



# **Brexit and Environmental Law**

**The UK and European Cooperation Bodies**

January 2018

The UK Environmental Law Association is the foremost body of environmental lawyers in the UK. UKELA aims to promote better law for the environment and to improve understanding and awareness of environmental law. UKELA is composed of 1,400 academics, barristers, solicitors, consultants, and judges involved in the practice, study and formulation of environmental law across England, Scotland, Wales and Northern Ireland.

UKELA remained neutral on the Brexit Referendum. In order to ensure regulatory stability and continued environmental protection UKELA considers it imperative that the UK's current environmental legislation is preserved pending proper review, and full and open consultation on options for change. UKELA's full position on Brexit can be found at [www.ukela.org/ukelaposition](http://www.ukela.org/ukelaposition).

UKELA's Brexit Task Force was established in September 2016 to advise on all matters relating to and arising from the UK's decision to leave the European Union insofar as this impacts environmental law, practice and enforcement in the UK. The Task Force has been examining the legal and technical implications of separating our domestic environmental laws from the European Union and the means by which a smooth transition can be achieved. With the assistance of UKELA's specialist working parties the Task Force aims to inform the debate on the effect of withdrawal from the EU, and draw attention to potential problems which may arise.

**The UKELA Brexit Briefing Papers have been produced under the guidance and approval of UKELA's Brexit Task Force chaired by Andrew Bryce and Professor Richard Macrory, and with input from relevant UKELA Working Parties and individuals. They do not necessarily and are not intended to represent the views and opinions of all UKELA members.**

**This report is one of a series to be published by UKELA on the implications of Brexit for environmental law.**

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- **Brexit and Environmental Law: Exit from the Euratom Treaty and its Environmental Implications**
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# Executive summary

This report examines the implications of Brexit on the UK's future involvement in a range of specialist cooperation bodies, networks and agencies relevant to environmental law. It forms part of a wider analysis of environmental governance after Brexit which UKELA has undertaken in the *Brexit and Environmental Law* series.

The functions performed by the European bodies which the UK currently participates in vary greatly. Some bodies are informally constituted, and facilitate cooperation, policy exchange and best practice; others are creations of specific legislative programmes, tasked with development, implementation and enforcement of environmental law across Europe. This paper analyses the eighteen bodies and networks of greatest importance to environmental law.

This report considers three key questions. First, as a non-EU Member State, will the UK be legally permitted to continue participate in each of these bodies as a full member, an associate member or as an observer? Second, what would the benefits be for the UK to continue to participate in each of these bodies? Third, if UK participation is not possible under current legislation what functions would the UK be losing in terms of environmental governance? The full findings in relation to each body are set out in Annex 1.

UKELA has used this information to prioritise the importance of continued participation in each environmental body after Brexit. Highest priority is given to three organisations: the European Environment Agency, the European Chemicals Agency (ECHA) and the Seville Process. The second tier of importance includes a broader range of organisations, including the European Network for the Implementation and Enforcement of Environmental Law (IMPEL), the European Food Safety Authority (EFSA), ENVI CrimeNet (ECN), the European Nuclear Safety Regulators' Group (ENSREG), and the European Community Urgent Radiological Information Exchange (ECURIE).

A number of themes emerging from this analysis are explored in more detail in the report including:

- the impact of ongoing uncertainty resulting from negotiations with the EU on the terms of withdrawal and future relationship. At present it is unclear whether the UK will continue to implement the relevant *acquis* or align with specific areas of European environmental policy, some of which form a precondition for future participation in bodies as a non-Member State;
  - the possibility that the UK may be able to regain membership of certain bodies if it negotiates continued membership of the European Economic Area, or participation in the European Neighbourhood Partnership;
  - the existence of possible barriers to continued UK involvement in bodies, such as accepting even limited jurisdiction of the CJEU in resolving disputes relating to membership of a body, and the possibility of participating in bodies without voting rights; and
  - the interaction between participation in environmental bodies and EU funding streams. LIFE is the only EU fund dedicated to the environment, but other funding streams relevant to the environment have been identified which are 'mainstreamed' into other funds within the EU budget, notably the Structural and Cohesion Funds. Further detail on each of these funding streams is set out in Annex 2 of this report.
- The report ends by suggesting an order in which participation in each body should be addressed, based on weighing the relative importance of each body against the barriers (or lack thereof) to continued participation. The conclusions are that there are:
- four environmental bodies which the UK can continue to participate in after Brexit without amendment to underpinning legislation: the European Environment Agency, EFSA, ENPE and the EEAC. It is recognised that acceptance of the relevant *acquis* and limited acceptance of CJEU jurisdiction would be required for the European Environment Agency and the EFSA;
  - two environmental bodies which the UK would not be able to participate in as a third country under current rules, but where amendment to those regulations should not be a substantial obstacle: IMPEL and EUFJE;
  - one maritime safety body which the UK can satisfactorily seek observer status in: EMSA;
  - two nuclear bodies which the UK can retain observer status in, but that nevertheless full membership should be negotiated: ENSREG and EURDEP;

- eight environmental bodies which the UK cannot retain membership of as a third country, and where amendment to the underpinning rules will not be straightforward. Of these there are:
  - three which we consider to be of the greatest importance, and should therefore be prioritised: ECHA, the Seville Process and ECURIE;
  - two which we consider to be less urgent: WFD CIS and MSFD CIS; and
  - three bodies where an accurate assessment of their priority level cannot be made because their importance for post-Brexit environmental governance hinges on the UK's future relationship with the relevant EU regimes: EFCA, ESA, and the FACs; and
- one body for which we could not obtain the rules of membership: ECN.

