION AND AWARENESS**

51. Building on the imperative to 'fast-track' data gathering and the development of national and local level spatial frameworks for sustainable, long-term growth (particularly in the marine environment), we believe there is an opportunity for the review to reinforce the benefits of early, and on-going, collaboration between stakeholders in ensuring robust decision-making.

52. For example, there is scope for working in closer collaboration with the renewables sector in terms of integrating policy objectives. One current example is the European Grid Declaration<sup>700</sup> - a joint declaration which aims to strengthen a coalition of stakeholders supporting grid expansion to integrate renewables and raise public awareness of this need. Industry commits to helping meet the EU's objectives to protect nature, for example, by ensuring that risks to MPAs are minimised. At the same time, NGOs commit to supporting crucial renewables development. WWF endorsed the Declaration in November 2011 (the 24 inaugural signatories include, inter alia, BirdLife Europe, Friends of the Earth Europe, Greenpeace Europe alongside National Grid, REE, RTE).

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<sup>699</sup> See : <http://www.seanergy2020.eu/>

<sup>700</sup> See: [http://www.renewables-grid.eu/uploads/media/European\\_Grid\\_Declaration\\_signed.pdf](http://www.renewables-grid.eu/uploads/media/European_Grid_Declaration_signed.pdf)

53. Similarly, the Good Practice Wind Project, a collaboration between the RSPB and the European Wind Energy Association aims to promote the deployment of appropriately located wind energy development in Europe<sup>701</sup>. Led by the Scottish Government, and funded by the Intelligent Energy Europe Programme, GP Wind aims to address barriers to the development of onshore and offshore wind generation. It will do this by identifying and developing good practice in two key areas: community engagement and reconciling renewable energy with wider environmental objectives. By bringing together renewables developers (e.g. Scottish Power Renewables and Scottish and Southern Energy), regional and local government, environmental agencies and NGOs such as the RSPB from eight different regions of Europe to share experiences, the project aims to facilitate the deployment of renewable energy in support of the European 2020 targets.

### **The relationship between biodiversity and long-term economic stability**

54. A number of current reports highlight the inter-relationship between policy targets including, for example, those on biodiversity and renewables. A recent report by Birdlife<sup>702</sup> points out that it is possible to meet these objectives concurrently using both marine and terrestrial resources. The European Environment Agency (EEA, 2009<sup>703</sup>) has calculated that the technical potential for onshore wind energy in Europe is over 10 times total electricity consumption, and that excluding Natura 2000 and other protected areas would reduce this by only 13.7%. The same study estimated that the economically competitive potential for onshore plus offshore wind energy in Europe by 2030 is over three times greater than total electricity consumption. It is clear that the potential for renewable energy in Europe is immense, and that therefore sufficient suitable locations can be found for our energy needs to be met using renewables and without creating risks for biodiversity in protected areas or in the wider countryside. However this cannot be left to chance: sufficient suitable locations for development must be identified and developers must be steered towards them – again underpinning the importance of spatial planning.

55. More generally, the long term health of our natural environment underpins our wealth and well-being and regulation plays a vital role in the mix of measures to address environmental issues, as demonstrated by the UK National Ecosystem Assessment. In our view, the focus of this review should be to strengthen best practice and refine implementation with an overall aim of meeting the Biodiversity 2020 targets.

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<sup>701</sup> See <http://www.project-gpwind.eu/>

<sup>702</sup> BirdLife International (2011) Meeting Europe's Renewable Energy Targets in Harmony with Nature. Available at [http://www.rspb.org.uk/Images/Renewable\\_energy\\_report\\_tcm9-297887.pdf](http://www.rspb.org.uk/Images/Renewable_energy_report_tcm9-297887.pdf)

<sup>703</sup> EEA (2009) Europe's onshore and offshore wind energy potential. An assessment of environmental and economic constraints. European Environment Agency, Copenhagen, Denmark.

56. The Lawton Review and the Natural Environment White Paper clearly identify the importance of an integrated landscape scale approach, stating that it is one of the only effective ways that we can enable biodiversity to adapt to the impacts of climate change and safeguard species. Integration of environmental objectives into local decision making is fundamental to conservation. However, a lack of expertise and clarity from the authorities and the environmental consultants, combined with a failure of developers to engage with the environmental aspects of projects at an early stage results in delays, expense and ineffective measures being applied. This results in the assumption that conserving biodiversity and the natural environment is a costly and arduous process with limited results. This is further exacerbated by a lack of evidence from post construction monitoring on which to base future improvements.

57. It is clear from The Economics of Ecosystems and Biodiversity and the UK National Ecosystem Assessment that the natural environment is providing us with a vital range of services that underpin our economy and our well-being. In many cases these benefits are undervalued. In addition, we have a clear responsibility to conserve threatened species and habitats. A European survey of attitudes to biodiversity showed that 90% of UK respondents agreed that halting biodiversity loss is a moral obligation.

58. The economy fundamentally depends on natural resources and a stable climate, and the value of the services nature provides is frequently underestimated or ignored in decision making. Environmental laws and policies are not imposing unnecessary burdens on business and impeding economic recovery. Policies that promote a shift away from fossil fuels will reduce the UK economy's exposure to volatile energy prices and climate change impacts. We can address current economic challenges by building a greener economy with secure jobs, clean energy and protection for our natural environment. As recognised by the CBI: "Environmental regulation doesn't have to be a burden for business. Framed correctly, environmental goals can help our economic goals"<sup>704</sup>.

59. WWF does not believe that we need to sacrifice our natural heritage to rebuild our economy. Over 80% of planning applications are approved and claims that delays cost £3bn a year are unsubstantiated. The Government's planning reforms risk promoting short-term growth rather than sustainable development, with proper assessment of local environmental and social impacts. Commentators have noted that: "moving the goal posts doesn't just destroy projects and jobs, it creates a mood of uncertainty that puts off investors and they wonder what's coming next."<sup>705</sup>

## **WORKSTREAM 6**

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<sup>704</sup> Dr Neil Bentley, CBI Deputy Director-General, Speech to CBI-Green Alliance Conference, Monday 12 December 2011

<sup>705</sup> John Cridland, CBI Director-General, speech to CBI East Midlands Annual Dinner, 10 November 2011

## INTERNATIONAL AND DEVOLVED ADMINISTRATIONS

60. WWF has engaged with colleagues in EU Member States and collated some case studies on the implementation of the Nature Directives. In addition, we have reviewed a number of reports examining implementation in selected Member States. These case studies and relevant extracts from reports can be found in Annex IV<sup>706</sup>.

61. Some key messages from the case studies are as follows:

- The UK isn't the only Member States to require high standards in terms of implementation - good examples appear to include Sweden (Bothnia line), Netherlands and many of the later examples that illustrate how strategic approaches to implementation are yielding positive benefits;
- Developing clear and specific conservation objectives and management plans for Natura 2000 sites and species can improve certainty and efficiency later on in the planning processes<sup>707</sup>;
- The identification of clear roles and responsibilities, early engagement of stakeholder and nature conservation authorities helps to develop agreed solutions;
- Where implemented properly, the Directives have already proved to be instrumental in driving more sustainable development. This happens by ensuring that alternatives for plans and projects are considered and, crucially, sometimes also chosen. The integration of nature conservation requirements within planning processes leads to better decision making. Examples include the German Federal Transport infrastructure plan, Kresna Gorge (Bulgaria), Siberian flying squirrel (Finland), Naardermeer (NL), Danish monitoring of Habitats Directive and the Water Framework Directive;
- Where 'bottlenecks' arise, these are the result of poor implementation and application of the Directives' requirements, including, and perhaps most crucially, a lack of proper communication about what the actual implications of the Directives are. Bad practice has resulted in habitat/species loss, delays, opposition, legal challenges and/or infraction proceedings. See, for example, A4 highway and Via Baltica (Poland), Duerganck Dock, Port of Antwerp

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<sup>706</sup> Given the short time frame of the review, we would point out that we have relied on information provided to us by colleagues, or contained within presentations or published reports. We have not had the time to verify the accuracy of the details.

<sup>707</sup> See, for example, European Environmental Bureau (EEB) (2011) "Where there is a will there is a way: An NGO snapshot on Natura 2000 management in 18 European countries" and cases on the Duerganck Dock, Port of Antwerp (Belgium), 'Document d'Objectifs' (DOCOB) approach (France), Feldberg district (Germany), Great Bustard (Austria), Barycz River Valley (Poland) in Annex IV

(Belgium), Maasvlakte Port 2 (Netherlands), German Hamster case, Port of Saaremaa (Estonia);

- Robust environmental assessment early in the process and the adoption of long term monitoring programmes are essential in understanding and managing the impacts arising from development on Natura 2000 sites and species;
- The accuracy of data and evidence is improved (and consequently less easily challenged) where truly independent, impartial and qualified experts are used, and staff involved in carrying out processes and assessments are skilled, experienced and knowledgeable, supported by appropriate training; and
- The use of guidance at the Member State level to help aid understanding of the different requirements of the Nature Directives and to provide examples of good practice have helped to improve how planning cases are dealt with.

## **CONCLUDING REMARKS**

62. WWF is concerned that in the face of unprecedented losses of biodiversity, this review is in danger of taking us in the opposite direction of travel. The Nature Directives make a vital contribution to the protection of our most endangered habitats and species and provide us with invaluable ecosystem services. Moreover, the long term health of our natural environment underpins our wealth and well-being.

63. Many of the case studies gathered in this very short period illustrate that effective implementation, spatial planning and early collaboration can yield multiple benefits. Conversely, that poor guidance, a failure to engage relevant stakeholders and confusion around roles and responsibilities can be severely prejudicial to a project's success.

64. This brief review of EU and UK case-law confirms there is little scope for circumventing the decision-making processes enshrined in the Nature Directives without falling foul of settled case-law of the CJEU and domestic courts. To reiterate the main points:

- Transposing measures must remain clear and precise;
- The network of Natura 2000 sites must be identified and designated on the basis of ecological criteria alone;
- These sites must be afforded appropriate protection as soon as they are identified;
- Existing Natura 2000 sites cannot be reduced in area unless they cease to be the most suitable areas for designation/classification as SACs/SPAs;

- If there is any doubt that a plan or project not directly connected with, or necessary to, the management of the site may have a significant effect on it, it must be subject to appropriate assessment and any impact on the site's conservation objectives must be identified in the light of the best scientific knowledge in the field;
- The terms 'plan' and 'project' are to be given a very broad definition and there is no distinction between direct (intended) effects of an activity and indirect side effects. The key test is the likelihood of the plan or project having a significant effect on the site;
- The assessment must be conducted prior to approval and encompass any cumulative impacts;
- It is not permissible to exclude certain categories of projects from assessment;
- Where any doubt remains as to the absence of adverse effects on the integrity of the site, the competent authority must refuse authorisation;
- The derogations set out in Article 6(4) of the Habitats Directive must be interpreted strictly - the implementation of a plan or project is, inter alia, contingent on the absence of alternative solutions;
- The UK must maintain measures to establish a system of strict protection for the animal species listed in Annex IV(a) of the Directive in their natural habitats, prohibiting: (i) the deliberate disturbance of those species, particularly when the species are particularly rare and/or declining and during the period of breeding, rearing, hibernation and migration; and (ii) the deterioration or destruction of breeding sites or resting places;
- The acts referred to Article 12(1)(d) of the Directive include non-deliberate acts; and
- The derogations set out in Article 16 of the Directive must be interpreted restrictively.

65. Legal advice to a consortium of NGOs including WWF also confirms that compensatory measures must ensure the overall coherence of Natura 2000 at all applicable levels - regional, national and EU. The concept of "Equal Value" has no origins in the Directive – lawful compensation relies on 'like for like' replacement.

66. The corollary of twenty years of practice and case-law is that we now have a clear and transparent decision-making process in relation to Natura 2000 sites and European Protected Species. That process may take longer than some would wish. However, it has certainty and clarity and is surely commensurate with the potential loss and/or damage to the European interests in question. As observed by [then]

Hon Justice Sullivan in Hart: “the provisions of Directive 92/43 were intended to be an aid to effective environmental decision-making, not a legal obstacle to it”. The danger of unpicking that process is not only that we risk losing yet more of our most precious sites and species but that we create a ‘lawyers’ paradise’, in which appeals and litigation become the norm.

67. WWF recommends the government uses this review as an opportunity to:

- reinforce the importance of the Nature Directives for the protection of Natura 2000 sites and European Protected Species as a litmus test for sustainable development and living within environmental limits;
- re-state its commitment to the conservation of sites and species of European importance in light of their intrinsic value, the valuable ecosystem services they provide and their contribution to long-term wealth and well-being;
- embark upon an period of accelerated data collection and analysis in order to complete the Natura 2000 network and the development of marine spatial planning;
- promote best practice in the decision-making process relating to Natura 2000 sites and European Protected Species;
- ensure that clear and authoritative guidance is available for developers, statutory bodies and NGOs; and
- identify examples of innovation and best practice, many of which involve adoption of a strategic approach to planning and to avoidance, mitigation and (where appropriate) compensation of impacts.

68. It would be deeply regrettable if this review were to undermine the vital contribution the Nature Directives have made (and continue to make) to the achievement of biodiversity targets and long-term, sustainable economic growth. In undertaking this review, the government has the opportunity to demonstrate a genuine commitment to the principles of sustainable development and living within environmental limits

WWF Annex document: [www.ieep.eu/assets/1230/Final\\_Report\\_-\\_Influence\\_of\\_EU\\_Policies\\_on\\_the\\_Environment.pdf](http://www.ieep.eu/assets/1230/Final_Report_-_Influence_of_EU_Policies_on_the_Environment.pdf)

## **Stakeholder Engagement- Note of meetings**

### **Brussels**

9 July 2013

Attendees:

British Agricultural Bureau  
Change Partnership  
Chris Davies MEP  
Confederation of British Industry  
Convention of Scottish Local Authorities  
Copa-Cogeca  
East of England Brussels Office  
Eurelectric  
European Climate Foundation  
European Commission, DG ENV  
European Policy Centre  
Fiona Hall MEP  
Institute for European Environmental Policy  
Merseyside Brussels Office  
RWE Group  
Sandbag Climate Campaign  
Scotland Europa  
The Sustainable Synergies Group  
Transport and Environment  
University of Cambridge Programme for Sustainability Leadership  
Welsh Government, EU Office

**Advantages of EU competence**

- Win-win situations for EU and MS, e.g. the new EU vehicle regulations and standards for fluorinated gases in air conditioners and other appliances that had incentivised chemical companies to innovate and come up with alternatives that had a polluting potential of 4 x that of CO<sub>2</sub> (as against the previous 150).
- EU-wide legislation incentivises investments in low carbon and energy-efficient technology which gives UK business an edge with its exports.
- EU Emissions Trading System (ETS) has created a level playing field and been positive for EU business. It now needs to be strengthened. The UK has introduced a carbon floor price per tonne of around £13 whereas for the rest of the EU the price has dropped to below €5. In the short term this has put the UK at a competitive disadvantage but has provided capital for the Government and provides some environmental benefits. It has also sparked a healthy discussion on taxation. Germany is now looking at introducing a carbon floor price.
- This floor price has showed that the EU ETS hasn't worked – it must be much stronger. On climate change, energy and the environment there are still 28 different systems. The overriding principle is that you cannot have a single energy market where there are 28 different approaches. Compromises are worthwhile in this area. Although harmonisation can be slow, EU competence and action is preferential to having 28 different carbon taxes.
- The internal market is the principal, key benefit for the UK. i.e. not having to work with 28 different regulatory systems. During REACH negotiations, there was



much debate but no one ever said they would prefer 28 different regulations over one.

- Norway, which is in the European Economic Area, has signed up to 250 pieces of environmental legislation except those affecting nature, i.e. Habitats and Wild Birds Directives. This suggests that most EU environmental legislation relates to the internal market. A mutual agreement must be made between the EEA and EU and no agreement has been reached on nature. On individual policy areas there are often links between whether legislation is a market measure or environmental. e.g. Ambient Air Quality Directive.
- European Climate Foundation research on CO<sub>2</sub> standards found that if the 95g standard were adopted across Europe then the car fleet would be significantly cheaper to run and create jobs across the EU. On energy efficiency legislation, if the EU meets the 20% target then it could have a lead share worth 1.4 trillion dollars a year. Without EU targets and Directives then there isn't much action at MS level.
- The UK cannot take action on climate change by itself; however it can inspire EU level action. The UK Government wanted a 20% target in the 90s but found that it couldn't act unilaterally. It used its momentum to make the EU address climate change in 2007. This is arguably the biggest achievement of the UK Government.
- What if the UK hadn't joined the EU? What is the counter-factual? This is obviously hypothetical and subjective, but it is fair to say that the number of times UK has been taken to court on infractions gives a clue as to which changes would have been brought about in the UK. Thanks to the EU, the UK has implemented legislation which has improved the cleanliness of rivers and beaches, municipal waste water treatment and improved the quality of life of citizens.
- EU legislation has provided UK environment ministers with a stronger hand in treasury negotiations. It is likely that the UK would have acted, but probably much more slowly.
- EU legislation has also saved money in the UK by improving health through environment legislation.
- It is debatable whether the UK would have brought in similar legislation on landfill or urban waste water treatment. The UK would probably not have been pushed into the same direction or as quickly. Yet, the Landfill Directive has rapidly promoted recycling in the UK. Would the UK have moved away from landfill without EU targets? In drafting stages the UK was one of the loudest MS working against proposals.
- Acid rain legislation has led to a huge reduction in the phenomenon. There is general consensus that on atmospheric issues, the EU is the smallest level of governance that should deal with these issues.

