

A healthy environment for a good quality of life



Green 10 position paper on post-Brexit EU-UK collaboration in the field of environmental protection

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While there remains considerable uncertainty regarding the shape of the future EU-UK relationship post-Brexit, it is clear that the way in which environment and health issues are dealt with by both the UK and the EU after the withdrawal date can have serious impacts on citizens across Europe.

This paper sets out the position of the Green 10 on how it expects the ongoing negotiations on the future relationship to impact environmental protection and how to minimize the environmental risks these are expected to bring. We call on the EU and UK to agree during the Article 50 negotiations to:

- *Continue to work together to address transboundary environmental issues;*
- *Ensure legal stability during the negotiations and any transition;*
- *Make future market access conditional on the respect of the existing and future environmental laws, and the existence of an effective and transparent governance system;*
- *Maintain existing funding streams which support cross-border environmental projects.*

Please note that this paper should be read in conjunction with other relevant positions of the Green 10 and its members, as well as other civil society organisations, including the Greener UK group.

1. The importance of the environment in the EU-UK relationship

Sustainability has long been at the heart of European collaboration

As the environment does not stop at country borders, over the past 40 years the EU, with the UK as a member, has adopted a common legislative framework to **more effectively address cross-border environmental issues** important to citizens' health and well-being. Examples include:

- The conservation of migratory/wide-ranging species and the establishment of a coherent network of protected nature sites across the EU (the 'Natura 2000' network), resulting in an unprecedented increase in protected area coverage, including at sea, as a result of a common legally binding and enforceable EU-wide approach.
- The prevention of transboundary pollution affecting human health with the air quality and chemical frameworks, which have helped to reduce everyday exposure of citizens in many areas.
- The protection of our marine environment across Europe through the Marine Strategy Framework Directive (including in UK waters as part of the Greater North Sea and Celtic Seas) and our rivers, lakes, groundwater and coastal beaches through the Water Framework Directive.
- Climate action, enabling the EU as a whole to decouple economic growth from greenhouse gas emissions and making it a stronger actor in international climate negotiations.

These standards are not only positive for the protection of the environment, but are also a crucial pillar of any common market. They provide equivalent consumer and environmental protection irrespective of the origin of commodities, as well as a level playing field and fair competition for businesses and industry. Common standards and their centralised enforcement help minimise distortions in competition across the EU single market and avoid a 'race to the bottom'. Additionally, common or equivalent rules and standards for industry reduce administrative and compliance costs. For instance, it is much cheaper to produce one set of vehicles for 28 or more countries than follow 28 different sets of standards.

Moreover, the EU's environmental laws and related standards are a significant driver for sustainability across the globe. Due to the enormous market it represents, the EU is able to act as a global rule maker by setting production and product standards for any imported goods. The EU plays a leading role in shaping the international governance system that guides the further development of these rules.

The uncertain implications of the UK's exit for environmental protection

While there is considerable uncertainty regarding the nature of the future relationship between the UK and the EU, it is clear that **any environmental standards in the UK that are lower than those of the EU27 would have significant consequences for the EU.** It would directly and indirectly undermine the environmental protection within the EU27 and the 'level playing field' provided by environment and health rules governing the single market. For example:

- A lowering of nature protection standards in the UK would risk undermining the ecological coherence of the Natura 2000 network and threaten the conservation status of a range of species of European importance. At present, the UK has over 100 species and over 75 habitats of common interest, as listed under the EU's Nature Directives occur in the UK.
- A failure by the UK to meet its national commitments against air pollution under existing EU legislation, such as the National Emission Ceilings Directive means neighbouring countries will be negatively affected by UK pollution and the EU27 would consequently have to increase their own domestic efforts.
- No longer applying the REACH regulation on hazardous chemicals could encourage UK companies to produce or market products containing substances that are restricted or banned within the EU, reducing the level of health and environment protection in the UK. This could potentially also provide an accidental or clandestine route for the import of such substances into the EU market. In particular, this would be worrying regarding so-called substances of very high concern, which are being phased out under REACH within the EU/EEA.
- A potential disorderly departure of the UK from the EU Emissions Trading Scheme (ETS) poses the risk of increasing mitigation and carbon price uncertainties during the upcoming trading period. Should the UK leave the EU ETS, both parties need to ensure that the overall emission reductions are not undermined. This would mean that the EU would need to readjust its ETS cap accordingly and the UK would have to put in place additional measures to ensure it still meets its own reduction targets under the UK Climate Change Act.
- There are almost 100 fish stocks shared between the UK and EU. Failure to jointly manage these stocks would exacerbate their rapid depletion. Stock management must continue to be carried out jointly and based on sustainable and science-based catch limits.

As the examples above show, maintaining **a robust set of common and enforceable standards** in the UK and the EU would **enable both parties to tackle cross-border environmental challenges more effectively and help facilitate trade.**

2. Key requirements for an EU-UK agreement on future relationship

Continue to work together to address transboundary environmental issues and protect fundamental rights

Shared EU environmental frameworks, agreed with the UK as a member of the EU, have delivered considerable benefits **from an environmental and health perspective, as well as from the perspective of business and trade.** There is strong support too from citizens for continued Europe-wide action to maintain high environmental standards.