# List of Acronyms

<b>BATs</b>	Best Available Techniques	<b>ETCs</b>	European Topic Centres
<b>BPC</b>	Biocidal Products Committee (ECHA)	<b>EUFJE</b>	European Union Forum of Judges for the Environment
<b>BREFs</b>	BAT Reference Documents	<b>EURDEP</b>	The European Radiological Data Exchange Platform
<b>CAP</b>	Common Agricultural Policy	<b>EUSF</b>	European Union Solidarity Fund
<b>CF</b>	Cohesion Fund	<b>FACs</b>	Fisheries Advisory Councils
<b>CFP</b>	Common Fisheries Policy	<b>GES</b>	Good Environmental Status
<b>CIRCABC</b>	Communication and Information Resource Centre for Administrations, Businesses and Citizens	<b>IED</b>	Industrial Emissions Directive (formerly the IPPC Directive)
<b>CJEU</b>	Court of Justice of the European Union	<b>IMPEL</b>	European Network for the Implementation and Enforcement of Environmental Law
<b>CLP</b>	Classification, Labelling and Packaging Regulation	<b>IPPC</b>	Integrated Pollution Prevention and Control Directive
<b>COSME</b>	Competitiveness of Enterprises and small and medium-sized enterprises	<b>IRMIS</b>	International Radiation Monitoring Information System
<b>DBEIS</b>	Department for Business, Energy and Industrial Strategy	<b>IUU</b>	Illegal, unreported and unregulated fishing
<b>Defra</b>	Department for Environment, Food and Rural Affairs	<b>LCP</b>	Large Combustion Plants Directive
<b>DExEU</b>	Department for Exiting the European Union	<b>LDAC</b>	Long Distance Fleet Advisory Council
<b>EA</b>	Environment Agency	<b>MB</b>	Management Board (ECHA)
<b>EAFRD</b>	European Agricultural Fund for Rural Development	<b>MOU</b>	Memorandum of Understanding
<b>ECHA</b>	European Chemicals Agency	<b>MS</b>	Member State
<b>ECN</b>	ENVI CrimeNet	<b>MSC</b>	Member State Committee (ECHA)
<b>ECURIE</b>	European Community Urgent Radiological Information Exchange	<b>MSCG</b>	Marine Strategy Co-ordination Group (MSFD CIS)
<b>EEA</b>	European Environment Agency	<b>MSFD</b>	Marine Strategy Framework Directive
<b>EEA</b>	European Economic Area	<b>MSFD CIS</b>	Marine Strategy Framework Directive Common Implementation Strategy
<b>EEAC</b>	European Environmental and Sustainable Development Advisory Councils Network	<b>NFPs</b>	National Focal Points
<b>EFCA</b>	European Fisheries Control Agency	<b>NIEA</b>	Northern Ireland Environment Agency
<b>EFEH</b>	European Federation of Environmental Health	<b>NRCs</b>	National Reference Centres
<b>EFSA</b>	European Food Safety Authority	<b>NRW</b>	Natural Resources Wales
<b>EFTA</b>	European Free Trade Area	<b>NSAC</b>	North Sea Advisory Council
<b>EIA</b>	Environmental Impact Assessment	<b>NWWAC</b>	North-Western Waters Advisory Council
<b>Eionet</b>	European environment information and observation network	<b>PAC</b>	Pegalic Advisory Council
<b>EMFF</b>	European Maritime and Fisheries Fund	<b>PIC</b>	Prior Informed Consent Regulation
<b>EMSA</b>	European Maritime Safety Agency	<b>RAC</b>	Committee for Risk Assessment (ECHA)
<b>ENAC</b>	Early Notification and Assistance in the case of a nuclear accident or radiological emergency	<b>RASFF</b>	Rapid Alert System for Food and Feed
<b>ENFORCE</b>	Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic	<b>REACH</b>	Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation
<b>ENP</b>	European Neighbourhood Policy	<b>SEA</b>	Strategic Environmental Assessment
<b>ENPE</b>	European Network of Prosecutors for the Environment	<b>SEAC</b>	Committee for Socio-economic Analysis (ECHA)
<b>ENSREG</b>	European Nuclear Safety Regulators' Group	<b>SEPA</b>	Scottish Environment Protection Agency
<b>ERDF</b>	European Regional Development Fund	<b>SVHC</b>	Substances of Very High Concern
<b>ESA</b>	Euratom Supply Agency	<b>TFS</b>	Trans-frontier Shipping
<b>ESF</b>	European Social Fund	<b>TWG</b>	Technical Working Group (Seville Process)
<b>ESI</b>	European Structural and Investment fund	<b>WFD</b>	Water Framework Directive
		<b>WFD CIS</b>	Water Framework Directive Common Implementation Strategy
		<b>WID</b>	Waste Incineration Directive



# Brexit and Environmental Law: the UK and European Cooperation Bodies

## Introduction

- 1 This paper examines the implications of Brexit on the UK's future involvement in a range of specialist European cooperation bodies, networks and agencies which facilitate cooperation, policy exchange and development in the environmental field. UKELA was neutral on the Brexit referendum<sup>1</sup>, and this paper forms part of a wider analysis of environmental governance after Brexit and the gaps which may emerge in these systems.<sup>2</sup>
- 2 The functions performed by the EU environmental bodies studied vary greatly. Some bodies are actively involved in the formation, implementation and enforcement of EU environmental law. These range from well-known bodies with a general scope, such as the European Environment Agency, to very specific and lesser-known bodies, such as the Marine Strategy Framework Directive Common Implementation Strategy (MSFD CIS). Other bodies provide more informal advice or facilitate knowledge sharing, such as the European Environmental Advisory Councils (EEAC). Some are institutions set up under EU legislation either expressly (such as the European Environment Agency) or as a direct consequence of the legislation in question (such as the Seville Process for industrial emissions standards). We have also found examples of bodies and networks which have developed much more informally – not as a result of the initiative of the European Commission or Member State governments, but because people and groups working in the environmental field have found it useful to have a forum for exchanging views and experience (examples include the European Association of Prosecutors for the Environment, ENPE). We have included in this report such bodies where they largely consist of public officials or organisations. There are a range of other European networks of environmental NGOs (such as the European Environmental Bureau) and trade associations but these are not covered in this report.
- 3 We have examined 18 bodies or networks. 13 of these are established under EU legislation, while the remaining 5 are networks or bodies governed by their own rules or constitutions. After the UK withdraws from the EU there are three key questions concerning such bodies and networks. First, as a non-EU Member State, is UK participation legally permitted, either as a full member, an associate member, or as an observer? This depends on the terms of the legislation establishing such bodies or their articles of association. Second, if participation is possible, should the UK or UK bodies continue to participate in such bodies? There may be a tangible benefit from continued participation, even if there is regulatory divergence from the EU, for example where a body facilitates crucial information sharing and know-how. Third, if UK participation is not currently possible, are the benefit of continued participation such that this should be a priority for the Government? In some areas negotiating the rule change that would allow for continued UK participation may be mutually beneficial, both for the UK and our European partners.<sup>3</sup> Importantly, some of these bodies carry out work that may have a continuing influence on our domestic environmental regulation after Brexit, for example if the terms of withdrawal or of a trade agreement require UK rules to converge with EU rules.<sup>4</sup> Answering the second and third questions posed above is a matter of judgment, and views may differ. We have nevertheless indicated in the conclusion to this paper our view and undertaken a ranking in terms of priority, based on consultation with experts within UKELA.
- 4 As part of this study we have also looked at the various EU financial initiatives for funding in the environmental field. It is uncertain whether, post-Brexit, the UK will remain eligible to access to these funding streams. Factors such as the conditions attached to these funding initiatives and the rules underpinning these funds need to be considered.
- 5 Two annexes accompany this report. Annex 1 summarises each body's core activities and the potential benefits of continued membership after Brexit. The rules that currently govern participation in each body are set out, including whether these would allow continued UK participation after Brexit (whether as a full member, observer status or in some other capacity). If the rules do not currently allow UK-participation, we consider what steps might be needed to enable continued UK participation, distinguishing where amendments would need to be made to EU legislation from where changes would need to be made to more informal documents. In doing so

we have consider the viability of securing these changes. We also considered other conditions of membership, such as financial contributions, alignment with European legislation, and requiring the jurisdiction of the Court of Justice of the European Union (CJEU).

- Annex 2 addresses EU funding streams concerning the environment. The relevance each funding stream has for the environment is addressed in the first column. The rules that currently govern participation in each funding stream, and the possibility of continued UK participation, are then set out.