## **Disadvantages of EU competence**

- Animal welfare legislation made under environment Articles, such as Directives on leghold traps, seal skin and zoos, were forced at the EU level by the UK animal welfare lobby. These porous quasi-environmental regulations provide enormous difficulties internationally.
- Businesses are burdened by energy audits which go too far and are possibly gold-plated at MS level. It is right that the goals should be set by the EU and MS implement them, but a balance must be found on the detail.
- The biofuels quantity target costs €10 billion and doesn't bring in the benefits it was designed to do. It was not well implemented.
- It must be recognised that there is a trend across the EU moving from prescriptive requirements to more flexible framework legislation. The situation has evolved dramatically over the last decade and a half, e.g. National Emissions Ceiling Directive. This is an existing trend that could be expanded.
- On the other hand, from a lawyer's perspective, comparing MS compliance with framework legislation can become very difficult e.g. Water Framework Directive.
- The Nitrates Directive is hugely expensive and is very prescriptive and inflexible. It's good for water but not for the rest of the environment.
- The Bathing Water Directive could arguably be a subsidiarity issue as it is not fully applicable in the UK.
- Noise legislation is arguably a localised issue with no transboundary impact. The subsidiarity of noise legislation can be called into question. Should MS have to report local problems to the EU because of noise legislation? e.g. Noise Directive. The Dutch subsidiarity review said that noise regulation should be left to MS. Attendees were split on whether noise should be a MS or EU competence – it is currently shared competence, distinguishing between emissions (internal market issue) and exposure (health and safety). EU standards support the running of the internal market. A noisy factory may be more productive and so can manufacture more produce for less money, which it can then sell more cheaply than other businesses. This can undermine the level playing field. There is also a strong local dimension to nature protection.
- The proposed Soil Framework Directive is another area where it can be argued the EU does not have competence to act and existing legislation is sufficient.
- Nature protection also has a strong local dimension.
- Other areas which seemingly don't need EU competence, such as drinking water standards, are actually critical to the single market. Drinking water is integral to the food processing industry, so common standards are essential.
- When the EU brought in legislation on the recycling of fridges and CFCs, the UK was not the only country without the means to recycle fridges. While France didn't implement the legislation until recycling centres has been built, the UK ended up with fridge mountains. If the UK Govt had not implemented the legislation then there would have been no consequences – court judgments take over 2 years.

## **The Habitats Directive**

- The Habitats Directive came out of the Council of Europe Convention Berne Convention, which all EU MS had signed up to but its requirements had not been fully enacted. There is a question mark over whether it should have been the EU or MS who acted and whether the action taken by the EU is proportionate. However, the Directive represents the agreed wish of Member States to effectively implement the Convention to a set of common rules, recognising that many elements of nature protection have a genuine European dimension.
- Natura 2000 is regarded as a major achievement. The UK's previous designation of Sites of Special Scientific Interest (SSSI) was ad hoc and left geographical gaps in protection of key species and habitats.
- It is important to recognise that designation is not 'harmonised' across the EU, but a common application of guidelines. The amount of designated national territory differs across Member States, with the UK having significantly less. Implementation, planning and management, remain the responsibility of Member States. It could be argued that this is a good example of balancing EU competence and national competence to give the most effective result.
- EU action on habitats also helped negotiations in the Convention on Biological Diversity and put pressure on third countries in respect of e.g. deforestation.

## **When the EU takes the lead**

- It is difficult to use the EU single market as a carrot and promote international norms if the EU doesn't look after its own environment. For example, on timber, the EU has made it compulsory for vendors to prove that their timber has been legally sourced and the supply chain established. This is an example of the EU bloc exercising its leverage. International organisations such as the UN proved unable to enact change, so the EU became the leader in international reform. Equally, in placing aviation in the ETS, the EU caused a "point of crisis" that has generated progress where negotiations had stalled before. It took the EU to act to force the international pace.
- That said, sometimes the consequence of leading, for example with new ethical legislation preventing the misuse of minerals, means that business will go elsewhere, such as China.
- When the EU takes the lead, the worry about EU and third country market distortion is overhyped. When double-hull legislation was enacted, the competitive distortion lasted only 9/10 months. It then became the international standard which has since saved lives. In the long term, the EU is a huge benefit internationally.
- It could be argued that setting relatively low, achievable 20% greenhouse gas targets means the targets do not make UK industry aspire to be innovative? The UK should be driving higher targets for GHG emissions. On climate change, the EU chose to fail by setting a 20% target that is outside the 20-40% recommendation that the science demands.

### **Differential implementation/interpretation**

- The UK implements Directives and then tries to measure the costs and benefits, e.g. Air Quality/Waste Directives. The UK's explanatory memoranda are unusual. Denmark, Netherlands and Finland measure impacts, but most other MS don't and will sign up to legislation merely to show good intent.
- Legislation must be implemented equally everywhere, however no one ever looks at how rules are interpreted differently by MS parliaments and courts. The UK is against common criminal charges but it may be the only way to resolve the issue of differential implementation.
- Would it be possible to strengthen the role of the European Environment Agency (EEA) to make it a neutral and balanced enforcer of fair and equal implementation? Does the EU have competence for this?
- If you want to improve enforcement, then what is the proportionate and suitably dissuasive penalty? On Common Fisheries Policy the fine levied in the UK for inaccurate returns on a catch was £100,000, €5,000 in Spain and only €96 in France. There can be no proper enforcement when different MS enforce separately.
- Likewise, on ETS non-compliance, there is a jail sentence in Ireland and a €50 fine in Bulgaria. A plus is that for checking the emissions of an installation, the 11,000 managers have had a huge impact on monitoring.
- There is a link between inspection and enforcement. For the first time, the Waste Directive included a clear inspection target which was then improved in 2010. The Offshore Safety Regulation outlined the need to have inspectors. This shows a general trend to improve enforcement of the EU acquis.

### **How can we do things better?**

- In the past there were no impact assessments or consultations and the whole law-making process took a few months. The trade-off with the current democratic and inclusive process is that it is *much* slower. The process is however, arguably better than in most MS.
- EU legislation has evolved over the years and now has a different approach with more flexibility. But it is very rare for the legislators to ask themselves whether the 28 MS can all implement the targets/legislation in question,
- However the more flexible outcome-focused framework legislation means increased market distortion, and there are trade-offs with increased flexibility, in that prescriptive regulations are easier to enforce.
- The Commission's response speed is poor, e.g. EU ETS. There has to be a balance to give the EU a way to respond quickly in the short term with the ability to adjust Directives.
- Carbon leakage support is not harmonised across the EU and should be.

- Impact assessments could be improved and made more accessible and clear, with a better assessment of costs at MS level. e.g. the carbon review of the Waste Framework Directive which is undergoing several consultations at the same time.
- The European Parliament is weak at holding officials and ministers to account. It should have the powers of a select committee in the UK.
- At the Council of Ministers it is not clear among those around the table as to who is enforcing legislation. Ministers never point the finger at their opposite numbers. There is a lack of accountability. Could the European Environment Agency play this role?
- There is a knowledge gap between what people think the EU is and what the EU does. Public communication on the EU role vs. that of the UK in the environment field needs to be improved. The Government needs to be honest about why the EU regulates, and how the UK implements EU law vis-à-vis other MS.
- In general, Member States don't have enough capacity or knowledge to act on all requirements. The Commission has previously held seminars to explain issues/legislation in MS. These have been valuable and helped to improve targets. But the measurement of MS capacity is important.
- We must be careful to distinguish between primary legislation (Treaties) and secondary legislation (Directives and Regulations). The institutions have their own powers under the Treaties and MS can't influence that. The specifics of secondary legislation are a matter for the institutions, not individual MS. For example, the Dutch don't want EU competence on coastal protection, but there is nothing they can do aside from form a blocking minority in Council or change the Treaties.
- The UK needs consistency and coherency in its policy on the EU so that we can plan a long term strategy.

### **Future challenges and opportunities**

- Energy – power plants will have to close in the UK and being part of the EU single market helps with security of supply. The UK is not on track to meet its renewable targets, it needs to be part of the wider EU single energy market and trade e.g. with Ireland (wind energy) and France.
- Economic growth in South-East Asia - implications are cost of resources on which the UK is heavily reliant. EU and UK must improve resource management, become less reliant on imports and encourage research and innovation to make better use of what we have; it's key to the UK economy. In the past, China bought EU technology on solar panels and scaled it up and is now outselling us on solar technology. EU/UK must invest in research and development.
- Waste - landfill sites are at breaking point and the UK is densely populated. Stronger EU policy on reducing packaging waste could help.
- Airport expansion could increase the problem of noise.

- The UK needs to define its strategic interests and then work out how to deliver them. We need to remain part of the EU to deliver the EU-US trade agreement.

## **Bilateral meeting with the British Property Federation**

Evidence of the impact of EU competence for the environment and climate change on the real estate industry:

- EU competence for the environment and climate change is broadly helpful to the real estate industry. For example, climate change targets in the 2030 Green paper provide the external pressure to bring about action. British Property Federation members operate transboundary, so single market instruments and harmonised standards provide a common rubric.
- However, there is an issue with a risk of “competence creep”. The industry had to fight hard to make sure that the EIA Directive did not infringe upon national competence in the area of planning. If the proposals were to go further than is currently being discussed, then it would be preferable that this area be brought back to a national level. Another example of creep would be in the area of spatial planning. Member States should reassert their authority with the Commission.
- There is a general view that an EU level there is a lack of understanding of the built environment. The Commission would do better to interact more with property owners or investors. The sector is treated as finance or a product, which means that interventions overlap or outcomes are confused. For example, the Energy Efficiency Directive, Directives on buildings and soft measures (energy efficient housing). There is a need for better policy-making, perhaps better resourcing at the Commission.
- Often competence creep or skewed outcomes are a result of the ordinary legislative procedure (co-decision) as the European Parliament as co-legislator is increasingly modifying legislation.
- There are different cultural differences across the EU which mean that a one size fits all approach to legislation is difficult. e.g. eco-labelling of houses and different cooling and heating demands.
- There is an issue in the UK with different local authorities applying different and seemingly conflicting rules. For example local planning rules and Energy Performance Building Directive?
- There is a problem with differential implementation across the EU. e.g. Energy Performance Building Directives, Italy has 11 different EPCs.
- Concerns over the Habitats Directive appear to be a national problem with statutory consultees rather than an issue with the legislation itself.
- An EU Soil Framework Directive would cause significant implications for industry.
- There is an opportunity for industry and market-led action at an international level to bring about action on sustainability. e.g. the [Global Real Estate](#)

[Sustainability Benchmark](#) has emerged without Government influence and is putting pressure on international companies to report on their performance and sustainability indicators. It needs an effective governance structure but is an opportunity for the future.

### **Bilateral meeting with the Home Builders Federation**

- While land use planning is national competence, there are several EU requirements which impact heavily on the home building industry. These include Directives on Environmental Impact Assessments, Strategic Environmental Assessments, Habitats and Water.
- Where issues are local, such as land use planning *and* its environmental impact, then it is in the UK's interest to have national competence for these areas. Following the subsidiarity principle, action should be taken at the national level.
- The vast majority of Great Britain's home building industry does not have ventures in other EU Member States and so are not affected by issues of competition across the single market. They do not reap benefits from a level playing field across the EU.
- However, while it *is* in the industry's interests to protect the environment, there are no discernible benefits from legislation being set at an EU level.
- At present, the cumulative cost of completing planning requirements, often stemming from the EU, are disproportionate to the environmental benefits provided.
- The Aarhus Convention and EU requirements which enact it, provide for access to environmental information, public participation and access to justice. These requirements are problematic for the home building industry, as they have an inherent bias towards the environmental side and judicial review can be very costly.
- Environmental requirements are defined by legislation, but not fully understood, particularly with regards to the cost of meeting requirements. The relevant case law attempts to reduce uncertainties but it is large and complex.
- The economic benefits of development are missing from the debate on planning. EU Directives on the environment always trump the economic arguments. This needs to be put into perspective. Providing sufficient housing is as important as protecting habitats.
- The Habitats Directive list of protected species is not fully applicable across all Member States of the EU. For example, great crested newts are not endangered in the UK, yet they are extremely well protected in line with the Habitats Directive.

- The UK is hyper-cautionary in its implementation. Within Local Authorities there is a debate over what is evidence and what is opinion, so a precautionary approach is used.
- The problem lies with the UK government agencies' interpretation of the Habitats Directive, rather than the EU Directive itself. Natural England doesn't have a sufficiently commercial outlook and its timescales are out of step with the development process.
- In some cases, e.g. current issues relating to Ashdown Forest and in the past in relation to the Thames Basin Heaths Special Protection Areas, mean that there are areas where no new planning permissions to build homes can be granted for years due to the cumulative requirements placed on the industry, including those under the Habitats Directive.
- The cost of biodiversity mitigation can be disproportionate. In Surrey, around 85% of Community Infrastructure Levy (CIL) Regulations funding has been set aside for alternative natural green spaces, leaving little funding for schools and roads. This is disproportionate and unsustainable.
- In other areas, for example Chichester, there is funding for mitigation, but no agreed strategy and no land available in which to provide for it.
- Sometimes EU Directives conflict. On land restoration, in order to remedy contaminated land and groundwater, these requirements sometimes conflict with habitats and species protection.
- EU Directives sometimes set environmental objectives that can only be met at the expense of the environment, e.g. increasing water quality is very costly in terms of carbon emission.
- If you looked into the number of planning applications processed in the UK compared to other Member States, the UK would most likely have the most disappointing record. Planning applications add about 18 months on to the normal cycle of an application and this is costly to industry. EU legislative requirements play a significant part in this.
- There are two costs, those for assessments and those for the delay, but the amount is site specific. For example, in one case, an area which was Ramsar protected and SSSI adjacent, the numerous surveys concluded that there was only a 3-month window for demolition of 25 acres. This is practically impossible, but the requirements are rigid. There needs to be more flexibility to reflect the specifics of a site.
- In another case, a site in Llanelli, a judicial review on the Habitats Directive spent 102 weeks in court, amounting costs of £1.12 million including £110,000 of legal fees for resisting the claim. The delay worked out at £5.4million/year for the local economy. The Senior Court of Appeal Judge commented that the claim was 'bonkers.'



- In an 18 hectare site in Burgess Hill, the discovery of great crested newts led to a year long delay in obtaining the correct licence (still to be resolved). There were various options considered including off site translocation and a local organisation called Green Circle agreed in principle to allow the use of land to translocate the newts to a new habitat. However, Natural England refused and were restricted by prescriptive requirements relating to town boundaries rather than a commonsense approach. The alternative methods to protect the newts onsite was incredibly costly at £2-300,000 in the context of a peak count of 23 newts. This doesn't count the costs relating to the interest owed on the purchase of the land and the loss of return on the proposed construction.
- Offsetting is a controversial option. If it is done badly, then it could lead to more regulation, be incredibly costly and become the new 'go to' option which doesn't deal with the essential problems. On the other hand, if it is flexible and allows home builders to unlock sites that have been stalled for many years then this should be looked into.
- Another example of national competence is the protection and management of soils, an area also relevant to planning and development. Soils are a local issue and competence should remain at a national level. It would be counterproductive to prevent development of greenfields. Often biodiversity is created from development and the addition of gardens to a site.
- Looking to the future, an area which needs further clarification is acoustics. Currently, as they are not well-defined at a national level (e.g. in the National Planning Framework), the industry looks to WHO standards. Industry would benefit from the certainty of framework legislation that is easy to amend. The EU would not provide an appropriate framework as a one size fits all approach could not work.
- The home building industry could also benefit from pan-UK standards on similar lines to building regulations. Currently standards are set regionally, so one town will have different standards to another. It would be preferential to have a national framework. This could not be easily dealt with at an EU level, however, as a one size fits all approach wouldn't be appropriate to cater for the wide climatic differences across the EU.

In the future, Natural England should be able to collate the evidence gathered through planning surveys in order to gain a full picture of species management in the UK. Presently, Natural England is not allowed to share the information provided to it. Where does this requirement stem from? If the agency were able to use the evidence and investigate remediation measures, then it would be to

## **Climate Change**

26 July 2013

Attendees

PWC

Greenpeace

Institute of Civil Engineers

British Marine Federation

EcofysGlass and Glazing Federation

Prospect

UNICEF

Anaerobic Digestion and Biogas Association

AIC

Mineral Products Association

University of Cambridge

Thames Water

Forestry Commission

RSPB

DLA Piper UK LLP

**Advantage of EU action in climate change negotiations**

The EU and its Member States have a stronger voice by negotiating as a bloc within the UNFCCC negotiations. Working at the EU level, rather than as individual Member States, gives us greater credibility in international negotiations.

The UK has an active voice within the EU and the EU itself adds further weight to our voice. Countries such as the US utilise the UK as a route into the EU and this gives us further influence.

There are 5 main advantages of being within the EU bloc for the UNFCCC negotiations:

- a) The stronger voice we have at international level.
- b) The harmonising of the EU position in advance, thus helping to simplify the negotiations.
- c) It is an opportunity to share intelligence.
- d) Collaboration, which helps to reduce the costs of negotiation.
- e) Flexibility with what we agree to.