Moreover, regardless of the outcome of the ongoing negotiations, both the UK and the EU remain bound by their **shared commitments in relation to tackling biodiversity loss, pollution and climate change under multiple multilateral environmental agreements,** including the 2030 agenda for Sustainable Development and the Paris Agreement on climate change.

Continued policy alignment after the UK's departure will be vital to safeguard our shared natural heritage, deliver on the international environment agenda and guarantee long-term prosperity. As such, any EU-UK deal should include **an effective mechanism for enabling continued coordination** on environmental matters which ensures the autonomy of the EU27 legal system and its further development, as well as **a robust and enforceable commitment to the high environmental standards** (i.e. a no regression/roll-back clause) by both parties.

Ensure legal stability during the negotiations and transition

As long as the UK remains a member of the EU, or if there is a transition involving continued membership of the internal market, the UK must continue to be bound by all EU environmental laws along with all their obligations attached including implementation, enforcement and compliance controls. **It would be unacceptable to discontinue implementation, enforcement and compliance-checking of EU law during the period prior to the UK exit.**

It is vital that throughout the negotiations legal stability is retained and that neither the EU nor the UK slow down or reduce their environmental ambition and implementation, nor take decisions that could result in damage to the environment. Moreover, the EU institutions must ensure that UK exit negotiations do not have a chilling effect in terms of new legislative proposals to deal with environmental problems.

72% of UK respondents in the 2016 Eurobarometer on the future of Europe support more European-level decision-making to protect the environment.

Almost half (48%) say the EU best embodies respect for nature and the environment, alongside peace, freedom of opinion, social equality and solidarity, and tolerance and openness to others.

Make future market access conditional on the respect of the environmental laws

"[...] different nature protection rules [...] would compromise the achievement of a single market, and would involve more diverse legal and assessment regimes for business."¹

If the UK wishes to continue to have access to the single market after its departure, then the UK should be required to comply with **all existing and future EU environmental laws**. Existing laws were negotiated together with the UK and continue to be essential to effectively addressing transboundary environmental issues, to protect citizens' fundamental right to a clean environment and to maintaining a level playing field for all businesses operating in the single market. Compliance with future legislation, as well as amendments to the existing laws, should ensure at least an equivalent level of environmental protection after the UK exit. For example:

- Two-thirds of UK-caught seafood exports go to EU markets (worth €1.2 billion per year) – continued tariff-free or low-tariff access to these markets should be dependent on the UK retaining marine environmental protection and fisheries management rules that are at least as strong as those in the EU's Common Fisheries Policy.
- The recent fitness check of the EU's nature directives demonstrated the importance of environmental laws to the single market and highlighted their importance in creating a level playing field and planning certainty for business, as well as supporting the functioning of the internal market. This was in addition to the nature directives' purpose of biodiversity conservation and was despite the fact they are not covered by the EEA Agreement (e.g. as a result of trans-boundary air/water pollution and impacts on migratory species).
- Many EU laws are modified regularly to adapt to new technologies or other developments. For example REACH, which seeks to control and mitigate the risks of harmful chemicals to environment and health, continuously evolves through the adoption of implementing acts that ban or restrict certain chemicals or otherwise seek to increase chemical safety.

The EU should make the application of any existing and future EU environmental legislation a condition for access to the single market.² In the absence of such a requirement, there is a

¹ European Commission. (2016). Commission Staff Working Document – Fitness Check of the EU Nature Legislation (Birds and Habitats Directives). SWD (2016) 472 final.

clear risk of damage to the EU environment. Before the start of the negotiations in July 2017, the UK on several occasions threatened to change its economic model to one of low taxes and weak regulation. And although it remains to be seen whether this is indeed formal UK government policy, the fact that there are high expectations in this respect among some of the UK's leading Brexit supporter's means that this is a risk we should be mindful of. UK deregulation would change the rules by which UK and EU industry compete to the disadvantage of businesses in the EU²⁷. It would also be to the detriment of citizens and consumers who would become exposed to products and/or substances approved under more lax UK standards.

Ensure effective enforcement of the UK's environmental commitments

Both the European Commission and the Court of Justice of the European Union (CJEU) currently play **a critical role in overseeing and enforcing compliance with EU environmental legislation** and resolving disputes. In the absence of their functions, future UK compliance with the EU environmental laws **is far from guaranteed.**

If the UK wishes to retain access to the single market, then the **jurisdiction of CJEU should continue to ensure, either directly or indirectly, that standards are applied in a uniform and consistent way**, noting also that there are a range of open EU infringement proceedings against the UK on environmental matters. Further consideration is required on how to achieve this through appropriate dispute resolution mechanisms and significant improvements to enforcement and access to justice within the UK. Ensuring compliance with an ambitious body of environmental legislation needs to respect the constitutional limits set by the EU Treaties. These give considerable and exclusive powers to the EU courts in order to ensure a uniform and consistent application of EU law. This will need to be considered when negotiating different options to ensure that this function of the EU court system is not undermined.