## Background

- The UK's departure from specialist EU bodies has been described as "a Brexit loss nobody's talking about".<sup>5</sup> This is still largely the case. Although there have been some comments on the issue, the impact of Brexit on the UK's membership of EU agencies and cooperation bodies has not attracted the level of debate that other aspects of Brexit have.<sup>6</sup>
- The Government has maintained a non-committal, but consistently public position about the UK's future relationship with EU bodies. The February 2017 White Paper said that:

*There are a number of EU agencies [...] which have been established to support EU Member States and their citizens. These can be responsible for enforcing particular regulatory regimes, or for pooling knowledge and information sharing. As part of exit negotiations the Government will discuss with the EU and Member States our future status and arrangements with regard to these agencies.*<sup>7</sup>

- A spokesperson for DExEU has similarly said that:

*The UK is leaving the EU and will be ready for all outcomes of negotiations. There are a number of EU agencies which enforce particular regulatory regimes, or facilitate information sharing. As part of exit negotiations, the government will discuss with the EU and member states the UK's future status and arrangements with regard to these agencies, and will consider all practical options.*<sup>8</sup>

- Specific questions have been asked by members of both Houses of Parliament about the future relationship of the UK to EU bodies, both in general and specifically in relation to the environment, however the Government's response to date has been consistently non-committal.<sup>9</sup>
- There has been some discussion of the impact of Brexit outside Parliament, in relation to specific fields. UKELA's paper on the environmental implications of leaving the Euratom Treaty drew attention to the "need to consider non-member engagement with ECURIE [the European Community Urgent Radiological Information Exchange]" and questioned "whether the UK could continue as a member of [ENSREG] European Nuclear Safety Regulators' Group".<sup>10</sup> Similarly, the issue was considered in relation to the European Chemicals Agency by the Environmental Audit Committee in their inquiry in to The Future of Chemicals Regulation after the EU Referendum. Their short report did not reach any positive solutions, stating only that "[e]stablishing a fully stand-alone system of chemicals regulation for the UK is likely to be expensive for both the taxpayer and for industry".<sup>11</sup> Future participation in fisheries related bodies was also considered by the House of Lords European Union Committee in their report on *Brexit: Fisheries*.<sup>12</sup>
- We have found three systematic analyses of European bodies. The first is a highly-partisan polemic which reached unjustified and unevicenced conclusions.<sup>13</sup> The second is a well-researched report by the former high-ranking British diplomats and civil servants which, while thorough, focuses on EU Single Market regulatory agencies.<sup>14</sup>
- The third is an authoritative analysis by the House of Commons Library.<sup>15</sup> This represents the most comprehensive legal discussion of EU Agencies and bodies published to-date. The paper raises the question of the UK's membership of (or future participation) in EU agencies, either as observers or participants, noting the various routes through which the UK could seek 'observer status' in EU bodies. It explores the possibility of continued UK participation if it were an EFTA state, a European Neighbourhood Country, or if it concluded an international agreement with the EU.<sup>16</sup> In the latter category the paper suggests that: "Participation might be based on an administrative arrangement or a memorandum of cooperation between the EU or the EU agency – there are legal questions about the power of the agencies themselves to conclude agreements of this kind - and the UK".<sup>17</sup> The authors also note that the founding regulations of some bodies preclude the option of third-party state participation; others may allow for participating without voting rights. Conditions of participation may include contributing to the agency's budget and accepting the jurisdiction of the CJEU.

14 This study is intended to complement the House of Commons Library's analysis, expanding it to cover a broader range of bodies in the environmental field, including informal bodies and networks. We aim to emulate their attention to producing objective analysis. We have elaborated further on the benefits of continued participation in each body; expanded on the possible obstacles to future participation; and provide a more detailed explanation of the possible legal basis for the UK's continued participations. However we have departed from the Library's style by positing a subjective, but informed, view on which bodies UKELA believes that the UK should endeavour to remain part of.



# Observations

## Interaction with withdrawal and trade negotiations

- 15 As the Government has highlighted,<sup>18</sup> the nature of any eventual withdrawal or trade agreement with the EU will have a significant bearing on which bodies the UK can continue to participate in. These agreements will impact the desirability of continued participation European bodies, the benefits of this participation will bring, and the legal basis on which it can be achieved.
- 16 There are a range of bodies which require the implementation of specific areas of EU legislation (full alignment with the relevant *acquis*) and participation in these bodies will largely depend on whether the UK agrees to continue aligning its environmental legislation with the EU. For instance, the UK may be able to participate in the European Maritime Safety Agency (EMSA) under the legal mechanism provided for by Article 17 of Regulation (EC) No 1406/2002; however, this is only applicable if the UK “adopted and are applying” EU law in the field of maritime safety and prevention of pollution by ships. The UK Government’s position is that continued participation with the Agency, as well as continued cooperation in the field of maritime safety, remains a matter for negotiations.<sup>19</sup> It is possible that under the terms of the Article 50 agreement the UK will continue to apply the relevant EU legislation, and may therefore elect to continue to participate in the EMSA. However, if the UK opts for a ‘hard Brexit’, or otherwise elects to depart from this area of EU law, then the UK may be precluded from pursuing this option. Furthermore, if the UK sought a policy of regulatory divergence from the EU then the desirability of participating in a common framework would be diminished.
- 17 The outcomes of the negotiations, and the UK’s future relationship with the EU on an institutional level, may have knock-on effects. For instance, an agreement which would allow the UK to remain a member of the European Economic Area (EEA) would allow the UK to remain a member of a number of other organisations, such as the Article 13 Forum of the IPPC Bureau. Knock-on effects can also be seen between different bodies, and in the access the UK may have to EU funded programmes. For instance, if the UK negotiated ongoing membership of the European

Environment Agency, then this in turn would allow for the UK to participate in other agencies, such as The European Network of Prosecutors for the Environment (ENPE). Furthermore, continuing membership of the European Environment Agency may allow the UK to participate in projects delivered by other bodies, where these projects are supported by LIFE funding.<sup>20</sup>

- 18 However, while the agreement that arises from the Brexit negotiations provides an important framework, it is unlikely to be conclusive. The UK’s future participation in some bodies will likely be achieved through ‘satellite’ agreements, collateral to both an EU-UK withdrawal agreement or any subsequent trade agreement. As Merijn Chamon points out, the usual way for a third state to participate on a structural basis in an EU body is to conclude a specific international agreement with the EU. The UK may seek a middle option, instead including negotiations in relation to individual bodies in the wider Brexit negotiation, the result of which may be that the “*Article 50 agreement might [ ] set out the framework for further future arrangements*”.<sup>21</sup> In any event collateral agreements are likely to be necessary to settle finer details of continued UK participation.

## Funding

- 19 Our research has flagged up the interaction between the UK’s participation in certain bodies and continued access to EU funding programmes. Although LIFE is the only EU fund dedicated to the environment we have examined all funding streams relevant to the environment. We note that funding is ‘mainstreamed’ into other funds within the EU budget, notably the Structural and Cohesion Funds,<sup>22</sup> and our analysis of these funding streams is set out in Annex 2.
- 20 IMPEL and ENPE are delivering LIFE funded projects, which are set to continue until after the UK withdraws from the EU. The ENPE-LIFE project is particularly salient. The project is aimed at improving compliance with EU environmental law by addressing uneven and incomplete implementation across Member States, and it is delivered through improvements to the efficiency and effectiveness of prosecutors and judges in combating environmental crime. The project runs until July 2020, with a budget of over €1 million. Delivery of this multi-partner project is being led by the Environment Agency.