The EU has ensured that the UK has implemented some legislation when perhaps we would not have otherwise done so. EU-level action can enable us to better deliver our objectives on climate change; the UK would have difficulty in achieving its climate objectives working in isolation.

Some legislation has been given greater credibility because it has been undertaken by the EU rather than individual Member States. The legislation introduced by the EU has given the EU greater credibility in negotiations, for example it provides evidence that decarbonisation measures can work. It also means some sectors such as aviation have been induced to take action at an international level when they might not otherwise have done so by the UK operating alone.

It is noticeable that some countries, such as China, Australia, Mexico and South Korea are following the EU example or seeking EU advice and are subsequently adopting it themselves (e.g. emissions trading schemes), all of which has benefited the EU.

Some schemes, such as the EU ETS have become “flagships” but they have in effect limited action at the Member State level in sectors covered by the cap.

### **Is control by regulation the most effective way of doing things or are voluntary agreements better?**

Having too many small players captured by regulation is a disadvantage – it can lead to an increase in the administrative burden as a whole and have a disproportionate impact on small players without producing significant additional benefits.

There needs to be a separate competency on implementation.

### **Is it good or a bad thing for the EU to have competency on climate change?**

It is a good thing. Most of what has been achieved has been done through the EU, for example, it is unlikely that Poland (2004 entry) would have done as much as they have without the EU.

EU competency needs to be considered in terms of how it relates to mitigation and adaptation. Mitigation is probably best done at the EU level and adaptation at the local, Member State level. However the issue is not a simple one, for example, some adaptation measures concerning water have trans-boundary effects; so there needs to be some flexibility.

We also need to be aware of the impacts that other countries can have on climate change and how it affects the EU.

The fact that the EU has competences and therefore has an engagement structure across transnational boundaries can impact beneficially on other areas, such as science and social policy.

### **Implementation and enforcement?**

Sometimes there are variations in implementation and enforcement which can also lead to accusations in the UK of gold plating; some countries will implement the “spirit” of the law rather than the “letter” of the law – the UK tending to do the latter. However, in practice gold plating has shown itself to be an urban myth – for example a study by the CBI could not find any evidence of this.

Enforcement of sanctions against individuals is usually a matter for individual Member States, consequently there may be different sanctions applied when laws are broken. However the Commission does have “teeth” – it has shown itself to be quite willing to take Member States to the ECJ and for fines to be imposed if Member States fail to implement EU legislation properly. The difficulty is that uneven

enforcement such as different levels of fines in different Member States can in itself lead to a distortion of the market.

Interpretation of directives is also an issue – some terminology is not clear and is only resolved in the ECJ – a process which takes time before clarification is obtained leading to uncertainty in the interim.

Having some flexibility on how goals should be achieved may be desirable and would allow Member States to do things differently if they so wished. However flexibility can be interpreted as “we don’t want to do anything” and can mean that goals will not be achieved. We need effective regulations if the EU is to achieve its objectives by 2050.

Flexibility can also help adaptation and allow Member States to take measures they may not otherwise have done so.

### **Mitigation and adaptation**

The issue of adaptation seems to have been discounted – thus far the emphasis seems to have been on mitigation. This is going in the wrong direction – mitigation and adaptation need to be thought of as synonymous. At the moment, through the Water FD we are implementing measures which may in fact turn out to be an inefficient use of resources. It may be better to think in terms of resilience rather than adaptation.

The key issues with adaptation rather than mitigation are that timescales will be longer, and costs and benefits more difficult to measure. It is also much easier to set targets or standards for mitigation rather than adaptation.

It is unhelpful that the UK has two separate Government departments dealing with adaptation and mitigation separately.

As noted earlier it may be more effective if adaptation was implemented more locally but this discussion needs to take place at the EU level.

For adaptation, strategic plans are needed to set out what actions need to be carried out. The UK Climate Change Act attempted to address this and included a requirement to identify what actions are required; this is something that could also be done at the EU level and could be particularly applicable to trans-boundary effects.

### **Future challenges and forward look.**

#### Knowledge

Government is shutting down, or selling off much of its climate science and cutting down on its specialists in the EA, Defra and Natural England. When this expertise is lost who will be the gate keepers? The EU needs to have the expertise in this area.

#### Energy

One of the issues for Poland is that their energy infrastructure faces Russia so their

security is based upon their own coal. However since 2009 there has been a much greater ability to reverse energy flows in west Europe to support eastern European energy needs.

Development of the smart energy grids across different Member States we need to be more strategic about putting in place a European super-grid for getting renewables online

### **Other issues**

#### Vehicles

The significant leadership role played by the EU in vehicle manufacturing has meant that the situation that has happened recently in Detroit has been avoided.

#### Finance

This needs to be more joined up, for example help to developing countries and mobilising of climate finance to them. However this is dealt with under the parallel competence of “development cooperation” and will be dealt with in another review.

### **London One**

19 and 21 June 2013

#### Attendees:

- Aerospace Defence Security
- Albion Water
- Alstom
- Animal Health and Welfare Board for England
- Associated British Ports
- Association of Drainage Authorities
- Association of Manufacturers of Domestic Appliances
- BioRegional
- BP plc
- British Marine Federation
- Carbon Disclosure Project
- Chartered Institute of Ecology and Environmental Management
- Chartered Institution of Wastes Management
- Client Earth
- Confederation of British Industry (CBI)
- Confederation of Paper Industries
- Copenhagen University

EDF Energy  
Electrolink Recycling Limited.  
Energy UK  
English Heritage  
Environment Agency  
Environmental Investigation Agency  
Environmental Services Association  
Environmental Sustainability Knowledge Transfer Network  
Essex County Council  
Eunomia Research & Consulting Ltd  
European Climate Foundation  
Flybe  
Food and Drink Federation  
Food and Environment Research Agency  
Forestry Commission England  
Greater London Authority  
Green Alliance  
Health and Safety Executive  
Herbert Smith Freehills LLP  
Ian Cameron Media & Communications Ltd.  
IBM  
Institute for European Environmental Policy  
Institute of Environmental Management & Assessment  
Interserve Defence Ltd  
Linklaters LLP  
Living with Environmental Change  
London School of Economics  
Maltsters' Association of Great Britain  
Marine Management Organisation  
Met Office  
Mineral Products Association  
Ministry Of Defence  
nabim (British and Irish Millers)  
Petrol Retailers Association  
Policy Exchange  
Royal Yachting Association  
RSPB  
RWEnpower  
SaBur Advisory Service/Black Swan  
SSE  
Stevens & Bolton LLP

Sustainability West Midlands  
Thames Water Utilities Ltd  
The Law Society  
The Society of Motor Manufacturers & Traders Limited  
Timber Trade Federation  
Town and Country Planning Association  
Travers Smith LLP  
UK Chamber of Shipping  
UK Environmental Law Association  
UK Green Building Council  
UK Non Ferrous Alliance  
UK Petroleum Industry Association  
University College London  
University of East Anglia  
Valpak Ltd  
Waste & Resources  
Water UK  
Westminster City Council  
Whale and Dolphin Conservation  
Wildlife Trusts  
Wine and Spirit Trade Association  
WRAP  
WWF

### **Theme 1: Advantages of EU competence**

- 1. Benefits to the environment:** some contributors felt that EU competence has been beneficial for the environment:
  - Major boosts to nature conservation, water quality, product standards, air quality and waste management.
  - Thanks to the Waste Incineration Directive England now has a set of energy recovery facilities which are improving air quality.
  - Due to EU Directives UK recycling rates have gone up.
  - The Landfill Directive has been effective in reducing land filling of waste in the UK.
  - The Landfill Directive and the Waste Framework Directive have had a positive impact in recovering paper.
  - The EU Emissions Trading System (EU ETS) has created a price for carbon, which is an effective signal to investors in clean technologies.
  - The EU Catalytic Converters Directive has been beneficial for the environment.
  - Strong and flexible EU regulations have been successful in protecting species across the EU. The Habitats and Birds Directives are advantageous especially for the protection of migratory species and for pan-European

protection (countries that would not act otherwise are enforced to protect species by EU legislation).

- The EU has been beneficial and the right level to make decisions with regards to waste and climate change.

## **2. Positive change**

- EU competence has driven positive change: (1) in the way we view the natural environment; (2) in third countries who want to trade with the EU; (3) by transforming industry, e.g. the Waste of Electric and Electronic Equipment (WEEE) Directive has pushed industries to reduce waste; (4) in UK policy, e.g. in waste the Landfill Directive has been followed by the UK landfill tax, which has led to the biggest single reduction of greenhouse gases in the EU.
- EU legislation keeps Member States (MS) pushing to make improvements in spite of high costs and little results, e.g. the UK is spending a lot of money to improve air quality but we see very little change.
- Things that would be politically impracticable get done thanks to the EU. A 'super partes' entity reduces the ability of MS to opt out of environment and climate change policies while helping to leave aside national interests in favour of achieving common goals.

## **3. Supporting the point:** identifying and quantifying the benefits of EU regulation is controversial as we do not have a counterfactual. We do not know what would have happened without EU competence. To support the point that EU competence has been beneficial for the environment contributors argued that:

- Existing MS competences are not effective, e.g. in marine.
- MS are often far away from meeting EU targets, e.g. in air quality.
- Before strong EU competence for environment and climate change was in place the UK Government did not manage to drive significant changes for the environment.
- EU legislation pushes through more ambitious standards than the ones set by MS legislation, e.g. in marine.
- MS policies relating to environment and climate change increase costs for MS which raises competitiveness issues. For example with the Carbon Price Floor (CPF) the UK has created a domestic carbon tax that is raising competitiveness issues for UK industries. The UK is now trying to compensate domestic industries for CPF payments via EU funds with a compensation package. Instead, the UK could have pushed for an EU wide carbon tax.
- Where there is a lack of EU competence competing interests of different DGs can result in ineffective action for the environment, e.g. in forestry.

## **4. Economic advantages**

- EU competences create jobs in the UK.
- The EU provides a level playing field for industries across MS. While different standards raise competitiveness issues and increase the risk of carbon leakage, consistency of approaches across MS promotes growth. Regulation is a burden for industry but to have it is better for the environment; if regulations are implemented at the EU level the burden to business is reduced.
- There would be potential extra costs for the UK if existing EU legislation would have to be replaced by UK legislation.



- EU legislation is difficult to amend. This creates certainty on the direction of EU policy development which is a clear incentive to business.
- The EU provides strong but flexible mechanisms to benefit the environment at the least cost, e.g. the EU ETS. Some contributors perceived this as a disadvantage. For example the Industrial Pollution and prevention Control Directive (IPPC) has no competence on how 'Best Available Techniques' (BATs) are set. Currently BATs can differ between MS, raising competitiveness issues.

## **5. Win-win situations**

- There can be economic opportunities arising from environment and climate change policies (win-win situations), e.g.(1) the growing bio-car industry in the UK (2) waste regulations have developed the UK's recycling industry; (3) thanks to environment and climate change (ECC) policies the UK became a place to design eco efficient products and this creates a potential benefit deriving from exports.

## **6. Operational advantages**

- EU funding streams enable MS to work collaboratively and a collective approach helps in identifying problems.
- It is easier to have EU competence on trans-national issues.
- EU regulations ensure that there is less duplication of efforts.
- Some directives are mutually supportive e.g. the Habitats and Birds Directives.

## **7. Innovation**

- EU competence allows a more evidence-based approach and more comprehensive evidence rather than localised evidence.
- The EU provides a platform for debate.
- EU competence increases learning and development by extending the scope for information exchange and networking e.g. (1) climate change actions have benefited from the exchanges between MS; (2) the Waste Information Network has shown that benefiting from the work of other people is much more efficient.
- The EU is a platform to encourage innovation for new environmental technologies
- EU legislation is difficult to amend which, on the positive side, provides legal certainty and creates a clear incentive for investors in innovation.

## **8. International negotiations**

- The EU has more power and is more ambitious than MS in international negotiations.

## **Theme 2: Disadvantages of EU competence**

### **1. Conflict within competence**

- Threat of legal action under Habitats Directive for doing maintenance work relating to flood risk management. There are conflicting priorities between pieces of environmental legislation.

- EU Eel Regulations are very expensive to implement and divert important funding from the Flood Risk Management budget.

## **2. Negative impact on SMEs**

- EU procurement rules disadvantage SMEs in the environment sector as they make bidding for work un-necessarily complicated and bureaucratic.
- The paper industry is heavily regulated in the EU in the areas of energy, carbon and waste. As this is a global industry they have to compete with businesses in other countries where there are fewer regulations. This puts UK & EU industry at a disadvantage on the global market.
- Waste Framework Directive - having minimum standards poses a disadvantage for SMEs i.e. small composting plants. They cannot meet minimum standards in line with the Directive.

## **3. One size doesn't fit all**

- The Industrial Emissions Directives: The EU is settling SO<sub>x</sub> and NO<sub>x</sub> emissions targets assuming plants use control flames at their combustion plants. However, the UK uses shell boilers which are a different method to other MS. For the UK, it will be difficult to comply with the rules. This is an example of EU adopting a one size fits all approach to their legislation.
- In the UK ports are privatised while they are mainly government owned in the EU. The EU is proposing to make LNG refuelling facilities mandatory. However, this is not appropriate in every UK port and does not fit with our market driven structures. It was felt the UK ports sector cannot justify spending millions on few customers. This puts the UK ports industry at a competitive disadvantage.

## **4. Sometimes EU legislation needs to be more prescriptive**

- Under the Energy Performance of Buildings Directive there is a lack of consistency in what Energy Performance Certificates measure. This means buildings are not comparable across MS.

## **5. Conflict between EU and UK/International competence**

- Inconsistency between EU's Eco Management and Audit Scheme (EMAS) vs. the international worldwide ISO 14001.
- EU Sulphur Directive is an e.g. of gold plating IMO MARPOL Annex VI and there are conflicting target dates set by IMO and EU with regards to low sulphur fuels.
- It was felt that areas like forestry suffered from competences being shared between EU and Member States, resulting in lack of policy coherence.

## **6. EU Processes**

- No focus on feedback and review of climate change legislation. It is important to assess the current threat of climate change on a regular basis in order to determine if the relevant EU action remains appropriate.
- The EU 2020 targets: 20% increase of energy from renewables; 20% increase in energy efficiency and 20% reduction in greenhouse gas emissions are not aligned and create conflict for business when trying to comply.
- Renewable targets are good, but high renewable targets create a race, and this reduces the ability to achieve long term sustainable solutions. E.g. use of bio-fuels as a means of renewable energy in the transport sector. An early

focus on bio-fuels stifled innovation and land was set aside for this use which adversely affected the environment.

- EU Institutions e.g. DG SANCO, DG Agriculture, DG Environment often operate in silos which result in conflicting competences.

## **7. EU competence vs. wider economic factors**

- Economic climate not great when it comes to setting targets, especially those that come in quickly. It means heavy cost to industry which they pass onto the consumers. It was felt the EU needs to engage industry more before setting unrealistic targets.
- While the principle of European Union Emission Trading Scheme (EUETS) is good, it's not a flexible regime as businesses cannot withdraw credits. Withdrawal would be useful now while the economy is in recession. Some EU legislation produced pre-EU crisis is no longer sustainable.

## **8. Differential interpretation**

- The Industrial Pollution Prevention and Control Directive (IPPC) has not been implemented in the same way across the EU. The same assessment standards are not being applied across MS. Issue here of differential interpretation.
- EU Timber Regulation is applied differently across MS. The UK enforces high standards via fines and prosecution. Timber businesses in other MSs do not face these stiff penalties and this places UK businesses at a competitive disadvantage.
- The protection of newts under the Habitats Directive is different across MS. The UK's application of the legislation gives them the highest level of protection by protecting individuals rather than protecting populations. This leads to a high cost for surveying and/or capturing newts. While the EU legislation is deemed correct, it was felt that attention should focus on a better/more flexible approach at MS-level, bearing in mind there is also a need to comply with local planning and building rules.

## **9. Precautionary principle**

- The use of the precautionary principle is sometimes over-applied e.g. in the REACH Regulations and the interpretation of "hazard vs. risk".
- Under the Habitats Directive there is a requirement to work within the "natural range". In UK we are at the edge of the "natural range" for many species. This means we are required to manage habitats just in case, even when there is no scientific evidence that a particular species needs protection.

## **Theme 3: Where Should Decisions Be Made?**

### **1. International level?**

General consensus that in a perfect world (1) ideally core issues should be agreed at an international level and implemented at the national level; (2) however current international action on the environment and climate change is ineffective and EU is next best option.

- An EU wide level playing field is of no use for companies operating internationally. These companies have competitive advantage in the global market as international environment and climate change regulations are less

strict than in the EU. E.g. the Registration, Evaluation, Authorisation and Restriction of Chemicals Directive (REACH) is beneficial for the environment but since it is not being implemented globally it is putting extra burdens on industries in the EU including the UK.

- Climate change issues should be dealt with at the international level. Implementing high standards within the EU can increase the risk of carbon leakage. This does not help the environmental agenda and there is a risk that the EU pushes ahead too quickly to the detriment of other areas.
- Climate change issues should be dealt with at the international level through the UNFCCC. However, if that cannot be achieved then the EU is 'second best'. EU level action and leadership has helped drive progress internationally.
- With regards to climate change, the trend for decisions taken at an international level has proven to be pragmatically unhelpful, for example the failure of the Copenhagen Climate Change Conference (COP) 2009.