In addition to these constraints under the EU Treaties, any option under consideration should also meet the following requirements:

- High level of transparency that ensures effective scrutiny of decisions taken by authorities;
- An effective independent monitoring and enforcement mechanism with adequately resourced enforcement authorities, complaint mechanisms for NGOs and individuals and powers to open inquiries;
- Access to justice for individuals and NGOs as required under the Aarhus Convention;
- A range of remedies for breaches of the agreement, depending on the seriousness of the breach.

The concerns related to enforcement listed above have recently been examined in a research paper by the Institute on European Environmental Policy (IEEP) and Client Earth, commissioned by WWF UK and RSPB.³

Moreover, as membership of the European agencies is not limited to EU Member States, the UK should remain part of all relevant EU agencies (e.g. European Environment Agency⁴) to ensure a smooth transition and future relationship between the EU and the UK. In certain cases, for example the chemicals agency ECHA, the UK should only retain membership if it has committed to remaining within the EU system (REACH in this case), in line with EEA members.

Maintain existing funding streams which support cross-border environmental projects

The EU has committed to fully align the EU budget with the Agenda 2030 for Sustainable Development. Practically speaking this means that the UK's exit from the EU **must not result in a**

² Throughout this paper when we are talking about 'access to the single market' we are referring to the level of access that an EU member state has as opposed to a third country where the level of access is typically governed by a trade deal or WTO rules.

³ Nesbit M, Ankersmit L, Friel A and Colson A: Ensuring compliance with environmental obligations through a future UK-EU relationship. IEEP, London 2017

⁴ The European Environment Agency currently counts 33 members, along with 6 cooperating countries. Membership is comprised of EU Member States, along with Iceland, Lichtenstein, Norway, Switzerland and Turkey. Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia have applied for membership and are currently already cooperating with the EEA.

reduction of funding for sustainable development. Vital investments in areas such as environmental health and climate change action across the EU must be kept intact and increased where necessary. Similarly, **the UK, as signatory to the Agenda 2030, should ensure that its national investments in sustainable development continue and are expanded.**

In order to enable effective transboundary conservation action, we call for **existing EU funding streams, such as the LIFE programme, which support cross-border environmental projects to remain open to UK applications** as long as appropriate contributions from the UK are provided. Such projects are critical to the effective conservation of species that move across borders. The current LIFE programme already allows for participation of third countries provided certain criteria are met (e.g. by being a member of the European Environmental Agency).

3. Safeguarding the environment under a potential EU-UK free trade agreement

From an environmental perspective, a requirement for continued UK alignment with all current and future EU environmental legislation remains the most attractive model for the future EU-UK economic relationship and is essential if the UK wishes to secure full access to the single market (as set out in Section 2 above).

However, based on the UK's stated position, it appears increasingly likely that this future relationship will take the form of a free trade agreement, meaning that the UK will enjoy significantly less market access than is currently the case.⁵

In order to minimise the environmental risks associated with this scenario, any such agreement would need to contain robust environmental safeguards so as to ensure a 'level playing field' in environmental matters⁶ and to protect against the transboundary environmental impacts that could arise from a significant weakening of environmental delivery in either jurisdiction.

Given the UK's size, geographic proximity and high level of existing integration with the EU, it would need to include a set of safeguards that go beyond the environmental provisions typically included in the EU's free trade agreements.

For example, it would need to include, amongst other safeguards:

- a **strengthened and fully enforceable non-regression clause** encompassing the full set of EU environmental rules currently covering the UK as an existing EU Member State, taking into account the current high-level of integration;
- a **set of binding and enforceable environmental commitments aligned with EU and international standards and principles** (e.g. the precautionary and polluter pays principles) across all environmental policy areas with **any flexibility for the UK carefully linked to its level of market access** and based on a robust environmental and economic assessment;
- an **obligation on the UK to establish enhanced domestic environmental governance arrangements** (i.e. new independent domestic institutions tasked with oversight and enforcement of environmental rules, a strengthened role for individuals and public interest groups in challenging failures in implementation, affordable access to justice, adequate and effective remedies etc.); and,
- a **robust dispute resolution mechanism covering the environment-related provisions of the agreement** that includes an effective role for citizens and NGOs in monitoring compliance and highlighting possible breaches and provides for effective legally binding decisions and tools to ensure compliance.

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⁵ Based on the UK's current red lines, the EU has made it clear that the *"only remaining possible model"* for the future EU-UK economic relationship is a free trade agreement and that such an agreement *"cannot offer the same benefits as membership and cannot amount to participation in the single market or parts thereof."*

⁶ The European Council on 23 March 2018 adopted guidelines that underline the need for *"robust guarantees which ensure a level playing field."*