- 21 The Environment Agency will be able to retain membership in ENPE after Brexit, but it is important to note that UK-based agencies may not be able to continue to participate in LIFE funded projects. Article 5 of the LIFE regulations sets out the requirements for participation of third countries in the LIFE programme.<sup>23</sup> After the UK leaves the EU it will not satisfy these requirements, unless the UK retains membership of the European Environment Agency. It is unclear what implications this will have for the continuation of this project if a UK-based agency, which is a member of ENPE is no longer able to participate. It may be possible in the future for activities outside the EU to be funded in accordance with Article 6, provided that this is in accordance with the Overseas Association Decision and “*provided those activities are necessary to achieve Union environmental and climate objectives*”.<sup>24</sup>
- 22 Comparison might be drawn with Horizon 2020 funding, where the European Commission has clarified that “*the eligibility criteria must be complied with for the entire duration of the grant. If the United Kingdom withdraws from the EU during the grant period without concluding an agreement with the EU ensuring in particular that British applicants continue to be eligible, you will cease to be eligible to receive EU funding (while continuing, where possible, to participate) or be required to leave the project on the basis of Article 50 of the grant agreement.*”<sup>25</sup> Although the terms of funding agreements are different (notably, Horizon 2020 provides co-funding with Member States) it should be noted that the Commission may pursue similar policies in relation to other funding streams.
- 23 Although the UK Government has said that it wants to continue to participate in funding streams such as Horizon 2020<sup>26</sup>, the possibility of this is sensitive to political constraints. First, this issue will be part of wider negotiations for the UK’s withdrawal from the EU and future relationship<sup>27</sup>. Second, participation in EU funding is typically dependent on payments into the EU budget.<sup>28</sup> While detailed political analysis is beyond the scope of this paper, it should be noted that the resolution of this issue will have a direct bearing on the UK’s ability to effectively participate in different environmental bodies.

## Participation without voting rights

- 24 For the UK to continue to participate in some bodies as a non-Member State this may require the UK to implement decisions which it was not able to vote on. For instance, involvement in the European Chemical Agency (ECHA) would be possible as an EEA member, but this form of membership would not give the UK the right to vote on either the ECHA’s Management Board, Committees, the Forum or various other networks.<sup>29</sup> Although this is the position accepted by Norway, Iceland and Liechtenstein it may be politically unpalatable to be bound by decisions on chemicals regulation without having influence in those decisions. Nevertheless, if the UK is to maintain regulatory equivalence with REACH, allowing UK scientists to interact with EU scientists when they are evaluating substances may allow the UK to maintain informal influence in decision making.<sup>30</sup>

## Jurisdiction of the Court of Justice of the European Union

- 25 Participation in some bodies may require acceptance of the jurisdiction of the CJEU as ultimate arbiter of disputes. This is a point which was highlighted by the House of Commons in their report.<sup>31</sup> Doing so would be controversial, not least because accepting this would run against the Government’s position that leaving the EU will “*bring about an end to the direct jurisdiction of the Court of Justice of the European Union*”.<sup>32</sup>
- 26 The most straightforward reason why the jurisdiction of the CJEU may be necessary if the UK wishes to continue participating in a body is because of the legislative framework underpinning that body. For instance, Articles 6 (access to information) and 18 of Regulation (EC) No 401/2009 (Agency liability) require that if the UK were to participate in the European Environment Agency it would accept the CJEU as the ultimate arbiter of certain disputes. Although this would not apply if the UK were to participate in agencies created outside the EU legal framework (such as IMPEL), similar problems may arise in relation to EU funding streams directed through these bodies (such as LIFE funding for IMPEL projects) as the legislation underpinning the funding may itself require CJEU jurisdiction.
- 27 It is unlikely that the jurisdiction of the CJEU can be removed through negotiations concerning the terms of UK participation in individual bodies. If the UK were to participate in EU bodies without accepting the jurisdiction of the CJEU, then this may place EU member states in breach of the EU law. The Opinion of the Court in a case

regarding the creation of a unified patent litigation system voices the arguments that that it would be unlawful for Member States to allow for the resolution of disputes by courts which are outside the EU legal order, without having in place sufficient safeguards to protect the supremacy and uniform application of EU law.<sup>33</sup> The practical effect is that, were the UK to be a member of a body regulated by EU law, the final arbiter of any dispute would have to be the CJEU or a national court within the EU legal order (i.e. not UK courts, to which the European Treaties would not apply). Therefore it may be necessary, if it were deemed imperative for the UK to participate in a body, for the UK to concede the possibility of allowing for a limited oversight role for the CJEU in strictly defined areas.<sup>34</sup>

28 This issue may also arise where informal participation is sought. For example, although membership of the ECHA is not possible for the UK without amending the legislative foundations of the Agency, the UK could ask the Management Board to invite it to participate in the work of the Agency under Article 106 of Regulation (EC) No 1907/2006. Article 94 states that the route of appeal, once the internal Board of Appeal route is exhausted, is the CJEU. It is unclear whether an invitation to participate under Article 106 would require an acceptance of the CJEU jurisdiction to arbitrate on any disputes arising from the UK's participation.

## European Neighbourhood Partnership

29 If the UK were to participate in the European Neighbourhood Partnership (whether in its current form, or otherwise) then this could facilitate involvement with a number of bodies. Article 8 TEU states that the EU "*shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation*". At present the ENP comprises 16 Middle Eastern and Mediterranean countries.

30 A 2006 Communication from the Commission outlined "*the possibility for ENP partner countries to participate in certain Community policies and programmes or to establish closer cooperation with them*"<sup>35</sup>. Two distinct forms of participation for ENP countries are outlined in the Communication: one for participation in Community agencies; and the second for the participation in Community programmes. The Communication expressly states that the possibility of ENP country participation in agencies within the first limb includes the European Environment Agency, EMSA and the EFSA.<sup>36</sup>

31 As the House of Commons Library Briefing sets out, the "Prime Minister has emphasised in speeches and White Papers that the UK will be leaving the EU but not Europe"<sup>37</sup>. Nevertheless it is not clear whether legislative amendment would be necessary for the UK to take advantage of the ENP. Furthermore, it is unclear whether membership through the ENP would give the UK voting rights in the body's decision-making process, require acceptance of CJEU jurisdiction, and/or require contributions to the body's budgets.<sup>38</sup>