## 2. National or EU level?

This depends on different factors:

- i) Prioritisation between short term economic growth and long term sustainable development.
  - Economic and environmental perspective/objectives can produce trade-offs, e.g. with the Volatile Organic Compounds Directive (VOC) while the environmental case was achieved there was a reduction in fuel security.
  - The EU provides a longer-term perspective in facing environmental issues. The EU helped push the agenda of long-term solutions to some environmental problems such as climate change, waste, and the protection of migratory birds.
  - At a national level, there is likely to be an erosion of long-term environmental policies during times of economic recession or political instability.
  - However, EU environment and climate change policies can increase costs for business and raise competitiveness issues.
  - The EU should not seek to correct or remove national natural advantages through legislation. e.g. closeness of UK cities and markets to ports. Big corporations have a better ability to implement change throughout their supply chains than Governments do. Business can play a role in implementing changes where possible as it can be a driving force for positive change.
  - Another contributor pointed out that business can also use their influence to override long term sustainable development with short term economic growth.
- ii) Geographical dimension of the issue's impact.
  - General consensus that trans-boundary issues are better dealt with at the EU level while locally specific problems are more suited to the national level.
  - E.g. EU competence for water in the context of the Water Framework Directive has caused unnecessary additional work not justified by locally specific circumstances and the decisions might have been better handled at a national level.
- iii) One size does not fit all.
  - The EU should set target targets/direction of policy development and then let MS decide on the detail of how to meet the objective.

- The EU can impose unnecessary requirements, e.g. Malta has to provide a river basin management plan but doesn't have any river basins; the UK has to adapt EU regulations to fit a situation where they are not applicable, i.e. the UK does not have any shared river courses.
- iv) The EU provides "a second bite of the cherry"
- Currently EU competence often fills the gaps when national legislation does not work or provides local political difficulties for national governments.
- v) International negotiations.
- In international negotiations the UK doesn't have enough weight acting alone, especially when competing with US, the BRICS (Brazil, Russia, India, China, and South Africa) etc.
- vi) Enforcement.
- MS can better ensure consistency of regulation as they have a stronger enforcing mechanism than the EU, which lacks an effective enforcement mechanism.
- Deforestation as an issue is best dealt with through the EU (the current regulation on timber is good) but the key question that arises is how it will be enforced.

### **3. How to address the problem.**

MS/the EU should carry out an assessment of the best level at which to make decisions.

- There is a need to work out when the context requires EU or national level decisions. In the case of water it is better dealt with at a national level. Waste management and air quality are better dealt with at an EU level.
- Assessments should follow a flow chart style of thinking. What is the issue? At what level does it need to be considered? What legislation is required? Is it proportional to the issue to be addressed?
- Legislation should be more flexible to allow shifting from national to EU level and vice-versa over time as issues evolve.

## **Theme 4: Doing things differently**

### **1. Commission: Silo mentality**

- Commission DGs are not joined up and are often openly competitive. Many targets on renewable energy, CFP, biodiversity overlap and address multiple objectives but are not aligned.
- There were also gaps in knowledge in the Environmental Liability Directive. The Biological Directive mentions a 'conservation status for birds', which isn't even an EU requirement. There should be greater interaction between air quality, climate change and industrial regulations as these policy areas overlap.
- The Commission is under resourced. It is very small, under a lot of pressure and relies on experts from MS on many issues. It should not have the right to initiate legislation.

### **2. Alternatives to legislation - General consensus that voluntary agreements and alternatives to legislation can be effective:**

- The Courtauld Agreement is voluntary and has worked, but tends only to be taken up by large and visible brands. The rest, some of which are of a significant size but aren't as visible, don't have the same pressures and haven't opted-in.
- The Marine Stewardship and Forest Stewardship Council schemes are voluntary and have been very effective. The FSC has led to a successful, integrated approach, which manages forests sustainably. However, they work for this sector and should not be seen as a panacea. They are market driven and will be affected if the economic climate doesn't improve.
- The Energy Services Directive was voluntary as long as there was a 70% uptake, failing which compulsory legislation would have been enacted. This worked well.
- EU legislation to reduce emissions for vehicles, specifically PM10 particulates (very small particles), didn't work in the UK because it didn't suit our cultural preferences.
- The Biodiversity Convention was soft law and therefore largely ignored. However the Habitats and Wild Birds Directive were too 'hard' and although effective, there is now a backlash.
- In the USA, they made the reporting of sulphur emissions compulsory. This led to a reduction in emissions which was probably greater than what would have been achieved with hard legislation.
- Negotiations for the EU Forest Law Enforcement, Governance and Trade Action Plan (EU FLEGT) have been effective and make life easier for EU SMEs, although they took way too long to agree. The EU market should be used as a carrot to influence better environmental and supply chain management across the world.
- Engaging EU citizens directly through IT and mobile apps is a viable way to enact change in this area and create an environmentally aware community. e.g. reporting flytipping, protecting species, modelling landscapes for flooding.
- A global alliance of city mayors has been effective in creating action in third countries on climate change.

**3. Or is legislation necessary?** Consensus that law is irreplaceable at the macro level and legislation supports voluntary action:

- Limits on CO2 emissions for passengers was a voluntary industry commitment and didn't work. It sounds like a good idea, but in practice provides further burdens and market distortions for those businesses that do comply.
- We have to be realistic about the capacity of other MS to use more sophisticated, non-legislative systems. Many are small and don't have the mechanism to do so.
- There needs to be a legislative driver – look at failure of major retailers to charge for plastic bags.
- There are no alternatives to legislation at the highest EU level. Have to be realistic about the powers of the EU – it does not have the competence to enact alternatives to legislation.
- Eco-labelling was never going to work – need to involve big players so the market will follow.

- EU has attempted voluntary action with the Eco-Management and Audit Scheme (EMAS) and Eco labelling. Eco-labelling doesn't work (only top 10% signed up) so it doesn't drive change. EMAS was designed for SMEs but is burdensome.
- It is important to have regulatory framework which then drives voluntary action. e.g. Waste Framework Directive for resource efficiency which led to the Courtauld Agreement.

#### 4. Corporate responsibility and market-led solutions

- Having EU legislation makes the environment a business critical issue; however action should appeal to the economic benefits for industry in order to pursue change.
- Airlines are heavily regulated and taxed so they work together to be innovative in combating CO2 emissions, investing in fuel efficient aircraft and air traffic management systems.
- The market should be a driver of resource efficiency and resource management. e.g. there is evidence to show the economic benefit of refurbishing waste electricals for earth metals. The private sector will take the lead, soon there will be a quality standard (kite mark).
- The Government doesn't trust market led solutions as they can lead to perverse outcomes i.e. ETS where the price of carbon has crashed. It was based on 2% carbon growth. If there had been the political will to set a cap then it could have been set lower.
- Reputational concerns of business are a big driver in reform. Retail can be a powerful driver of change, e.g. John Lewis helps the environment by choosing what they sell.
- There should be a balance between bottom up and top down change. There will always be companies who will lead and show what is possible, but then you need legislation to bring up others. Good legislation will reward companies who lead first.
- There should be favourable financial incentives e.g. reduced VAT on energy efficient products. However the EU is taking the UK to court on this because it wants an equalised VAT regime across the EU. The EU should support this sort of action.
- 'Waste' is an obsolete concept. The debate needs reframing around circular economies, resource efficiency and eco-design. Initiatives and imperatives in these areas are geared to climate change responses and are largely being led by industry.
- Market-based instruments work best at national level, not at EU level, e.g. landfill tax in UK.
- **SMEs:** The Commission could be better at providing technical assistance to SMEs trying to procure through the single market, alongside EU Regional Development Fund (ERDF) and cohesion funding. Need to reduce the burden on SMEs, but it's extremely difficult to get them to work together, as they're all very different. SMEs need frameworks or structure, e.g. supply chain agreement. LIFE+ bids are onerous and procurement is cost-prohibitive for SMEs.

#### 5. Outcome-based legislation?

- General consensus that there should be a focus on outcomes. This should consist of EU frameworks which enable national flexibility where possible/appropriate.
- The National Emission Ceilings Directive provided a framework with a clear outcome for different application depending on the MS and industry. This worked very well.
- The Industrial Emissions Directive was the opposite, very prescriptive which didn't work well. The problem with legislation being too prescriptive means it leads to several derogations in national plans so it becomes flexible anyway, e.g. the Large Combustion Plant Directive.
- Whether legislation should be outcome-based or not depends on the area and the product. On packaging, the consequence of flexibility is 28 different varieties across the EU.
- There are various outcomes required in the Water Framework Directive but the totality doesn't add up to the overall desired outcome. They even work against each other.
- The Air Quality Directive is implemented locally and each local authority produces its own ideas. It is a fractured approach and sharing knowledge and methods is a challenge.
- Flexibility is a problem when you have 28 different countries. The system of reporting data to Eurostat is laughable as it doesn't check the quality of the data. Romania doesn't actually meet the Packaging Directive targets but this is not verified.
- Flexibility in emissions trading is very helpful and very effective in reducing emissions and encouraging investment. It also wouldn't work on a national basis.
- Codes of practice or best practice, which aren't law, are outcome-focused and very effective. They are subject to industry input and are a useful tool on the ground, e.g. the BREF notes under the IED Directive or the IPPC Directive in a particular sector.

## **6. Should targets be aspirational and political or evidence-based?**

- Air quality targets are based on health and mortality evidence. Everyone's political drivers are different so aspirational targets do not work. Evidence-based targets are better as the evidence/science should be the same across the EU.
- The more local you get, then the more politics comes into play and the target is watered down. Environmental targets are often polluted with political and business issues. For example, London's 'No Emissions Zone' has practically ground to a halt.
- Much 'cleaning up' of the steel and glass industry was led by business. Current UK Government targets don't recognise where industry started from and what progress has been made. Unless there is a dramatic technological breakthrough there is no longer much room for improvement, targets must therefore be evidence based.
- Current EU targets have led to the EU exporting pollution. The environmental impact of shipping from the Far East to the EU should be taken into account. You cannot address part of the problem.



- You can't argue with the science of climate change. Europe needs to do a lot so we need Government to be aspirational and have targets which aim high.

### **Theme 5: Future challenges and opportunities**

Energy	Energy is the biggest challenge.
Water	Management of water resources is a national issue and not an EU one.
Climate Change (CC)	Climate change provides opportunities for the green industry. Challenges include (1) how to design/implement climate change adaptation and mitigation strategies given the high degree of uncertainty around the impacts of climate change e.g. on food security, biodiversity loss and invasive species (e.g. Natura 2000 sites may not be in the right place to prevent the increase in invasive species in the UK/EU); (2) to prevent the EU from imposing unnecessary requirements on MS e.g. certain types of eco-labelling.
Targets	Uncertainty around climate change impacts means that there may be an unexpected adverse effect on our ability to meet targets e.g. with the Habitats Directive.
Carbon pricing	Challenge that should be dealt with at the EU level.
Growth vs. Environment	The challenge is to pursue sustainable development, i.e. to find a balance in existing tradeoffs between short term economic objectives and long term environmental goals.
Effective policy	Preservation of effective environment and climate change policy in the face of economic adversity.
Current EU Legislation	There is a need to rationalise and simplify EU legislation given that (1) current lack of clarity of legislation makes it difficult to implement consistently across MS; (2) risk of EU Commission adding costs to business; (3) need for more consistency of regulation across MS but also more flexibility within EU structure to reflect local circumstances; (4) EU legislation should be subjected to future proofing to enable industry to meet all the legislative requirements.
Low carbon economy	It will be challenging to move to a low carbon economy in an affordable way. One of the reasons is that we are limited by the availability of technology.
Role of the EU internationally	The EU can drive positive change in third countries, e.g. the EU has led on an EU wide ETS which has been adopted by other countries like China. Another contributor pointed out that the role of the EU is almost irrelevant now compared to previous years. Countries like China became richer and currently have a bigger environmental impact than MS.
EU vs. UK	EU Directives can add burdens to MS in areas where comprehensive and effective domestic legislation is already in place e.g. the UK Marine Act.
International agreements	Some targets e.g. the Green Paper 20-30 need international adoption but it can be challenging to get international agreements.
Level playing field	Different interpretations/ways of implementing EU legislation can make it challenging to achieve a level playing field.
Flexible vs.	Where multiple standards exist e.g. in the quality of bunker fuel for

prescriptive legislation	ships, there may be advantages in having more flexible legislation, but also more complexity and costs.
IAs and CBA	When evaluating natural resources there is a high degree of uncertainty about how to value environmental assets and their degradation or depletion. While costs are easier to identify, it is challenging to set criteria on how to attribute a positive value to natural resources. This issue needs to be addressed carefully given that there is a need for more robust cost-benefit analysis and impact assessments and for more effective checks and examination of proposals to ensure value for money.
Regionalisation of EU	Regionalisation of the EU, i.e. groups of MS working together: challenge or opportunity? According to some contributors this is not likely to be beneficial since it could add another tier of bureaucracy to MS.
Enforcement	The EU has a weak enforcement mechanism compared to MS.
Resource efficiency	Resource efficiency is a challenge that has to be dealt with at the EU level. There is need to integrate renewable energy and security of supply issues given that fossil fuels are more and more limited and costs are increasing.
EU processes	Whilst the UK government engages effectively with regulators and industry before and during the drafting process, this model is not followed by the EU. On the contrary the EU can have a silo mentality that can lead to contradictory regulation.
Engagement of MS	There needs to be more proactive engagement and influencing by MS in working with the EU Commission at all stages.
EU Funding	There are funding opportunities which the UK does not tap into but other MS do.
Communication UK citizens	It is important to make UK citizens aware of long term benefits as well as short term costs they may have to face when dealing with ECC issues. Historical euro scepticism in the UK can make it challenging to communicate these issues to UK citizens effectively.
Tidal power	Opportunity for energy development.
Food production vs. env. protection	It can be challenging to get this balance right given existing tradeoffs e.g. increased use of fertilisers can increase food production while having a negative impact on the environment.
Waste	Challenges will be to produce less waste and to ensure flexibility of EU waste regulation.
Resource Gap	Our current energy and water resources are not expected to be sufficient for our future needs particularly given climate change projections. However, those industries that are heavy users of either or both e.g. agriculture cannot simply be stopped/significantly reduced to lower usage. One particular problem is that there is some evidence that producers of energy are not using the potential of waste products (from the production process) e.g. waste heat (particular problem in Sutton, Surrey which the local government (mayor) is looking into).
Impact of the EU vs. the UK	(1) The EU can lead and achieve objectives that would not be possible if left to MS, e.g. Directive on Emission Limit Values for vehicles; (2) there can be positive interplay between MS and EU

	competence but also unnecessary overlapping; (3) the EU has more power in international negotiations.
Role of the EU and innovation	(1) Combining of expertise could be beneficial but it is challenging to keep MS engaged; (2) the EU is a very powerful driving force but sometimes this has the disadvantage of preventing/stifling innovation.
Scope of the EU	It would be better to stick to fewer objectives while reducing the volume of EU legislation.
Future expansion of the EU	Future expansion of the EU could pose challenges to (1) the UK's ability to influence the EU, and (2) getting agreements given the greater number of MS, as well as opportunities for learning and development as new MS can follow the example or use the experience of existing MS.
Economic development vs. environmental concerns	Do developed countries have the right to restrict developing countries from having the benefits the developed world has in light of present environmental concerns?
Consumers' attitude	Consumers will have to change attitudes and ways of using resources. Consumers want the benefits of environmental protection but do not wish to pay for it or appreciate it has a cost.
State Aid	It can be challenging to use State Aid effectively.

## **Theme 6: Current legislation**

### **1. Impact Assessments (IAs), Environmental Impact Assessments (EIAs) and Risk Assessments**

- EIAs are key to mitigate the impacts of development on the environmental conservation. On that level they work well.
- Although the quality of assessments varies, IAs could be more explicit and robust, i.e. they could show what data they are based on and differentiate between hazard and risk.
- Risk analysis in IAs is often weak e.g. in the low carbon roadmap all evidence was extrapolated from one piece of data.
- IAs should be fully independent. When they are outsourced to contractors they are not carried out properly. The EU Commission only makes use of existing information and does not collect new information for IAs.
- Currently they are usually too broad ranging.
- IAs could be more flexible to take into account the differences between MS.
- There is scope for a lot more Risk Assessments.
- EU Commission's IAs rely on data provided by MS and are poor as they focus on ticking boxes/justifying policy proposals more than assessing risks.

### **2. Transparency**

- The EU often publishes an Explanatory Memorandum to the legislation too late.
- Lack of transparency over data can make it hard to challenge EU legislation e.g. with biomass calculations for carbon the figures could not be challenged.
- Complexity/lack of transparency of EU legislation means fewer opportunities for stakeholders to get engaged in EU processes. This can result in a clash of

interpretation of legislation e.g. the Eels Regulation underestimated the cost of implementation creating a final out-out on budget choices between managing flood risks and protecting eels.

### **3. Lack of understanding**

- The public needs simplicity as they can lack the knowhow to implement complicated legislation e.g. with the Carbon Reduction Commitment Energy Efficiency Scheme (CRC) there was a lot of confusion amongst citizens and businesses about their obligations.
- Since the public often do not access EU legislation directly, sometimes it is the way legislation is communicated by the media that causes discontent rather than legislation itself.