# Conclusions

- 32 We have identified four environmental bodies which the UK can continue to participate in after Brexit, without amendment to underpinning legislation. These are the European Environment Agency, the European Food Safety Authority (EFSA), the European Network of Prosecutors for the Environment (ENPE) and the European Environmental and Sustainable Development Advisory Councils (EEAC). We consider the importance of the UK maintaining participation in European Environment Agency is HIGH, EFSA is HIGH/MEDIUM, ENPE is MEDIUM and the EEAC MEDIUM/LOW. There are potential barriers to the UK continuing to participate in these bodies. In the case of the European Environment Agency the UK would have to accept the jurisdiction of the CJEU (at least as the final arbiter) if it were to remain a member of the Agency under existing rules. In the case of EFSA the UK would have to continue applying the relevant *acquis* in the area of food safety before an agreement could be reached which would allow continued participation. Weighing up these barriers against the benefits of continued participation, UKELA recommends that the UK maintains or negotiates membership of each of these four agencies.
- 33 We have identified two environmental bodies which the UK would not be able to participate in as a third country under current rules, but where amendment to those regulations should not be a substantial obstacle. These are the European Network for the Implementation and Enforcement of Environmental Law (IMPEL), and the European Union Forum of Judges for the Environment (EUFJE). We consider the importance of the UK maintaining participation in IMPEL is HIGH/MEDIUM and for EUFJE it is MEDIUM. As IMPEL and EUFJE are both governed by the association's own rules rather than EU legislation, seeking amendment to these rules should not present an insurmountable problem. UKELA recommends that the UK negotiates renewed membership with each of these bodies.
- 34 Our analysis shows that the UK can retain membership with observer status in three bodies. Two of these bodies are nuclear bodies: the European Nuclear Safety Regulators' Group (ENSREG) and the European Radiological Data Exchange Platform (EURDEP). We consider the importance of the UK maintaining participation in ENSREG is HIGH/MEDIUM, and for EURDEP it is MEDIUM. Although the UK is eligible to be nominated for observer status with ENSREG it is doubtful whether the UK's participation at this level would be adequate. Similarly, although the UK can maintain voluntary arrangements with EURDEP in the short-term, a deeper and more formal relationship should be preferable. Each of these bodies is established by EU legislation. While recognising that observer status is possible with both of these agencies, UKELA recommends that the UK negotiates full membership of both agencies.
- 35 The third body where the UK can retain membership with observer status is the European Maritime Safety Agency. We consider the importance of the EMSA to be MEDIUM. Ideally the UK would seek third party membership of EMSA, however given the barriers to doing so (implementing the relevant *acquis*, CJEU jurisdiction and budgetary contributions) we do not think that this is the highest priority.
- 36 There are eight environmental bodies which the UK cannot retain membership of as a third country, and where amendment to the underpinning rules will not be straightforward. Negotiating changes to these rules will require political commitment and these have therefore been ranked in terms of priority.
- 37 There are three which we consider to be of greatest important, owing to their environmental and/or regulatory importance. These are the European Chemicals Agency (ECHA), the European IPPC Bureau (the Seville Process) and the European Community Urgent Radiological Information Exchange (ECURIE). We consider that the importance of retaining membership of ECHA is HIGH, for the Seville Process is also HIGH and ECURIE is HIGH/MEDIUM.
- 38 There are two which which we consider be less urgent. These are the Water Framework Directive Common Implementation Strategy (WFD CIS) and the Marine Strategy Framework Directive Common Implementation Strategy (MSFD CIS). UKELA judge the importance of retaining the WFD CIS as MEDIUM, and the MSFD CIS as MEDIUM/LOW.
- 39 There are three bodies where an accurate assessment of their priority level cannot be made because their importance for post-Brexit environmental governance hinges on the UK's future relationship with the relevant EU regimes. These are the European Fisheries Control Agency (EFCA), the Fisheries Advisory Councils (FACs), and the Euratom Supply Agency (ESA). We are alert to the fact that it is highly unlikely that the UK will continue to participate in these regimes. However, if the UK does continue to participate in these regimes then UKELA believes that on balance the importance of the EFCA is MEDIUM, the FACs is MEDIUM, and the ESA is also MEDIUM.
- 40 There is one body where the rules of membership were not found. This was ENVI CrimeNet (ECN). We consider the importance of retaining membership to be HIGH/MEDIUM.



# Endnotes

- 1 UKELA was neutral on the Brexit referendum. UKELA's position is that the preservation of existing environmental law pending proper and open review is vitally important for regulatory stability and the continued protection of the environment: for UKELA's position statement see, [www.ukela.org/UKELAposition](http://www.ukela.org/UKELAposition). Although the immediate focus has been on the challenges of rolling-over the substance of EU environmental law, UKELA is committed to examining the other, vitally important systems of environmental governance, which will not simply roll-over upon Brexit.
- 2 UKELA published a previous report examining the impact of Brexit on the enforcement of environmental law, when the systematic and independent supervisory functions of the CJEU and the European Commission cease. UKELA, 'Brexit and Environmental Law: Enforcement and Political Accountability Issues' (July 2017). We are also preparing a paper on the setting of environmental standards in the UK after Brexit. UKELA, 'Brexit and Environmental Law: Environmental Standard Setting after Brexit' (forthcoming).
- 3 For example, anecdotal evidence from a former Chair of the Management Board of the European Environment Agency suggests that the Agency, as well as its member states, would be glad to have the UK continue to participate in its work, including participating in information to EIONET and collaborating with Europe-wide scientific research: 'UK should keep working with the EU on the environment', *The ENDS Report*, 20 December 2017.
- 4 See paragraph 15ff, below.
- 5 Simon Sweeney, 'EU agencies: a Brexit loss nobody's talking about', *The Conversation*, 13 April 2017.
- 6 Where it has received attention, the focus has been on the relocation of EU agencies currently located in the UK rather than the important regulatory roles these bodies provide. See, for instance, Contiguglia, Collis & Paun 'Everything you need to know about the EU agencies leaving London because of Brexit', *Politico*, 30 July 2017.
- 7 HM Government, 'The United Kingdom's exit from and new partnership with the European Union' (cmd 9417, February 2017).
- 8 'UK set to keep EU regulations after Brexit', *Financial Times*, 26 March 2017. This position has since been repeated by DExEU officials 'Brexit Britain Could Retain Membership Of EU Banking And Science Agencies', *Huffington Post*, 9 August 2017.
- 9 See, for instance:
  - Caroline Lucas MP, 27 November 2017, Q115838, "To ask the Secretary of State for Environment, Food and Rural Affairs, pursuant to the Answer of 21 November to Question 113594, what assessment his Department has made of the range of functions carried out by EU bodies on environmental protection, and which of these would end in the UK should the UK cease to be an EU Member State." Answered by Dr Thérèse Coffey, 5 December 2017, "As part of our preparations to leave the EU, we are assessing the functions carried out by EU bodies on environmental protection. Our future relationship with the EU is still to be determined and is the subject of negotiations. This will include discussions over our future status and relationship with these bodies and their environmental functions."
  - Stephen Kinnock MP, 14 November 2017, Q113008, "To ask the Secretary of State for Environment, Food and Rural Affairs, whether the Government plans to seek the UK's continued participation with the European Chemicals Agency, as set out under Article 106 of EU Regulation 1907/2006, after the UK leaves the EU." Answered by Dr Thérèse Coffey, 17 November 2017, "The Withdrawal Bill will convert current EU law into domestic law wherever practical, giving consumers and businesses as much certainty as possible. This includes laws relating to chemicals. The UK is strongly committed to the effective and safe management of chemicals. That will not change when we leave the EU. While it would not be appropriate to pre-judge the outcome of the negotiations we will discuss with the EU and Member States how best to continue cooperation in chemicals regulation in the best interests of both the UK and the EU."
  - Stephen Kinnock MP, 15 November 2017, Q113233, "To ask the Secretary of State for Business, Energy and Industrial Strategy, whether the Government plans to enter a contract with the EURATOM Supply Agency after the UK leaves the EU." Answered by Richard Harrington, 23 November 2017, "The Government's stated objective in the forthcoming negotiations with the EU on our future relationship is to seek maximum continuity with Euratom, which is in the mutual interest of both parties. Those negotiations have not yet started, so the precise nature of that relationship, including with the Euratom Supply Agency, cannot be set out at this stage."
  - Mary Creagh MP, 6 October 2017, Q106113, "To ask the Secretary of State for Environment, Food and Rural Affairs, what assessment he has made of the cost to the public purse of replicating the relevant functions of the European Chemicals Agency after the UK leaves the EU." Answered by Dr Thérèse Coffey, 3 November 2017, "No decisions have yet been made on our future relationship with the EU's agencies and bodies, including the European Chemicals Agency, after leaving the EU. Prior to any

decisions on replicating relevant functions, the Government will always look to minimise disruption and costs, which will include considering a number of options. Defra, along with all other Government departments, continues to take a responsible approach in preparing for all exit scenarios.”