### **4. Use of evidence**

- In the EU context evidence can be subject to political pressure, e.g. (1) adverse public opinion on Genetically Modified Organisms (GMOs) in MS can be an obstacle to their development; (2) in the case of forest dieback in Germany, legislation which was necessary only in Germany was applied EU-wide to ensure German industry did not suffer. However it was also noted that the same can happen with domestic legislation.
- Hazard vs. risk: EU Commission's decisions are often based on hazard instead of risk i.e. an extensive interpretation of the precautionary principle. However there are also examples such as ozone-depleting substances where MS agreed on an evidence-based proposal.
- There can be tradeoffs between fast action and evidence, e.g. with alien species some MS wanted fast action while others wanted more data.
- There can be a risk of being hamstrung by detail of evidence e.g. in the case of power stations all focus was on reducing impact of emissions from chimneys while ignoring the impact from transport to and from the station.
- To some, evidence should play a stronger role in legislation design at all stages; others thought the process as it is allows wider considerations to be factored in.

### **5. EU process**

- The EU Commission could engage with MS/DGs or businesses earlier in the process to produce legislation which is easier to implement.
- MS however tend to be reluctant to engage early.
- EU processes put increasing pressure on UK government resources, but government needs to continue to engage UK stakeholders effectively.
- It happens (e.g. with the Habitats Directive) that some parts of the legislation are outdated due to expansion in MS and need amending. However it takes a long time to amend EU legislation, e.g. negotiations on amendments to the WEEE directive started in 2008 and will be implemented in the UK in 2014. There can also be uncertainty as to whether legislation can be changed, e.g. Birds Directive.
- There should be a clear and simple mechanism for challenging proposed laws. Once the Commission has made a recommendation it cannot be challenged/opposed effectively due to poor EU processes, e.g. sometimes a

qualified blocking minority is required to prevent a proposal from becoming law.

- The EU system is very dependent on a few Commissioners proposing legislation.

## 6. The role of the European Parliament (EP) and the UK

- The EP could have a bigger role in the process, e.g. the Common Fisheries Policy has shown the strength of the EP compared to the Commission. However the EP can also throw up random/incorrect information which can delay the process.
- Members of the EP (MEPs) have little accountability because of their disconnect with the public.
- The UK could be more active or braver in discussing, influencing, proposing and opposing EU legislation.

## 7. Flexibility Vs. Uniformity

- EU legislation is set to fit all MS and does not take sufficiently into account that policies have different impacts in the different MS and that MS have different starting points, e.g. more advanced MS are able to meet more stringent targets.
- Inflexible legislation can create burdens and leave little scope for MS.
- It is hard to find a balance between prescription and flexibility as more flexible legislation could result in inconsistent application.
- The Water Framework Directive is a good example of this balance as it sets general standards but with the flexibility to interpret and implement differently across MS.
- A bad example is air quality legislation where EU laws reduce MS resilience and their ability to cope with problems/changes.
- There is a need to assess where EU legislation adds value, e.g. the UK's building legislation was good before the EU got involved.
- The EU legislates as if the field to which they apply legislation is simple/uniform across the EU, e.g. (1) when target setting is aspirational rather than evidence based it can be difficult for micro-businesses to comply with and this can give a bad reputation to the entire sector; because of this some argue that micro-business should be given more time to adapt or greater leniency, although it was also suggested this would be problematic in some areas, e.g. waste; (2) the EU can add bureaucracy on SMEs who have to provide added data, e.g. for carbon reporting.

## Annex I: Questions

Theme 1: Advantages of EU competence in the area of environment and climate change

- How has EU competence in the area of environment and climate change benefited your sector/business/the environment?

Theme 2: Disadvantages of EU competence in the area of environment and climate change

- How has EU competence in the area of environment and climate change disadvantaged your sector/business/ the environment?

Theme 3: Where should decisions be made?

- Do you think the UK would be better served if action on environment and climate change was made at a national or international level (i.e. non-EU)?

Theme 4: Doing things differently

- How could EU competence for the environment and climate change be used more effectively?

Theme 5: Future challenges and opportunities.

- What do you think is the biggest future environment and climate change challenge or opportunity facing the UK? How can EU competence help or hinder in addressing it?

Theme 6: How is current legislation made?

- Is EU legislation based on an assessment of risk and scientific evidence?

## **Annex II: Glossary**

Acronym	Name
BATs	Best Available Techniques
CBA	Cost Benefit Analysis
CFP	Common Fisheries Policy
COP	Copenhagen Climate Change Conference
CPF	Carbon Price Floor
EIAs	Environmental Impact Assessments
EMAS	Eco-Management and Audit Scheme
EP	European parliament
EU ETS	European Emissions Trading System
EU FLEGT	EU Forest Law Enforcement, Governance & Trade Action Plan
ERDF	EU Regional Development Fund
EU-US TTIP	EU-US Transatlantic Trade and Investment Partnership
GHG	Greenhouse Gases
GMOs	Genetically Modified Organisms
IAs	Impact Assessments
IED	Industrial Emissions Directives
IMO	International Maritime Organisation
IPPC	Industrial Pollution & Prevention Control Directive
IAs	Impact Assessments
L&D	Learning & Development
LNG	Liquefied Natural Gas
MEPs	Member of the European Parliament
MS	Member States

REACH	Registration, Evaluation and Authorisation of Chemicals Directive
SMEs	Small and Medium Enterprises
VOCs	Volatile Organic Compounds Directive
WEEE	Waste of Electric and Electronic Equipment

## London Two

22 July 2013

Attendees:

Centre for European Reform  
Confederation of Paper Industries  
Defra's Strategic Regulatory Scrutiny Panel/Aldersgate Group  
Friends of the Earth  
Institute for European Environmental Policy  
Intellect  
Prospect  
University of Durham  
Wine and Spirit Trade Association

There was consensus that competence for action to combat climate change should ideally be at an international level to maintain a level playing field and bring about global change. As this is unlikely to be achieved in the foreseeable future, there was disagreement over whether EU competence was the appropriate level for action in the interim. While the majority felt that the EU remained the best option, others argued that there should be global action or none at all.

### Advantages and disadvantages of EU competence

- × It was argued that the cumulative impact and cost of EU environment and climate change (ECC) policy had all but destroyed energy intensive industry in the UK. Evidence of the significant burden of ECC legislation can be seen through comparison of the number of factories that signed up to the first phase of climate change agreements in 2001 and the number that signed up to the second phase. The number of paper factories is down from 100 to 50, glass is down 50-25, while there is only one remaining aluminium factory. Steel, cement and ceramics factories have been similarly affected.
- × EU and UK ECC policy does not take into account cumulative costs and their impact on investment cycles. Energy-intensive industry investment cycles can be up to 30 years. Many factories were built before requirements were enacted and after it was too costly to retrofit factories to meet the development of new legislation and targets, meaning they have had to close. In addition, different requirements generate cumulative costs, e.g. the Sulphur Directive will cost the

paper industry £500million in 2015, while the Europe BREF will cost an additional €2billion. It was claimed that the German government provides much more support to industry.

- ✘ It was argued that the EU has failed miserably to combat climate change as it should be measuring carbon consumption not emissions. The EU is merely offshoring its carbon emissions, sending its industry to third countries, while consumption is actually increasing. EU and UK ECC policy increases the risk of carbon leakage and raises competitiveness issues at the international level.
- ✘ Over the last twenty years or so ownership of much of manufacturing has moved abroad and has resulted in increased competition for investment capital. There is no particular loyalty to UK PLC and in future capital will go where the best returns are to be made. If costs rise in the UK to a level which makes the UK uncompetitive then that capital will not come here – and neither will the R&D.
- ✓ On the other hand, there was disagreement as to whether carbon leakage was a direct result of EU competence. For example, other factors such as lack of investment in industry and low incentives for business have played a role since the sixties.
- ✓ It was argued that the EU had to play a role in a holistic approach involving several layers of government in order to protect and improve the environment. We should be looking at energy consumption, emissions *and* energy production. By looking at social factors as well as political and environmental there would be a more substantial change in the way the EU consumes energy.
- ✓ There was consensus that international standards would create a level playing field for industry and so not distort the market. Most attendees were very critical of the UN's ability to reach agreements at a global level, but it was nevertheless suggested that a holistic approach is required – global agreements together with EU agreements including tax/subsidy regimes.
- ✘ It was argued that differing tax regimes distort the level playing field across the EU. For example, there are different rates for package recycling waste in different Member States. While the UK pays the top rate, others pay low costs for recycling, which significantly influences where recycling is done.
- ✓ There is a BIS report which outlines how the green economy has been a UK success story. There are 51,000 companies involved in low carbon good and services, and 959,000 employed with sales of £122 billion. However, it was also argued that these figures are disputed and do not fully reflect the complexities of the area.
- ✓ The EU is a constant. There is no distraction of politics or change in government. It is a continuous pressure which allows a long term strategy for improving and protecting the environment. EU legislation has also paved the way for international treaties, e.g. sulphur dioxide legislation provided the model for the



Kyoto protocol. It has the mechanism for driving technological change that doesn't exist at the international level.

### What is the counterfactual? Are improvements thanks to EU competence?

- In 1973, British environment policy was very primitive. The EU has been beneficial to British environmental policy-making as it has imposed mandatory standards (e.g. on air and water quality) that must be met by specific deadlines, forcing us to think and act on the environment.
- If Britain weren't in the EU, it is possible that we would have a more advanced policy on the environment and climate change, as the UK's energy policy goes further than the rest of the EU. Particularly in the area of emissions performance standards, where our system is comparable to that of California. e.g. the Carbon Price Floor.
- However, the current government's cuts in the number of public sector jobs in sustainability, such as sustainability officers at the Food and Environment Research Agency, Natural England and the Marine Management Organisation means it has been difficult for them to take forward aims in reducing emissions and meeting targets. Left to its own devices, it is arguable that the UK would not prioritise action on the environment.
- Indeed, often it is the UK government and not the EU which has prevented developments. With the aim of creating a self sufficient community, an English SME created a green scheme under the 45p Feed-In Tariff (FiT), where the company would take 30p, the community 10p and the individual 5p. However, when the new Government came to power the FiT was reduced to 25/30p and the scheme collapsed.
- **Corporate impact:** commercial interests have already had an impact, and will continue to drive change. Manufacturing now focuses on resource efficiency and resource security to increase their profits and improve environmental impacts. It is becoming a commercial imperative to reduce energy costs and often this done without the stick of legislation. The corporate world and investment banks are also bringing in global importing index and environmental codes of practice.

### Subsidiarity

- Article 3b in the Treaty on European Union enshrines subsidiarity and allows a process for the issue of subsidiarity to be raised. That said, the fact that discussions such as this Review and that in the Netherlands are taking place, suggests the system is not working well.
- The subsidiarity definition is vague and has a caveat which allows for EU competence for areas which don't necessarily have a transboundary impact, such as water quality and zoos. Drinking water does not have a transboundary impact and does not affect competition nevertheless drinking water is an

essential commodity and the travelling public need to know that water is “safe to drink” and falls within EU competence.

- The issue of subsidiarity is particularly relevant to the environment as many issues are actually dealt with at a local level. However, the EU has already done much work to go back and repatriate areas which are not done at the correct level.

### Flexibility

- One size doesn't fit all. It is difficult to find a common policy to match the extremes across the EU. The IPPC Directive enables everyone to use Best Available Techniques (BATs), which is not quite one size fits all.
- You can adapt the policy to different countries. The Large Combustion Plant Directive resulted in horse trading among MS depending on their energy mix, allowing different amounts of SO<sub>2</sub> emissions. This policy was generous to the UK because of its coal production. There is no reason why this process can't be used more often.
- EU legislation lacks a harmonised enforcement mechanism and as a result enforcement is implemented differently across MS.

### Harmonisation and Minimum Standards

- Insufficient distinction was made in the Call for Evidence between standards for traded products and standards for fixed assets, such as mixed power plants, e.g. a waste disposal plant. A plant is immobile and so doesn't need harmonised standards across the EU - minimum standards are sufficient. For non-traded goods such as water, bathing water, where standards in one Member State do not impact on another a different justification for EU competence must be applied..
- However, standards for products which are traded need to be harmonised for the proper functioning of the single market.

### Future Opportunities and Challenges

- ✓ While the EU pushes the UK into action, it also should be recognised that the UK influences the EU, e.g. REACH or the ETS. The EU provides an opportunity for the UK to show international leadership. e.g. on air quality.
- ✓ Need to deliver to make REACH a success – initially it was a very controversial policy among industry and environmentalists but one procedure is better than 20+ and a strong EU regime would give the EU the strength to negotiate with the US, through economies of scale and the attraction of Europe as a surrogate global standard. The EU is underplaying its capacity to influence global standards.

- ✘ The challenge for industry is the cost of operating competitively in the EU and lack of investment incentives as compared to third countries. Over the last twenty years or so ownership of much of manufacturing has moved abroad and has resulted in increased competition for investment capital. In future, capital will go where the best returns are to be made. If costs rise in the UK to a level which makes the UK uncompetitive then that capital will not come here – and neither will the research and development
- ✘ In order to tackle the imbalance of competition, could industry come to international agreements and then be excluded from EU legislation that negatively affects competitiveness? There are mechanisms at WTO which can help address problems of competition.
- ✘ There is a lack of EU and UK impact assessments. Departments are siloed in the UK and EU; they don't look at the cumulative impact of legislation.
- ✓ Europe attracts international manufacturers who like to use EU standards as a surrogate. Many large companies, such as Microsoft and Cisco, will use EU targets and standards for their new car/aeroplane/product as a good way of making sure they do not fall foul of international requirements.
- ✓ Long term vs. short term – climate change and environment issues are long term, so the EU provides a better mechanism for making commitments with a long term interest. Most requirements look forward at least 10 years.
- ✘ A challenge will be how to prevent the pharmaceutical industry from going to China, India etc (most of production, research and development) where there are fewer environmental standards. If it's cheaper and there are less rigorous requirements then they will go elsewhere. Venture capital takes over.
- ✓ Energy security of supply – we have an opportunity to reduce the amount of energy we need to import and this would be better dealt at the EU level.
- ✘ Need flexibility on habitats and protected sites to deal with changing circumstances e.g. climate change might force the movement of species.
- ✘ GMOs – the Commission has used risk and science-based evidence in its handling, but in the Council of Ministers and the European Parliament the politics has skewed the result. The GM legislation is so out of date that it no longer applies to modern circumstances.
- ✘ It will be a challenge to enforce EU regulation with decreasing resources.
- ✘ Anti-EU sentiment could impact negatively on the environmental agenda.

### **London Three**

Emerging Themes: 6 August 2013

#### Attendees:

Aviation Environment Federation  
Confederation of UK Coal Producers  
Institute of Environmental Management & Assessment  
RenewableUK  
Royal Meteorological Society  
RWE npower  
Society of Chemical Industry  
Wedge Group Galvanizing Ltd

#### **The impact of EU competence**

- The EU provides significant benefits in terms of scale. It allows information to be shared and avoids duplication of research in different countries.
- EU targets provide long term certainty especially in the present political climate. Protection measures must however be balanced between providing flexibility for Member States (MS) and prescriptive requirements. e.g. the Environmental Impact Assessment Directive might be too prescriptive for smaller organisations.
- It can be difficult to pinpoint which areas need legislation that is prescriptive or flexible. For example, most of climate change adaptation would probably be best done at a local level, but there are aspects where an EU led approach would be better, e.g. with funding streams or to encourage international action.
- In the UK we have a strong planning regime, but there are conflicts with the Habitats Directive. The problem is arguably with implementation in the UK rather than the Directive itself, which does allow for flexibility.
- Having EU wide legislation can be a great advantage to companies working across MS. This is particularly the case for the construction industry. On major infrastructure projects, such as Crossrail, EU competence provides that multinational consortia are used to working to the same legislation and guidance.
- The UK's Red Tape Challenge was a very effective piece of work which demonstrated some of the economic benefits of legislative areas. Legislation is not always a burden, in the EU, legislation has driven innovation in areas such as vehicle and eco-design standards.
- The EU has had a significant and adverse impact on some sectors of UK industry. For the galvanising industry, many of which are SMEs and cater almost exclusively to the UK market, EU requirements are costly and burdensome without the benefits of the level playing field. For example, the Integrated Pollution Prevention and Control (IPPC) Directive and Industrial Emissions (IE) Directive. The UK previously had a significant forging and casting industry but much of this has been exported to other countries, such as Turkey, where costs are lower.
- There is not enough review of Best Available Techniques (BAT) guidance. It would arguably be better to have minimum standards, rather than a constant drive to improve and raise standards without analysis of the implications, cost and burdens of further legislation.

- It is important that the value, impact and cost of legislation is properly considered. Are marginal benefits actually worth the high cost? For example: in the galvanising sector the removal of particulates is carried out in accordance with the limits (15mg/cu.m) stated in the BREF notes. However, if lower emissions were required, this would require the use of filtration equipment at extremely high cost, but with an arguably low additional environmental benefit.
- Alternative, market-based instruments should be considered. It may be more effective to use fiscal measures such as taxation to control emissions. For example, a carbon consumption tax could be used instead of emission limit values (ELVs) to control and limit the use of fuel in the aviation sector. Prescriptive emission limits lead to an export of UK industry to third countries and the import of goods to the EU with a high carbon footprint.
- UK climate change and renewable targets are different to/higher than those in the EU. This causes problems for UK business. It is extremely unlikely that the UK will achieve its 80% reduction target.
- At present, the EU Emissions Trading System (ETS) is not in a very good state but the principle is sound and it has, in general, been successful. It is debatable whether a fiscal measure would have been more effective than the EU ETS. One issue is that it has been used to achieve two objectives: emission control and carbon price, and it was never designed to achieve the latter. Plus, without the EU ETS the UK would probably still have met its reduction targets.
- The Commission must be more joined up, with a balance between long term targets and specific short term targets for particular sectors, which drive change for the longer term goals. e.g. the success of vehicle emission standards.
- On environmental legislation, there can be no generalisation on flexibility vs. prescriptive requirements. Each area must be treated differently. e.g. a single standard for the IE Directive didn't work.
- Aviation is by nature a transboundary issue and EU competence is very important to provide equal standards across Europe.
- Of course, for those who do not agree that CO<sub>2</sub> is the cause of climate change, then there is little argument for EU competence to reduce emissions.

### **Future challenges and doing things differently**

- **Enlargement of the EU:** harder to negotiate agreement through EU processes with more MS. Plus newer MS will have differing levels of development which will affect their ability to bring about change.
- **EU ETS:** supporting the functioning of the ETS, with appropriate sanctions.
- **Reviewing legislation:** Is it achieving its original aims? We need to have independent studies to ensure that this has happened.
- **Burdens:** Could the UK Government's 'one in one out' policy work in the EU to reduce burdens to business?
- **Level playing field:** Defra and DECC need to engage more at an international level to encourage the implementation of global environmental standards. The Government should resource this and provide support for industry to explore international standards.

## Nature Protection and Biodiversity

19 July 2013

Attendees:

Anaerobic Digestion and Biogas Association  
British Marine Federation  
Essex & Suffolk Water  
National Farmers' Union  
RSPB  
Wildlife Trust

- Most attendees were content with the current balance of competence, although international standards would be preferential in many areas. As the international framework does not currently work in practice, it was argued that EU competence is the 'second best' option.

### Advantages of EU competence

- For the offshore wind farm industry, it is beneficial that the Habitats and Wild Birds (H&WB) Directives are the same across all MS, as this provides a level playing field. There is an issue surrounding common implementation across the EU, but that does not concern the balance of competence.
- There have been very positive benefits to the H&WB Directives which are over and above what could have been achieved unilaterally. e.g. cross border protection policy and species recovery: birds in Annex 1 have done far better than other populations.
- If a company is told that they must comply with EU or international legislation then they are more likely to comply.
- The Habitats Directive is flexible; there is a clause which allows breathing space to achieve ecological status if you outline what needs to be done to achieve it.
- If you accept the need for action on the environment and climate change then where does that competence lie? Were that competence not at EU level, the UK would have to act unilaterally. This would be very problematic for UK business as action would be taken differently in other Member States (MS). The only other option is to do nothing at all.
- The H&WB Directives are powerful and force industry to look for different resolutions and be inventive. They are an incentive to accommodate environmental concerns.
- The Habitats Directive is outcome-focused, but this is too often underplayed. For example, the great crested newts issue was a question of interpretation, it did not follow the meaning in the Directive (i.e. that protection refers to the species, not to the individual specimen). This could be because there was not enough

time to work out the guidance at a local level. The EU would do better to be clearer in the legislation.

### **Disadvantages of EU competence**

- Farmers and others are frustrated that enforcement of the H&WB Directives is strong in this country, while birds are shot in other MS en route to the UK. This is often anecdotal, but it feels that implementation is not working properly across the EU. The whole life cycle must be protected.
- Where protection is provided within the EU, it is often the case that a bird's breeding and migratory routes are outside of the EU. Protection should be an international competence i.e. the Bern Convention, but this is unfortunately insufficient.
- Compensatory habitats and coastal realignment are worthy aims, but we must be realistic about the limited space which is available.
- The precautionary principle is very burdensome. Directives provide protection and designated areas, but as time goes on the area impacted often expands to upstream, upwind, or to the impact of air pollution, e.g. water companies in East Anglia have an impact on water 10 miles away. If it is claimed that someone has had a negative impact it is extremely difficult to prove either way, so action must be undertaken without proof of its necessity.
- The Falmouth Docks Development and the protection of maerl<sup>1</sup> is a controversial case study which shows the impact of EU competence for habitat protection. Under the Habitats Directive, the development was not allowed as it would have involved the dredging of the harbour and damage to the maerl beds. Depending on your point of view, EU action either protected vital habitats that are important at a European level, or prevented a project which would have brought great economic benefits to the area.
- There are currently multiple Directives with conflicting aims in relation to the same piece of land, e.g. it is difficult to see how we will be able to increase food production by 50% in the next decade while compensating habitats. The Common Agricultural Policy (CAP) conflicts with nature goals and it is very difficult for farmers to achieve everything, e.g. different definitions on what constitutes 'permanent pasture'.
- There is no need for EU regulation on end of waste criteria for things such as organic waste which aren't cross border in nature. This has national protection at its heart so there is no need for EU level regulation. The UK already has a more developed market than the EU.
- EU Directives lack a mechanism to assess the costs of nature protection. We do not have a framework on which to base decisions to prioritise actions. This can result in spending a lot of resources in saving every single individual in a population of birds while lacking resources to protect more important biodiversity losses, e.g. the habitats those birds live in.

## **EU Processes**

- The EU Commission is siloed and some DGs are weaker than others. There are examples where one DG has encouraged incentives to drain land and another provided incentives not to do so.
- As requirements conflict, there are cases where you are 'damned if you do and damned if you don't', e.g. renewable energy targets vs. H&WB Directives. This is burdensome and costly and it is sometimes preferable to do nothing. Requirements must be more joined up.

## **Local or International level?**

- Not *all* action should be taken at an EU level, as many nature issues affect local communities. For example, upcoming biodiversity offsetting, which should involve strong local decision making.
- Where industry is global, international standards are preferable to EU competence. International action works well at the International Maritime Organisation (IMO). Marine leisure, shipping etc. is a global industry. Boats are manufactured in the UK but mostly exported. There have been positive hints of progress i.e. gambit in including aviation in the ETS in the hopes that the International Civil Aviation Organisation would come up with a similar program. Wherever possible, EU competence shouldn't overlap with UN action. On the other hand, environmentalists would argue that the marine industry has been very good at resisting change over the years and that EU competence has been the only hope for pushing change internationally.
- It must be reinforced that businesses are prepared to leave the UK/EU if it becomes more profitable to do business in third countries. This is the case with superyachts, which have been mostly bought up by Chinese companies – there is a real threat that they will move their business abroad if the cost of EU environmental legislation becomes too high.
- Globalisation – we now operate in an international market. Ideally standards would be implemented internationally to maintain a level playing field for business. However, although international competence is preferable, there is no court to check that international treaties are adhered to. Conversely, the European Court ensures implementation in the EU and the power of the 'stick' is essential. If the WTO were more environmentally minded, then there could be an argument for international action, but until then action at the EU level is our 'second best' option
- Natural resource accounting and the Natural Capital Committee is a great national system, but it would be even better at a European level.

## **Future**

- There is a need for a high level strategic overview on land management, how land is used, at an EU level. At the moment, there are conflicting pieces of



legislation. There is also a strange distinction between food and non-food crops, even though crops such as grass can be used for both.

- Environment banking is a future opportunity, and although it could be done at a national level, it might be easier to take it up if it were set at European level.
- Invasive alien species are a threat to the UK, but the majority of non-native species will be coming out of third countries, not the EU. The approach will therefore need to be international. The EU is a union of small players, but big buyers, so it can use the internal market to insist on international standards to prevent invasive species.
- EU environmental proposals don't have to go through assessments to examine the economic impact. By contrast, any economic legislation has to go through assessments to check that it is in line with sustainable development.
- Renewable energy sustainability criteria are not in place for other things, such as food growth. There is a gap there.
- Protected sites rely on climate patterns. As the climate changes, it might become impossible to protect a species in some areas. The Habitats Directive doesn't preclude the changing of a protection areas - Natura 2000 forms could be changed - however it is possible that national legislation does. SSSI designations might be more of a barrier than the EU. Changing SPAs would be slightly more difficult, but there is flexibility for SACs.

## **Northern Ireland (Hillsborough)**

24 July 2013

24 attendees representing:

AgriAD Ltd  
Belfast City Council  
Belfast Healthy Cities  
Colleges Northern Ireland  
Department of Agriculture and Rural Development in Northern Ireland  
Department of the Environment in Northern Ireland  
Department for Social Development in Northern Ireland  
Energia  
Linden Foods  
Moy Park  
Northern Ireland Environment Link  
Northern Ireland Food and Drink Association  
Northern Ireland Local Government Association  
Northern Ireland Science Park  
Omagh Council  
Queen's University  
Ulster Wildlife

## Advantages of EU competence

- Attendees were agreed that EU competence for the environment and climate change provided tangible benefits to Northern Ireland and the UK. The principal benefit outlined was the level playing field provided to allow for consistent improvements to the environment across the EU. There was consensus that EU competence for the environment and climate change was of overall benefit to Northern Ireland.
- EU competence offers a greater degree of environmental protection than national law as it comes from a higher level. It is more influential as there is a potential for national embarrassment and a threat of sanctions if legislation is not enacted. It is more difficult to find a way around EU legislation, such as the Habitats Directive, which means it affords a greater degree of protection than national law.
- The EU can enact changes that wouldn't work at a national level, such as the EU ETS. National efforts to control greenhouse gas would not work as they would negatively impact on competition.
- The EU has brought about change where local and national governments are more reluctant to act. Part III of the Waste and Contaminated Land (Northern Ireland) Order 1997 was enacted six years ago but has not yet commenced. The EU however, provides a driver, which successfully brings about change.
- There was consensus that the EU provided a constant, long-term strategy to manage the environment, which was less influenced by politics or personal whim. e.g. Irish reefs will need 50 years of conservation policy in order to recover. It was particularly felt that Northern Ireland had benefited from the UK and EU legislating on the environment, as the environment was not a strong political and public priority in Northern Ireland.
- It was agreed that the EU should provide an overarching framework, with flexibility at a local level, such as local tax policies to encourage greener activities. However, it was acknowledged that local change is impacted by political drivers. For example, there is no political will to introduce a congestion charge in Belfast, so this will not happen, while EU action to increase use of electrical vehicles will most likely see progress.
- Specific pieces of legislation were named as being advantageous to the UK, e.g. the Large Combustion Plant Directive and Habitats Directive. It was felt that without the latter, Northern Ireland would be unlikely to have protected areas and that the EU provided a means for NGOs to influence policy.
- Moreover, air quality, and as a consequence public health and lives, has significantly improved thanks to EU competence. There is also evidence of a link between improved air quality and higher GDP. UK recycling has also been invested in thanks to the EU.

- It is very difficult to find a counterfactual, but there can be no doubt that there was little environment or climate change policy in place before the UK entered the EU.
- It has been particularly beneficial when the UK has influenced and pushed legislation and improvements in the EU e.g. industrial pollution control and climate change targets.
- Finally, the EU also provides a framework to bring together knowledgeable experts on conservation and avoiding the loss of ecosystem services across the continent.
- EU targets are an important driver for improvements in MS plus they can lead to win-win situations, e.g. protecting Irish reefs is beneficial for fishermen that gain their livelihood from the reefs. Conservation policy does affect industry and economic growth. In addition, access to healthy fish has a positive impact on human health.
- EU legislation is outcome based and innovative, e.g. in the context of the Natura Integrated Project (NIP) and Prioritisation Action Frameworks (PAFs) the EU has thought of a framework to deliver in partnership through a new funding system. This framework allows different EU bodies and partners to work collaboratively towards common goals - to protect ecosystem services. Thanks to the new funding system, projects are funded through the NIP and do not have to apply for funding separately. This system also allows prioritising between objectives.

### **Disadvantages of EU competence**

- The cost to industry of enacting EU environmental legislation has been very high - industry and jobs have been lost as a result. Although, admittedly there are other factors that have contributed to this reduction in industry.
- Local action and national action has also improved the environment, so there is arguably no need for EU competence. Belfast introduced air quality legislation in the sixties even before the EU. The UK Climate Change Act goes beyond EU law and is at the forefront of international legislation. This is evidence that the UK can bring about positive change on its own. e.g. the UK's targets are higher than the EU's 20% reduction in greenhouse gases by 2020. Northern Ireland is about to exceed the renewable energy target, having reduced emissions from 900g per kw/hour to 415g per kw/h in 30 years.
- There remains competitive disadvantage across the EU. The EU municipal recycling target is for 50% recycling, with countries such as Austria and Germany at 62-3%, with the UK far behind. The costs to local government to reach this and future targets will be enormous. It is unfair that those Member States that need to improve the most will incur the highest costs.
- Some environmental targets were set before the economic downturn and there is no flexibility to recognise this. Plus, waste levels in general are decreasing

because of other factors, so although it appears that targets are not met, the situation is still improving. Higher targets of around 70% need to more evidence-based and impact assessments need to be improved.

- One size doesn't fit all. Some argue that the Nitrates Directive works contrary to Northern Ireland's traditional methods of farming, as it is better suited to stock kept indoors such as in mainland Europe. Others would argue that it has improved water quality and provided value to farmers through the use of slurry.
- EU legislation can be overly prescriptive. There is a need for Member State flexibility and regional flexibility to tailor policies to local issues. Inflexibility and/or complexity of legislation can lead to a failure to achieve the intended outcome.
- It was felt that many politicians, NGOs and local government institutions in Northern Ireland did not appreciate, or fully resource, the importance of interacting with the EU. There is a lack of knowledge of EU processes among the public and in the private sector, due to poor flow of information. This also limits the UK's ability to engage fully.
- The SEA Directive is particularly costly. A simplification of EU bureaucracy would be beneficial.
- The UK has been accused of gold-plating the Habitats Directive. However, it is difficult to assess this as legislation is so complicated that developers do not understand what the requirements are.
- In the EU there is a general reluctance to act even though people agree things should be changed, e.g. the EU Water Blueprint framework is not very ambitious.

### **Doing things differently**

- In an ideal world, climate change action would be best done at international level. However, because agreement cannot be reached at international level, EU level agreement is better than national level agreement.
- Competence at an international level is important for transboundary issues and migratory species.
- EU Directives eg. the National Emissions Ceilings Directive replicate (sometimes unnecessarily) the United Nations Economic Commission for Europe Treaties.
- There should be more review and feedback opportunities to improve EU legislation, e.g. every 5 years.
- Current EU legislation lacks a mechanism to take into account disproportionate costs, e.g. delivering clean water is very expensive in terms of both money and carbon emissions. A key question should be 'how much can we pay to have... e.g. an extra 5% of purity in water'?

- Legislation needs to be outcome focused to be implemented effectively at the local level and to be able to adapt to changing circumstances, e.g. Habitats Directive with climate change.
- GMO Directives are currently out of date as technology has developed enormously in the last decade. GMO legislation is based on risk assessments but subject to political preferences. There is a need for more flexibility to ensure emerging technology can be taken into account.
- There are extensive funds available for cross-border research and development, but of €333 million available, Northern Ireland received only €13 million. Northern Ireland needs to be more plugged into the EU.
- There was a general view that Northern Ireland was damaged by the lack of a UK lead within the EU. It was felt that while EU legislation was often quite straightforward, the UK Government lengthened the process and made the process more complicated at a local level of implementation.
- It was stated that often the UK position was only representative of the interests of Great Britain, with Northern Ireland misunderstood and forgotten – particularly by Defra. What is best for the UK isn't always best for Northern Ireland. NI is asked to participate, but no weight is given to their views.
- EU requirements to improve engine technology to reduce emissions didn't work as impact assessments were based on scenarios instead of real life cycles. Processes need to be improved.

Alternatives to legislation e.g. voluntary action or market led agreements:

- No suggestions. All groups agreed that voluntary action was not a practical alternative to legislation as it was optional and unenforceable.
- It was felt voluntary action only worked to help meet specific EU target, e.g. voluntary work done by the Ulster wildlife at (Strangford Lough) helped meet requirements set in annexes I and II of the Habitats Regulation.

### **Future Challenges and Opportunities**

- EU environmental standards are fairly static and Chinese standards are improving rapidly. China registers approximately 500,000 patents to the EU each year. If such trends continue then this will put the EU at a major disadvantage as we will no longer be able to export technology possibly leading to worse environmental outcomes.
- Despite the restrictions on planning, EU competence via directives like Habitats and international conventions like Ramsar, have huge benefits for protecting the environment.
- The various reporting cycles from EU Directives can be burdensome for NI government departments and it would be useful to have these standardised.

- Energy producing businesses have to comply with the EU Emissions Trading System, Carbon Reduction Commitment, and European Standards Organisations along with other internal targets. This can complicate their business model and deter innovation.

### **A border with another Member State - the impact of the Republic of Ireland**

- There have been some issues caused by different systems in Northern Ireland and the Republic of Ireland (RoI) e.g. the transfrontier shipment of toxic waste or fuel duty as a tax. Another example quoted was a perception that a different interpretation of EU rules on the spreading of slurry was being applied. It was suggested that these differences had led to a disparity in costs.
- It was agreed that although such issues of competition were sometimes problematic, the situation would be significantly worse without the level playing field afforded by the EU.
- There are many integrated projects across the two Member States, e.g. national parks and a wildlife service. Northern Ireland has shared waterbodies with the RoI. The Water Framework Directive has meant that they have co-designated special areas. The EU provides security that both states are offering the same level of protection to habitats. EU standards mean that both states are discussing the same rules and requirements; it allows easy consultation between neighbouring councils.
- Losing EU competence for the environment would have significant problems. Northern Ireland shares a 300km land border, including 3 international river basins (North-West international RBD, Shannon International RBD and Neagh-Bann International RBD) with the Republic of Ireland. This is an issue which only affects NI as GB has no land border with any other Member State.
- EU competence in the area of environment and climate change gives NI Government departments a common mandate by which to operate and quells any dispute between departments.
- In addition, there are many businesses in NI that also operate in the Republic of Ireland. Trade between the two counties is facilitated by the fact that both countries are part of the EU.