- Stephen Kinnock MP, 14 November 2017, Q112899, “To ask the Secretary of State for Transport, whether the UK plans to seek formal co-operation with or third country participatory membership of the European Maritime Safety Agency after the UK has left the EU.” Answered by John Hayes MP, 22 November 2017, “The Government is considering carefully all the potential implications arising from the UK’s exit from the EU, including the implications for the continued participation in the European Maritime Safety Agency. The UK’s continued participation with the Agency as well as continued cooperation in the field of maritime safety, will be a matter for negotiations.”
- Tom Brake MP, 4 September 2017, Q7479, “To ask the Secretary of State for Exiting the European Union, of which EU institutions and other EU-related bodies the UK is a member; and what assessment the Government has made of the financial cost and benefit to the UK of membership of those institutions and bodies.” Answered by Steve Baker MP, 12 September 2017, “Until the point of exit, the UK remains a full member of the European Union, its institutions and related bodies. We want to achieve a deep and special partnership between the UK and the European Union, but the precise nature of this future relationship is a matter for the negotiations. It would not be appropriate to publish information which might undermine our negotiating position – a principle that was overwhelmingly supported by the House of Commons in October last year.”
- Alistair Carmichael MP, 17 July 2017, Q5546 “To ask the Secretary of State for Exiting the European Union, how many EU agencies of which the UK is a member the Government plans to replace with national or other agencies after the UK leaves the EU; and whether his Department has made an estimate of the cost of setting up those new agencies”. Answered by Robin Walker MP, 21 July 2017, “Our relationship with the EU’s agencies upon exit will be evaluated in light of delivering the twelve objectives outlined by the Prime Minister to achieve a deep and special partnership between the UK and the EU. No decisions have yet been made on our future relationship with the EU’s decentralised bodies after leaving the EU. Prior to any decisions on establishing new agencies, the Government will, however, always look to minimise disruption and costs, which will include considering alternative options. The European Union (Withdrawal) Bill makes clear that any decision on creating new agencies would require the approval of both Houses of Parliament under the affirmative procedure.”
- Tom Brake MP, 17 July 2017, Q5349 “To ask the Secretary of State for Exiting the European Union, what estimate his Department has made of the number of EU institutions and other EU-related bodies which the UK will leave on leaving the EU; and what assessment it has made of the financial and staffing implications of replicating the role of those organisations in the UK”. Robin Walker MP answered on 25 July 2017, “No decisions have yet been made on our future relationship with the EU’s institutions and decentralised bodies after leaving the EU. We are considering very carefully a range of options. Our relationship will be evaluated in light of delivering the twelve objectives outlined by the Prime Minister to achieve a deep and special partnership between the UK and the European Union. Prior to any decisions on establishing new agencies, the Government will, however, always look to minimise disruption and costs, which will include considering alternative options. The European Union (Withdrawal) Bill makes clear that any decision on creating new agencies would require the approval of both Houses of Parliament under the affirmative procedure.”
- Lord Lester of Herne Hill, 10 July 2017, HL628, “Her Majesty’s Government what is their assessment of the benefits and costs to the UK of membership of the European Maritime Safety Agency.” Answered by Lord Callanan, 21 July 2017, “The European Maritime Safety Agency (EMSA) hosts a range of information systems that are used by the UK Maritime and Coastguard Agency and the Marine Accident Investigation Branch. More broadly, EMSA’s supporting role is broadly in line with the Government’s vision of a maritime transport system driving forward economic growth and market efficiencies. With regard to the Government’s contribution to the EMSA budget, the UK makes a contribution to the EU Budget as a whole, and not to individual spending programmes within it. However, the Government is represented on EMSA’s Administration Board the EMSA management takes full account of better regulation and value for money principles in its ongoing delivery of its services. The Government is considering carefully all the potential implications arising from the UK’s exit from the EU, including the implications for the continued participation in the European Maritime Safety Agency (EMSA). As part of the exit negotiations the Government will discuss with the EU and Member States how best to continue cooperation in the field of maritime safety, pollution and security.”
- Lord Lester of Herne Hill, 4 July 2017, HL448 “Her Majesty’s Government what is their assessment of the benefits and costs to the UK of membership of the European Environment Agency.” Answered by Lord Gardiner of Kimble, 18 July 2017, “Within the European Environment Agency budget it is not possible to identify the membership cost for any individual EU Member State. The European

Environment Agency undergoes regular independently-conducted evaluations and the UK Government is fully engaged with the evaluation currently in progress. When published in 2018, this evaluation will enhance our understanding of the benefits of European Environment Agency membership. In common with other EU agencies, as part of exit negotiations the Government will discuss with the EU (and European Environment Agency Member Countries) any potential future relationship with the European Environment Agency.”

- Martyn Day MP, 26 June 2017, Q1155 “To ask the Secretary of State for Exiting the European Union, what his priorities are during negotiations on the UK leaving the EU on the UK’s future relationship with (a) the European Chemicals Agency and (b) the European Maritime Safety Agency”. Answered by Robin Walker MP, 4 July 2017, “As part of the exit negotiations the Government will discuss with the EU and member states how best to continue cooperation in the maritime and chemicals sectors in the best interests of both the UK and EU. Our relationship with the European Union’s bodies upon exit will be evaluated in light of delivering the twelve objectives outlined by the Prime Minister in her Lancaster House speech on 17 January to achieve a deep and special partnership between the UK and the European Union. We are working closely with colleagues across government to make sure that we have a regular dialogue with the maritime and chemicals sectors.”

See also:

- possible issues facing the UK’s membership of EU agencies that were discussed in general terms in a blog post by Richard Corbett MEP, who set out 10 key agencies which the UK stood to lose membership of, and the options available to the UK: Richard Corbett MEP, ‘Brexit and EU Agencies’, 21 February 2017. These options were (1) setting up domestic equivalent agencies (2) continuing to follow the recommendations and decisions of these agencies and (3) asking to remain members of them. As discussed below, in many cases we consider the options to vary, depending on the agency.
  - Caroline Lucas MP has also flagged up the issue in relation to wider questions of safeguarding the UK’s environmental protection: Caroline Lucas MP, ‘Exiting the EU, Not the Environment’, Spring 2017, at page 9, point #6. See also: The Guardian, ‘UK unprepared for exiting Europe’s green legislation, says Lucas’, 13 February 2017.
- 10 UKELA (Stephen Tromans QC and Paul Bowden), ‘Brexit and Environmental Law: Exit from the Euratom Treaty and Its Environmental Implications’, July 2017.
  - 11 House of Commons Environmental Audit Committee, ‘The Future of Chemicals Regulation after the EU Referendum: Eleventh Report of Session 2016–17’, 25 April 2017; note also the evidence of Andreas Herdina, Director of Co-operation ECHA before the Committee.
  - 12 House of Lords European Union Committee, ‘Brexit: Fisheries’, 6 December 2016.
  - 13 The Red Cell, ‘The Tangled Web: Dealing with EU Agencies after Brexit’, May 2017. See page 27 on the post-Brexit functions of the European Environment Agency: “Given that plenty of EU environmental legislation has been ill-thought out, by a heavy-handed target-creating bureaucracy, the UK would do well in leaving [the European Environment Agency] behind. The tendency for the EU to see itself as leading the world in environmental legislation has given its agencies the tendency to overreach themselves and damage the economies of the countries they regulate.”
  - 14 Senior European Experts Group, ‘Brexit and EU Regulatory Agencies’, September 2017. While this is a considered report, it focuses on very different bodies than are explored in this report, emphasising the potential for regulatory divergence.
  - 15 House of Commons Library, ‘Briefing Paper 7957: EU Agencies and post-Brexit options’, 28 April 2017.
  - 16 *ibid*, pages 13-14.
  - 17 *ibid*, page 4.
  - 18 See paragraphs 8-9, below.
  - 19 Stephen Kinnock MP, 14 November 2017, Q 112899: “To ask the Secretary of State for Transport, whether the UK plans to seek formal co-operation with or third country participatory membership of the European Maritime Safety Agency after the UK has left the EU.” Answered by John Hayes MP, 22 November 2017: “The Government is considering carefully all the potential implications arising from the UK’s exit from the EU, including the implications for the continued participation in the European Maritime Safety Agency. The UK’s continued participation with the Agency as well as continued cooperation in the field of maritime safety, will be a matter for negotiations.” See further, questions 1155. For the House of Lords, see also question asked by Lord Lester of Herne Hill, 10 July 2017, HL628.
  - 20 See paragraph 21, below.
  - 21 Merijn Chamon, ‘Consequences of Brexit for EU Agencies’, *Blogactive*, 4 July 2016.
  - 22 See further, the Manual of European Environmental Policy written by the Institute for European Environmental Policy: Farmer, A.M. (2012) (Editor). Manual of European Environmental Policy. 1043pp. Routledge, London.
  - 23 Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007.

- 24 Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union.
- 25 Commission note to British applicants to Horizon 2020, October 2017.
- 26 HM Government 'Collaboration on science and innovation: A future Partnership Paper' [undated]; See also, Financial Times 'Science paper sets out UK plan to remain in EU projects'.
- 27 See paragraph 15ff, below.
- 28 House of Commons Library, Briefing Paper 7847, 'Brexit: UK Funding from the EU', 10 January 2018, see page 29.
- 29 See, the ECHA website.
- 30 House of Commons Environmental Audit Committee, Oral evidence: The Future of Chemicals Regulation after the EU Referendum, HC 912. See answers given by Dr Camilla Alexander-White to questions 54 and 80.
- 31 House of Commons Library, 'Briefing Paper 7957: EU Agencies and post-Brexit options', 28 April 2017, page 15ff.
- 32 HM Government, 'Enforcement and dispute resolution: a future partnership paper'.
- 33 Opinion 1/09 of the Full Court (8 March 2011) concerning the legality of a previous draft of an international agreement to establish a Unified Patent Court, at [80].
- 34 Richard Gordon QC and Tom Pascoe, 'Preparing for Brexit & The Great Repeal Bill: The Legislative Options', 5 April 2017, see page 23 for discussion of self-contained regimes for replicating the structure of EU law (including incorporating the jurisdiction of the CJEU) within specialist fields, such as intellectual property law or, potentially, environmental law.
- 35 'Communication from the Commission to the Council and to the European Parliament on the general approach to enable ENP partner countries to participate in Community agencies and Community programmes' COM/2006/0724 final.
- 36 *ibid*, page 5: "As the European legislator creates each agency through respective secondary legislation, establishing specific provisions for each agency, the legislator has laid down varying conditions for the participation of third countries, depending on the sector in which each such agency is active (see Annex B)." Note that in relation to the second limb (participation in EU programmes) the Communication states that while an "additional protocol on a framework agreement" may facilitate third country participation in "programmes whose legal basis includes the provision of 'opening up' to the ENP countries (see Annex C)" (page 11), this would not include LIFE, EAFRD or EUFF funding stream (see pages 33 and 39-40).
- 37 House of Commons Library, 'Briefing Paper 7957: EU Agencies and post-Brexit options', 28 April 2017, pages 13-14.
- 38 *ibid*

# **Annex 1: European Cooperation Bodies**

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
<p><b>European Environment Agency (EEA)</b></p>	<p>The EEA's mandate is to help the Community and member countries make informed decisions about improving the environment, integrating environmental considerations into economic policies and moving towards sustainability. The EEA has diverse responsibilities, including specific responsibilities under key Directives (including MSFD, Waste and Water Framework Directives, etc.).</p> <p>Ongoing query about the extent to which information is reported directly to the European Environment Agency and how much this is done for the EU28 by the European Commission. The EEA is not responsible <i>per se</i> for environmental legislation however it informs decision-making by producing and disseminating independent information on the environment, including evaluating impacts and cost-benefit analyses. Furthermore, it assists in integrating political, legal, economic and social action. Additionally it coordinates the European environment information and observation network ("Eionet") as a forum for information sharing between MSs.</p>	<p><b>Very valuable</b></p> <p>Produces and provides independent information on the environment, such as good annual reports in the field of Air Pollution. Query how much of this will be publicly available for UK authorities to use if the UK no longer participates in the EEA.</p> <p>Publishes regular reports on the state of the environment.</p> <p>Forum for sharing information between MSs, such as good practice and what is working in other MSs. This is a key loss, although parallel informal information sharing systems could be created with agencies in the EU27.</p> <p>Good at establishing integration between political, legal, economic and strategic action. This will be less important as integration between these actions will be done within and between the UK and devolved governments.</p> <p>Coordinates efforts to protect the environment and secure sustainable development in Europe by providing decision makers with information to</p>	<p><b>Membership is open to non-EU MS under EU regulations, but this would probably involve accepting jurisdiction or complaint mechanisms of the CJEU (covering disputes over public access to information held by the Agency and Agency liability).</b></p> <p>There are currently <b>33 member countries</b> of the EEA. Non-EU member state members are Iceland, Liechtenstein, Norway, Switzerland and Turkey. The co-operating (non-member) countries are: Albania, Bosnia and Herzegovina, the Republic of Macedonia, Montenegro, Serbia and Kosovo (under UN Security Council Resolution 1244/99).</p> <p>The EEA is governed by <a href="#">Regulation (EC) No 401/2009</a> of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (Codified version). Article 19 provides for membership of the EEA by non-MS, stating:</p>	<p><b>HIGH</b></p>