### **Scotland (Edinburgh)**

4 July 2013

Attendees:

Transform Scotland

Quality Meat Scotland  
Scottish Power  
Scottish Water  
The Environment Exchange  
Scotch Whisky Association  
Scottish Government  
Scotia Gas Network

1. Attendees agreed that EU competence should set strategic outcomes with MSs setting the direction at a national level. The Water Framework Directive, the Urban Waste Water Treatment Directive and the Marine Strategy Framework Directive were cited as three good examples of outcome-based legislation. Framework Directives give the UK flexibility in relation to implementation; the Urban Waste Water Treatment Directive took the quality of the UK's bathing waters from poor to exceptional.
2. Despite the positives of the Water Framework Directive, it was felt that there was a need for more flexibility e.g. in the text around drought. This is an issue that never applies to Scotland as they do not suffer drought, yet they have to comply as they are part of the UK.
3. A possible solution to having Directives that provide a better fit to UK needs may be to have more seconded UK experts to help EU Commission officials when drafting proposals. It was agreed that UK businesses should invest more resources to lobby the Commission so legislation better suits the needs of UK businesses. This is especially important for SMEs (via trade bodies like CBI) as a lot of burden on these businesses is due to "bad" legislation.
4. The EU could do more on some pieces of obsolete environmental legislation that are no longer fit for purpose. Legislation such as the Waste Electrical and Electronic Equipment Directive should be repealed.
5. The EU could act more by e.g. by providing a single definition of *waste*. This was felt by some to be important in order to create a level playing field, but they stressed that it should not be used as an excuse to transport problem waste elsewhere. Others expressed the view that an EU definition of waste can be too restrictive and prevent innovative handling of waste materials.
6. There was debate over the value in having an EU-level quality assurance (QA) standard to which UK standards could be pegged. It was the view of some that e.g. a UK standard set by the Food Standards Agency means little when trading with a company in China. However, if the FSA's standards are pegged to some specific EU-level QA standard it could make trade easier.
7. While there were concerns expressed about the slow rate of development of legislation at EU level, at times slow EU progress advantaged businesses, as

there was in effect a longer lead-in time to implement changes. It was generally agreed that longer term targets were better for business as they provided a longer lead in time to implement changes. Targets set in the Water Framework Directive were said to be a good as they also provide clarity for businesses. Setting targets with short deadlines provide little scope for innovation or sourcing sustainable solutions. When discussing the merits of monetary vs. voluntary targets it was felt that voluntary targets only work if there is 100% compliance. Where there are strong economic incentives voluntary agreements tend to work well.

8. When considering implementation of EU directives, there was some discussion around whether the UK 'gold plates' directives; the Habitats Directive was cited as an example. It was agreed among participants that the UK does not routinely gold plate when transposing/implementing EU Directives and Defra's research into this subject supports this view. It was felt that perhaps the fear of legal challenge and general risk aversion results in over enforcement. However, this is a separate issue and not the result of gold plating.
9. The Industrial Emissions Directive is a good example of where the UK benefits from EU competence. However, concern was expressed about the lack of consistency between regulators in the EU and this is an issue. Different standards being applied across MSs and indeed within the UK limit the effectiveness of the legislation.
10. When considering the trend of moving from Directives to Regulations participants felt that this was not necessarily a good thing. It was felt by some that Directives create more UK flexibility and some said a good EU Directive is better than a Regulation. Problems with Directives often arise during MSs transposition, leading to inconsistency. A solution could be to introduce more education, training and guidance for MSs on the transposition of Directives, rather than moving to more use of Regulations. However, others expressed the view that Regulations are often clearer and reduce the risk of differential interpretation across MSs which occurs when Directives are transposed. The REACH Regulation was cited as an example of a Regulation that is clear with easily understood outcomes which creates consistency in the market.
11. Participants discussed the draft proposal to revise the EIA Directive which is currently being negotiated, noting that Commission proposals are difficult to alter once published. The EIA Directive is a procedural cross-cutting Directive that has devolved and federal arrangements across MSs. Some attendees thought that the EIA Directive was an example that didn't allow for MS flexibility.
12. Ecosystem services was given as an example of where the UK is leading the way and the EU would like to do more.



13. Attendees discussed the fact that even without EU competence in the area of environment and climate change, there are several international conventions and protocols that would still apply e.g. the Gothenburg Protocol.

14. Discussions concluded with a plea for better made legislation as not all EU, or indeed UK legislation, provides the best solutions. Attendees said there is a need for the UK to invest more resources in lobbying the European Commission to ensure legislation meets UK needs. All participants agreed and stated that the balance of UK-EU competence in the area of environment and climate change is about right and this area of competence is indeed a good thing. It was also stated that without EU competence, the UK was unlikely to be doing as much as it currently is on the issues related to environment and climate change.

## **Waste and Resource Management**

19 July 2013

Attendees:

Anaerobic Digestion and Biogas Association  
Chartered Institution of Wastes Management  
Environmental Services Association  
Improvement and Efficiency South East  
Intellect  
Kent County Council  
Nabarro  
North London Waste Authority  
UK Environmental Law Association

### **Advantages of EU competence**

- Has EU legislation resulted in good environmental outcomes? The EU has a good record on this but some MS were doing good things before they joined the EU. Good waste management is dependent on good MS implementation of EU legislation. The main reason for waste collection was public health and the legislation still relates to that.
- A contributor pointed out that the waste management industry in England was very poor before EU legislation, showing low recycling rates and a large amount of waste going to landfill. From a UK local government perspective the EU framework on waste management has been very beneficial. However, waste management in the commercial and industrial sector is not as advanced as it is in the local government sector.
- EU legislation has driven investment in the UK's green sectors, e.g. recycling has increased dramatically.
- EU legislation has been beneficial in reducing the amount of waste going to landfill and also for air quality by reducing emissions from waste. This would have not happened without the EU push. Conversely, it has been argued that the reduction in the amount of waste going to landfill has also reduced the

UK's production of landfill gas. (Industry was against the Landfill Directive at the time because of the efficient operation of UK landfill sites which enabled the extraction of methane.)

- EU legislation in waste management avoids quick changes in the direction of policy development. This has provided more certainty and increased confidence for long term investment. This certainty would not exist if waste was dealt with at the national level as governments change policy direction quickly, e.g. investing in bins is risky as changes in government might require the frequency or method of waste collection to change. These changes are in turn costly for tax payers.
- EU legislation has helped the development of the market in the waste sector, which drives economic growth, but policies need to be flexible to take account of emerging trends.
- The waste management sector has to be grounded in the concept of the circular economy<sup>1</sup> as it is made up of local industries with trans-boundary issues which need to be dealt with at an EU or ideally international level. But there is no law regulating the circular economy and the market place is in its infancy. Being in the EU is a massive strength in terms of growing the market.
- 97% of rare materials of the world are controlled by China. These are used in the production of electronic products. The UK industry is heavily dependent on imports of rare materials, thus the relationship between the UK and China is crucial.
- None of the attendees at the workshop argued that waste policy should not be done at EU level.

### **Disadvantages of EU competence**

- There are examples of bad practice coming from the EU e.g. short lead-in times and lack of clarity needed to implement legislation. This was part of the reason for the fridge mountain scenario in 2002 when new legislation came in giving local government only two months to come up with solutions to manage the disposal of fridges.
- Transposition of EU Directives in MS can be an issue because of complex EU processes, political obstacles and different legal systems across MS.
- In the UK we are keen on transposing EU legislation in the best way even at the risk of being 'pedantic'.
- A key issue in the resource sector is the interpretation of EU legislation which has a negative effect on waste management. When EU legislation is not clear it is down to LAs to interpret it. E.g. the UK's interpretation of the Waste Framework Directive was to collect different materials separately (and a review confirmed that Defra's interpretation was correct). However, this was only decided after an internal debate on collection which was costly as local authorities had to pay consultants and lawyers to interpret the Waste Framework Directive. The same applies to the commercial sector.
- Most EU waste directives rely on local authority activity. LAs feel the burden of EU legislation more.

### **Doing things better**

- The UK needs to do more to analyse the flow of materials and product lifecycles, including how to shorten these cycles, e.g. to create a laptop in theory we would need to travel 49 times around the world. Consideration needs to be given at an international level on ways to shorten this. There is a poor understanding around the quality of materials and how to stimulate market response. However this is not a problem that pertains to EU legislation but UK understanding of and compliance with it. In the context of the PFI 2000, while other countries e.g. Germany and Holland had landfill bans since 2006, the UK is still discussing it.
- Given that waste management operates in a circular economy it would be beneficial to manage waste more jointly. However this depends on politics. Currently the structure of the management of waste across the UK is not cohesive. LAs are not joined up. The commercial sector collects waste through the private sector market. In addition since the UK's devolved administrations are left with a lot of discretion to develop policies there are significant differences in waste management systems between Scotland, Wales, and Northern Ireland.
- Trade in materials is a cross border matter and has to be regulated at the EU level. However (1) EU legislation sometimes clashes with existing MS regulations; (2) EU regulation is important but markets are different. This implies that at times EU legislation may be irrelevant for some areas e.g. the way organic material is recycled is very different across MS and it is difficult to merge EU regulations and MS arrangements that are already in place. Is EU action needed at all? Organic materials are not traded and therefore their regulation could be left to MS.
- From a business point of view there are accusations of gold plating of some waste legislation, but this has not been substantiated.
- A successful waste management system should be based on the balance between flexibility of legislation, i.e. leaving some discretion to LAs and MS, and consistency of application of legislation across the EU to ensure a level playing field for business.
- Waste policy and fiscal policy are interdependent and support each other. While waste policy comes from the EU, fiscal policy is a MS competence. Sometimes it happens that the flow of money does not support the flow of materials and it is challenging to match supply and demand efficiently and in a cost-effective way. Some countries for example have developed a better fiscal/waste fit. Do we really want the single market? If so it should be implemented with all sectors' policies instead of building the single market with a silo mentality. The single market could be the route to economic growth if we pursue it in a more comprehensive way.
- There is a strong need for harmonised principles across the EU. For example, we share energy across boundaries but we do not apply the same approach to rare materials. We trade around 360 tonnes of materials across the EU. We need a far better strategic understanding of the value of the materials we are handling. A single mobile phone has 47 different materials in it, many are rare materials, most of that is not being extracted in the UK or in the EU.
- The UK needs to engage earlier to feed in evidence and data to inform EU policy making process.

### **Use of evidence**

- How to define waste is crucial, e.g. (1) the definition of waste in the EU legislation changed in 2009 to include industrial waste; as a result of this change in definition the amount of waste produced in England doubled overnight; (2) The definition of municipal waste changed two years ago and landfill rates increased.
- Waste data needs to be improved - this is a national issue. Sometimes evidence is biased by policy, different classifications of data gives can determine the UK's assessment on its ability to meet the targets
- The Waste Incineration Directive was cited is a good example of EU legislation based on evidence, as well as on risk, ensuring that systems to prevent air pollution are put in place.
- There should be an "Office for Resource Management" as a means of pooling limited resources and support government departments in checking and producing high quality evidence.

### **Future challenges and opportunities**

- To make the UK resource efficient.
- To be able to compete with China by 2050.
- Uncertainty of the national position as a member of EU is the UK's biggest challenge.
- China is investing heavily in Africa, which has a lot of resources but is not extracting most of them because of political instability. Where is Europe in this strategic investment plan? A true single market would give the EU a strong position internationally.
- Risk of failure to deliver is a challenge, e.g. Tantalum is a rare material used to produce laptops. 67% of it comes from the Democratic Republic of Congo. If we could not get it, our reliance on electrical goods would be under threat.
- Water scarcity is a future challenge; a 2 kg laptop takes 2000 l of water to produce.
- The UK's carbon reduction commitment to reduce GHG by 80% by 2050 poses major challenges. The UK needs a strategy for the long-term.
- We need a more holistic approach to join up environmental, economic, and social objectives. Only by doing so will it be possible to manage waste more efficiently e.g. we could recycle heat and use it for the desalination of water.

### **Does anybody disagree/agree with any of the statements from the introductory workshops?**

*'Waste Framework Directive: having minimum standards poses a disadvantage for SMEs i.e. small composting plants. They cannot meet minimum standards in line with Directive'*

The aim of the WFD is to protect the environment. If SMEs are finding it difficult to meet standards, they should do things differently, e.g. change their production systems. Besides minimum standards are very important e.g. for organic waste treatment.

Waste should be referred to as 'waste resources and waste management resources' and there should be a focus on circular economy when dealing with waste starting from Government Departments, e.g. there should be a 'circular economy team'.

## **Water and Marine**

19 July 2013

Attendees:

Marine Management Organisation  
National Farmers Union  
British Marine Federation  
Wildlife Trust

### **How has EU competence for water and marine benefited or disadvantaged the EU/UK/your sector/business/the environment?**

- There was a general view that overall EU competence in the area of water and marine has been beneficial but it is hard to assess. This is because we do not know if the UK would have put in place similar legislation and standards or might have done things differently in the absence of EU competence. Notwithstanding this it was felt that EU legislation has been beneficial in the area of marine.
- There was a view around the inflexibility of the Habitats Directive specifically that it is difficult to change protected areas once they are designated even if the protected species had moved. It was suggested EU legislation should not be so rigid and that it should also be flexible enough to account for these changes.
- The Nitrates and Water Framework Directives were also cited as being examples of overly prescriptive legislation. For instance it was said that even if the necessary hydromorphic and ecological measures are put in place to improve a watercourse, that watercourse could still "fail" when it is assessed, despite the fact that the necessary adjustments have been made. The Directives do not take into consideration that it can take a long time for benefits to be realised.
- While the 2027 target set in the Water Framework Directive for good ecological status is positive, there is still little clarity on what "good ecological status" means.

### **To what extent is EU harmonisation of water and marine legislation necessary for the proper functioning of the single market? To what extent does it provide the right balance between protecting the environment and the wider UK economic interest?**

- One view suggested that EU legislation in this area could be a potential barrier to trade, for example the Nitrates Directive is seen by some as being too

prescriptive and costly to implement by UK business, although providing high protection.

- It was suggested that there should be longer lead in times so that Member States (and businesses) have time to implement changes required from new Directives and that more should be done to prepare them.

**Considering specific examples, do you think there are cases where Member States would be better served if action on Water and Marine was made at a national or international level?**

- It was suggested that UK legislation and our understanding of it in this area is more mature and developed than in other MSs.
- There is no one size fits all, therefore MSs should be allowed to opt out when national level competence in this area provides a better fit. It was felt that there should also be more robust evidence about what EU legislation is delivering.
- The marine and shipping industry is international and so should arguably have standards set at the International Maritime Organisation (IMO) rather than EU level. However, there was disagreement over whether IMO standards were sufficient for protecting the marine environment, which is arguably much further behind terrestrial standards. Plus, progress in getting agreement at the IMO can be slow.
- The Floods Directive is an example of legislation which doesn't fully apply to Great Britain - the UK has its own national legislation which goes further and is particularly aligned to our issues. The Directive provides no benefit to the UK but is costly to implement.

**What do you think is the biggest future challenge or opportunity on water and marine facing the UK? How can EU competence help or hinder in addressing it?**

- Climate change was raised as one of the biggest challenges. One view suggested that it will be very important in the future for competence in this area to be kept up to date and questioned whether the EU will be able to keep pace with change.
- It was suggested that EU derived legislation can often be UK inspired. There is an opportunity for the UK to continue to play an important role and have strong influence over the creation of EU legislation.

**Is EU legislation based on an assessment of risk and scientific evidence?**

- It was suggested that the cost of gathering scientific data for Environmental Impact Assessments on the marine environment can be very expensive which hinders a proper assessment of the risk when developing the legislation. It was

felt that it is easier and often cheaper to obtain data in the terrestrial environment compared to the marine environment.

- Eel legislation was cited as an example of legislation which focused on hazards rather than being risk-based. Equally, the Nitrates Directive is very prescriptive and not particularly risk-based.

### **Is EU legislation focused on outcomes (results)?**

- It was suggested that there are quite different views between Member States in terms of their preference for outcome based EU legislation. Larger Member States quite often do not need much assistance to deliver outcomes, whereas the smaller Member States often have fewer resources and therefore prefer more prescriptive legislation.

### **Wales (Cardiff)**

29 July 2013

Attendees:

Aberystwyth University  
Bat Conservation Trust  
Constructing Excellence in Wales  
Cynnal Cymru-Sustain Wales  
Dŵr Cymru Welsh Water  
Institute for Archaeologists  
National Assembly for Wales  
Panasonic  
Renewable UK Cymru  
RSPB  
Soil Association  
The Carbon Trust  
Welsh Government  
WWF

### **Advantages of EU competence**

- The EU provides a level playing field and sets out what is expected of public bodies.
- There is clear evidence that EU action has had a beneficial effect on environmental protection, for example: the Wild Birds Directive has helped to ensure greater protection that might not have happened otherwise. There are other examples such as water quality where standards set by the EU have been beneficial.
- The EU supports Wales' green growth agenda – Wales is the one of a few countries which has sustainability written into its constitution. EU policies on sustainability and resource efficiency support this agenda. Agreement of these policies at EU level, together with EU funding, is driving investment in sustainability projects. The EU provides reasonable stability outside of the politics of Westminster or Cardiff.

- Similarly the EU ETS has enabled Wales to retain jobs in energy intensive industries that might otherwise have been lost without the flexibility the market-based system provides.
- The existence of EU targets has provided long term certainty and this has encouraged investment – without which it is unlikely that 2020 targets will be met.
- Manufacturers like the commonality of laws across the EU. This allows international companies to introduce products easily to new markets in various Member States.
- Wales is not a global player, but being part of the EU gives Wales a louder voice. The EU has provided global leadership in emissions reductions which the UK would not have been able to achieve on its own.
- Being within the EU has enabled the UK to influence policy development. Norway has the highest level of compliance with EU legislation, including environmental legislation but it is not a Member State and has no means of influencing the drafting of legislation.
- The UK is recognised as a leader in climate science and being part of the EU has enabled it to have much greater influence than it might otherwise have done.
- Earlier water legislation provided fixed standards which were clear and which you either met or failed to meet. With the new framework directives, it is not so clear cut and there is less certainty for industry, although generally the outcome based-approach is sensible.

### **Disadvantages of EU competence**

- Not everything works well. The Habitats Directive has had significant benefits for some species but its interpretation is causing some difficulties. For some species such as bats, it has probably done more harm than good.
- Aluminium, steel and cement are the industries most likely to be affected by “carbon leakage” and international competition. Wales has lost its aluminium manufacturing plants and carbon pricing has been cited as a reason. The EU ETS is admirable, but the economic balance is delicate. There is a global price for these products and if costs are higher here as a result of environmental and other legislation then it distorts the market. Carbon-based tariffs could help redress this, but WTO rules currently wouldn't allow this.
- While EU competence for water has been generally very beneficial, some improvements are incredibly costly, both economically and environmentally. The EU does not always take into account the link between the environment and climate change, so revised standards require carbon intensive processes. e.g. fixed standards for effluent under the Urban Waste Water Directive.

### **Impact Assessments**

- Some evidence may be difficult to obtain; for example operators of wind farms may be reluctant to allow measurement of their impact on migrating birds in case the evidence is unfavourable.
- We need to be conscious that some research relied on in IAs is influenced by the companies who are financing it.
- For some areas the science is imprecise and still developing so it can be difficult to do reliable cost benefit analysis.



- It can be difficult to put a monetary value on environmental benefits.
- Identification and measurement of risk is difficult, for some things we have to take the precautionary approach.

### **Difficulties and challenges within the EU**

- Some regulations can have disproportionate effects and cover much wider scope of stakeholders than was ever intended; for example the Habitats Directive requires households to go through the same procedures as a major developer.
- However, exclusion of SMEs from requirements because of claims of disproportionate cost may not always be appropriate. SMEs are sometimes the worst culprits in the management of waste and need to be regulated in line with the polluter pays principle. They are also often in a better place to react quickly than bigger business.
- The time taken to develop and negotiate EU policy is much longer (especially with continued enlargement and co-decision) the amount of legislation is increasing but this is a feature of every statute book and the EU is not unique in this respect.
- Although originally a good thing that had raised standards, some aspects of legislation such as the Urban Waste Water Directive are now out of date. Revisions are needed but it is unlikely to happen.
- Sometimes obtaining the appropriate evidence can be difficult, for example from the energy perspective it was difficult to get the necessary evidence about electricity market reform.
- The original objective and purpose of policies may not always be reflected in their finally adopted form or different regulations are not joined up. The reduction of nitrates in water courses needs to be part of the Water Framework Directive and the emphasis should be on nutrient management and planning not just treating nitrates separately; in its present form the Nitrates Directive will not work.
- Concerns about the UK gold plating regulations may be an issue of enforcement rather than implementation, with the UK taking a more strict approach than other MS.
- An improved process at the EU level for revising and repealing legislation would be beneficial. An example could be sunset clauses, although this would take a long time with 28 separate Member States and the ordinary legislative procedure. It should also be noted that the Commission is relatively small; there is a need for better policy makers and experts at the EU level.

### **Prescriptive regulation or flexible standards – which is preferable?**

- There needs to be more flexibility in some of the legislation, for example the Habitats Directive. The Water Framework Directive (WFD) is an example of effective flexible legislation. The WFD encompasses everything relating to water, including in the case of Wales, pollution from abandoned mines. It then allows flexibility for Member States to set more stringent standards as appropriate.
- Fixed standards provide certainty, for example, the Bathing Water Directive has a pass or fail mark. This certainty can be better for business and encouraging investment.
- Flexible standards can mean that it is difficult to find an expert who can say what the legislation truly requires.

- The way in which Directives are drafted has led to ambiguities and clarification of terms and definitions used can sometimes only be made by the ECJ. This can lead to differing interpretation in Member States. Regulations provide more certainty.

### **International perspective**

- Being able to operate as a bloc has meant the EU has been able to drive action on climate change in a way that would not happen if the EU did not exist or was smaller.
- The size of the EU economy relative to the international economy is a strength. The EU could use access to its market as a carrot to bring about change, based on the carbon content of traded products.
- It is possible to have regulation at both the EU and international level – for example the RAMSAR Convention.
- Some standards, such as drinking water quality, are driven by the WHO and trickle down to the EU but the UK has imposed more stringent standards than those required by EU legislation.
- Regulation at the international level is important for migratory species – it may be pointless to regulate part of the habitat if there is no regulation in another part.
- International treaties will only work if all countries sign up to them, for example the UK and USA are not signatories to some maritime UNESCO conventions but other EU MS are.

### **Future Challenges and Doing things Differently**

- Availability of natural resources and resource use: this should include embedded carbon and water use. We should not simply hope that future innovation will solve current problems, e.g. there is still no alternative to asbestos disposal other than landfill.
- Energy efficiency and energy multipliers: photo-voltaics (PVs) may be expensive to produce and we need to assess the benefits over the whole life cycle including disposal.
- Movement of people and population increase: implications for resource use and infrastructure development.
- New products and technology: new products and technologies are emerging quickly and the EU needs to be able to respond to them.
- Recycling is a global market. There is currently a gap in capability in Wales between the producer of waste (e.g. plastic) and the user of the treated waste product (e.g. pellet) - the challenge is the intermediate processing which at the moment is often being done outside the EU. If we wish to have a circular economy, this gap needs to be filled.
- The historic environment is not covered by the EU and is not included in “good environmental status”. EU legislation would afford greater protection, so in this area more EU action would be welcomed.

### **Wales specific issues**

- Ministers in Westminster are not always aware of Welsh issues when negotiating regulations or do not pay enough attention to them. For example, water quality in Wales is adversely affected by pollution from mines.

- The framework provided by the EU Marine Strategy Framework Directive is very important and Wales welcomes that it is allowed to define its own marine protected areas within the UK remit.
- Wales is developing its own environmental legislation and would probably do this whether it was in or out of the EU.
- Without the longer-term framework provided by the EU, local political pressures tend to mean that standards and requirements would be more vulnerable to dilution. The EU provides a backstop.
- Like Norway, if the UK were to leave the EU we would probably still have to comply with many of the requirements but without the influence.
- Wales is a GMO-free zone.

## York

### Attendees:

BRE Global Limited  
 Food and Environment Research Agency  
 Kingston upon Hull City Council  
 Prospect  
 United Utilities  
 University of York

### Advantages of EU competence

- EU competence for environment and climate change expanded during the 80s-90s when the UK had a reputation as the so-called “dirty man of Europe”. Since then the UK has enormously improved its environmental standards. The UK Government at the time would not have been able to put in place the same kind of framework for protecting the environment without the EU push.
- EU competence in the area of ECC mitigates against the danger of a “race to the bottom” on environmental standards. However, the UK’s experience as an older industrial power means it has longstanding experience of legislation in areas such as air quality. Higher environmental standards may also act as a spur to innovation.
- The EU provides a longer-term perspective in facing environment and climate change issues, whereas MS are likely to prioritise short term economic objectives e.g. during times of economic recession or political instability.
- The EU Commission provides certainty to business on the direction of policy development as opposed to having 28 different MS regulating on environment and climate change separately.
- We need EU legislation on GMOs, which has provided a useful framework for risk assessment. GMOs are a commodity, they can be traded, and trading GMOs across the EU would not work if GMOs were regulated at the national level. Whether the framework works or not is another question.

- EU Directives on GMOs are flexible and outcome-focused, and leave MS with a lot of freedom to decide on GMO field trials on their territory. It is local political forces and in particular local NGOs that have stopped GMO field trials happening. Even if we had UK legislation on GMOs the same would have happened. Issues such as GMOs ultimately remain a political problem at all levels of governance.
- EU regulations on chemicals, pesticides, and GMOs provide a positive control. In the case of pesticides, for example, producers have to prove that the substances they use are safe. It is difficult to see how the UK could operate a pesticide assessment system in isolation. Without the EU, the UK would still be basing its regulations on other countries' regulatory frameworks (most likely the EU or US) as other countries do, e.g. Brazil is borrowing the US framework to regulate GMOs.
- The Urban Waste Water Treatment Directive has been good for the environment, but has the precautionary principle has pushed too far.
- A particular issue around green standards for buildings is how to measure impacts across the EU. There are no holistic assessment methods so individual national standards for the sustainability of buildings are not comparable. The EU is developing technical guidance to standardise the approach and set a basis for moving towards more consistency and comparable outcomes. In this the EU has been helpful.

#### Disadvantages of EU competence

- EU legislation on chemicals and GMOs first came into force in the 1990s: it is therefore fairly recent but differential implementation by MS has been a problem. The framework itself is good; the problem is how to implement it consistently across the EU. In addition, the UK's GMO activity has plummeted since the EU framework on GMOs has been in place.
- EU legislation on GMOs is currently outdated with respect to the definition of GMOs. GMOs have evolved over time due to technological progress and innovation and we are now stuck with very specific definitions in the Directive which means it can be difficult to decide whether a new technology is or is not a GMO. Current safety assessments are actually dealing with different technologies than the ones that were in place in the early 1990s. As a result there is uncertainty on where EU legislation applies and how to implement it. Nanotechnology and synthetic biology pose fundamental difficulties in terms of how they should be regulated.
- There is no consideration of economic development in legislation relating to pesticides or GMOs, and no cost-benefit analysis. There's a lack of consistency in different areas on the balance between economic growth and environmental protection. IAs are often done from a purely environmental perspective and do not take affordability into account. True sustainability is a balance of environmental, economic and social factors.
- The Water Framework Directive is flexible and outcome-focused but is constrained by more prescriptive requirements such as the Habitats Directive. There is no mechanism in those older Directives to take account of disproportionate costs. The shift to more outcome-focused legislation has to be right, but outcomes should not be hampered by adhering to rigid requirements. How much do you protect a species when that very act may be

to the detriment of other species? How the EU deals with that question is quite fundamental.

- EU legislation on GMOs and the Habitats Directive are examples of rigid and outdated EU legislation. With GMOs it is difficult to update legislation as there is a lot of uncertainty, e.g. after more than 20 years there is still little evidence of the environmental and health impacts of GMOs.
- EU policies can have a negative effect on business and in particular on SMEs, e.g. EU regulations on chemicals can impose heavy burdens on business.
- EU requirements and standards are constantly being raised without factoring in enough what the evidence tells us. There is a strong political pressure to constantly raise standards.
- EU processes can fail to decide on controversial issues because of the political cycle, e.g. on the EU-US trade deal we expect no decisions to be reached for the next two years because of coming elections.

### Doing things better

- Is policy based on scientific evidence? From the UK point of view, FSA and EFSA assessments are generally based on science and evidence, but there's political pressure to raise the bar (no race to the bottom). UK advisory committees do very good work in analysing the available evidence to back up decisions.
- EU legislation needs to take conflicting objectives into account, e.g. new technologies to deliver indoor air quality are linked with tradeoffs between environmental and health-related objectives. Improving indoor air quality can involve increasing GHG emissions and the carbon footprint of buildings from insulation.
- Prescriptive vs. flexible legislation and conflicting priorities, e.g. the Water Framework Directive - on the one hand it is outcome-focused and flexible enough to meet different MS needs and circumstances and works very well. On the other hand it is constrained by objectives set by other EU directives such as the Habitats Directive, which is very prescriptive. The Habitats Directive lacks a mechanism to assess disproportionate costs whereas the Water Framework Directive does take this into account. This can raise an issue of conflicting priorities as there can be disproportionate costs involved when protecting biodiversity. E.g. the blueprint for West Cumbria's future water supply is affected by the changing climate and our ever-increasing understanding of habitats and the needs of species. West Cumbria has suffered from water stress as available water in the area could not be used to protect a colony of freshwater mussels which require a certain level of water in River Ehen to survive. To decrease water stress in the area the alternative option was to ship water from elsewhere which would have been incredibly costly. The EU process as it is now stipulates that the environment has to be protected whatever the cost. However environmental objectives need to be achieved in an affordable way as tradeoffs are involved. There should be a change in EU processes for a better balance between environmental objectives and wider socio-economic factors.
- EU institutions should take costs into account when applying the precautionary principle, which can be disproportionate. E.g. the Water Framework Directive sets out 'strategies against pollution of water' which established a list of priority substances. These include some substances that

may present a risk to the environment. However it would cost £10 billion to remove these from water in accordance with the precautionary principle.

- Water has a strong local element as well as posing trans-boundary issues as there are negative externalities involved, e.g. priority substances will have a detrimental effect on everybody, but who should take action? The best would be to trap water pollution at source, e.g. by taxing chemical companies. However it is also crucial to stimulate businesses to innovate and find new solutions.
- National solutions to global issues cannot work in the long-term, i.e. there should be a global consensus to improve water quality.
- Legislation is developed in silos and is not joined up sufficiently. There are tradeoffs between different environmental objectives, e.g. delivering good bathing water means increasing our carbon footprint.
- Flexibility vs. level playing field: on one hand the 'one size fits all' approach is great for the single market; on the other hand, it is not always cost efficient, e.g. bathing water standards are more costly to manage in Northern European countries than the Mediterranean due to climatic differences which means that EU water legislation will raise water bills in the UK.
- Sometimes having the same target across all MS can be the right approach. The problem is to identify the best instruments to implement it effectively. There could be more thought given to targets and how they can be implemented effectively, e.g. we could have more bodies to recommend to business and government what instruments to put in place to deliver environmental objectives more effectively and with less costs for business.
- Once good instruments are identified they can work well over time, e.g. the landfill tax was a success and did not change over the years.
- Targets need to follow a framework for implementing EU legislation, e.g. with the Building Performance Directive, first we set the framework to categorise buildings on the basis of their energy performance (A to D) than we set the targets on the basis of which decisions are taken e.g. to demolish the buildings that do not meet the requirements.

#### Future challenges and opportunities

- How to regulate innovation at the EU level is a general issue and it applies to GMOs as well as to other areas e.g. nanotechnology and synthetic biology. It is also crucial that any new legislation allows innovation to occur. In this context the precautionary principle poses problems.
- The economic crisis and poor countries coming into the EU will push EU targets down.
- There is a need for a mutually beneficial relationship between economic growth and the environment at the EU and at the UK level.
- We need a better understanding of the interconnectedness of resource use, with possibly a minimum standard or targets set at EU level and implementation left to MS. The EU could enable implementation of targets e.g. through business, planning, tax, financial instruments. EU competence pushes MS towards higher targets, which stimulates innovation.
- Climate change will have an impact on EU legislation on buildings, invasive species, biodiversity, the environment, etc., e.g. the Habitats Directive will

have to change because of the impossibility of protecting certain species or controlling others. This will have different effects in each Member State.

- Can the Water Framework Directive build in effects of climate change? Where is the role of the EU in making a positive difference in this adaptation challenges? Some water related issues e.g. floods are a local problem and should be dealt with at the national or local level.
- There are tradeoffs between adaptation to climate change and protecting species which should be dealt with at an EU level.
- To tackle climate change we should make decisions about adaptation now to drive positive change and stimulate innovation. The 2020 Directive is very effective in this respect.

## **Appendix I: Questions**

### **Advantages and disadvantages**

What evidence is there that EU competence in the area of environment and/or climate change has:

Benefited the UK / your sector? Q1

Disadvantaged the UK / your sector? Q2

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

Considering specific examples, how might the national interest be better served if decisions:

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?) Q3

Currently made at another level were instead made at EU level? Q4

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

To what extent do you consider EU environmental standards necessary for the proper functioning of the internal market? Q5

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? Q6

### **Current legislation**

Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

Focused on outcomes (results)? Q7

Based on an assessment of risk and scientific evidence? Q8

### **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?) Q9



How far do you think the UK might benefit from the EU taking:

More action on the environment/climate change? Q10

Less action on the environment/climate change? Q11

Are there any alternative approaches the UK could take to the way it implements EU Directives on the environment and climate change? Q12

a. 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? Q13

b. How important is it for the UK to be part of "Team EU" at the UNFCCC? Q14

### **Future challenges and opportunities**

a. What future challenges or opportunities might we face on environmental protection and climate change? Q15

b. 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? Q16

c. What would be the costs and benefits to the UK of addressing these future challenges at an EU level? Q17

Anything else?

Are there any general points you wish to make which are not captured in any of the questions above? Q18

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