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
	<p>Eionet is a partnership network of the European Environment Agency (EEA) and its member and cooperating countries. It consists of the EEA itself, six European Topic Centres (ETCs) and a network of around 1000 experts from 39 countries in up to 400 national bodies dealing with environmental information. These experts are the National Focal Points (NFPs) and the National Reference Centres (NRCs).</p> <p>The Eionet partnership is crucial to the EEA in supporting the collection and organisation of data and the development and dissemination of information. The organisations and individuals in the network are supported by an extensive information technology infrastructure (referred to as e-Eionet).</p> <p>Through Eionet, the EEA coordinates the delivery of timely, nationally validated, high-quality environmental data from individual countries. This forms the basis of integrated environmental assessments and knowledge that is disseminated and made accessible through the EEA website. This information serves to support environmental management processes, environmental policy making and assessment, and public participation at national, European and global levels.</p>	<p>shape, implement and assess environmental policies. This advisory function extends to the Commission as well as MSs.</p> <p>Key body for assembling statistics, evaluating impacts and conducting cost-benefit analysis. Overlap with tasks done domestically by the EAC and the NAO. UK legislation current includes reporting requirements to the EEA.</p> <p>EEA provides a conduit to international bodies and equivalent agencies in other countries (such as the US Environmental Protection Agency, Environment Canada, and the State Environmental Protection Administration in China).</p> <p>Membership of EEA allows access to LIFE funding programmes.</p>	<p><i>The Agency is open to countries which are not members of the Community but which share the concern of the Community and the Member States for the objectives of the Agency under agreements concluded between them and the Community following the procedure in Article 300 of the Treaty [now Article 218 TFEU].</i></p> <p>A <a href="#">Communication</a> from the Commission to the Council and to the European Parliament on the general approach to enable ENP [European Neighbourhood Policy] partner countries to participate in Community agencies and Community programmes makes specific provisions for the involvement of third parties. The Communication states at pages 2 and 6 that the EEA is currently exploring possibilities for participation of selected ENP countries in certain EEA activities and it is giving priority to cooperating with ENP partners in regional cooperation processes. This may take the form of selective cooperation as an external partner in specific activities, and may not involve participation in all EU environmental programmes.</p>	

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
			<p>This is consistent with Article 8 TEU which provides that the EU may conclude specific agreements to develop a special relationship with neighbouring countries. However, the ENP is an EU foreign relations instrument seeking to tie those countries to the east and south of EU territory to the Union: it does not cover countries which are in the current EU enlargement agenda, the European Free Trade Association or the western European microstates. It has been argued that "The 2003 explanatory notes from the Convention Praesidium that drafted the Treaty establishing a Constitution for Europe in 2003-04 argued that this Article [Article 8 TEU] removed the need to create a special associate status for withdrawing states." (see House of Commons Library <a href="#">Briefing Paper 7957</a>, page 13 fn 18). However whether Art 8 TEU or the ENP would allow the UK to enter into an agreement under Art 19 of Regulation (EC) No 401/2009 remains unclear.</p> <p>Furthermore it is likely that continued participation in the EEA would involve accepting the jurisdiction or complaint mechanisms of the CJEU. This is the view taken by the House of Commons Library Briefing Paper (page 19). This</p>	

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
			<p>analysis likely derives from Article 6 of Regulation 401/2009, wherein all decisions taken by the Management Board under Article 8 of Regulation (EC) No 1049/2001 (confirmatory applications relating to access to documents) may form the basis of an action before the CJEU. To a lesser extent also Article 18(1) says that the CJEU shall have jurisdiction over contractual liability where this is pursuant to an arbitration clause contained in a contract concluded by the Agency.</p>	

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
<p><b>European Chemicals Agency (ECHA)</b></p>	<p>The ECHA manages the technical, scientific and administrative work to implement REACH, the EU's registration system for chemicals. It is mandated to cover REACH, CLP, Biocides and PIC, but also covers elements of the IPPC Directive and the Water Framework Directive.</p> <p>The ECHA assists in fulfilling registration requirements under these directives. REACH requires companies to provide information on the hazards, risks and safe use of chemical substances that they manufacture or import, which they register with ECHA. CLP requires notification of ECHA of classification and labelling of companies' chemicals. Companies not allowed to place on the market a substance designated a Substances of Very High Concern (SVHC), unless they have been given prior authorisation to do so. The ECHA provides a source of information for businesses on SVHCs, as well as assistance in phasing them out.</p> <p><u>Main bodies</u></p> <p>The Management Board (MB) is the governing body of the ECHA. It has a supervisory role with general responsibility for: budgetary and</p>	<p><b>It would be highly beneficial from both an environmental and a practical perspective for the UK to retain participation in the ECHA.</b></p> <p>The Chemicals industry is the biggest manufacturing exporter in the UK and employs over 500,000 people. There are strong reasons for maintaining regulatory equivalency with the EU in relation to chemicals.</p> <p>The expensive but vital process of testing, evaluating and authorizing chemicals as safe for use is carried out jointly through the ECHA, to save money and avoid duplication.</p> <p>ECHA provides an effective regulatory system which UK industry spent lots of money on implementing and gained benefits from market access and harmonisation.</p> <p>If the UK leaves the ECHA, we would need to set up our own agency, agree equivalency rules and mutual recognition as well as procedures to resolve differences.</p> <p>Continued involvement will help keep the UK aligned with and abreast of regulatory development, as REACH etc. constantly evolving.</p>	<p><b>Membership would not be possible without amendment to underpinning legislation, but involvement with organs of the ECHA can be achieved and, alternatively, a cooperation agreement may be possible. In both cases it is unclear to what extent CJEU jurisdiction would have to be accepted.</b></p> <p>The ECHA was established by <a href="#">Regulation (EC) No 1907/2006</a>. The ECHA engages with non-MS but it is not open to them becoming members, i.e. there is no equivalent in Regulation (EC) No 1907/2006 to Art 19 of Regulation (EC) No 401/2009 allowing non-MSs membership of the EEA.</p> <p>The Management Board is composed of EU28 MSs; six representatives of the Commission (including 3 members without voting rights appointed to represent interested parties); two representatives of the European Parliament; one observer each from Iceland, Liechtenstein and Norway which the Management Board has invited.</p> <p>Invitation of Iceland etc. to the Management Board is not achieved through Article 79, which sets out the composition of the Board and does not</p>	<p><b>HIGH</b></p>

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
	<p>planning matters; the appointment of the Executive Director, the members and the Chair of the Board of Appeal; and the reporting of ECHA's activities to EU institutions.</p> <p>The Member State Committee (MSC) participates in several REACH processes such as evaluation and authorisation. The MSC is responsible for resolving divergences of opinions among Member States on proposals for the identification of Substances of Very High Concern (SVHCs). The Committee provides opinions on ECHA's draft recommendation for the authorisation list (Annex XIV) and draft Community Rolling Action Plan (CoRAP) for the substance evaluation process. If an agreement is not reached within the MSC, the matter is referred to the European Commission for decision-making.</p> <p>The Committee for Risk Assessment (RAC) prepares the opinions of ECHA related to the risks of substances to human health and the environment in the following REACH and CLP processes. The final decisions are taken by the European Commission.</p> <p>The Committee for Socio-economic Analysis (SEAC) prepares the opinions of ECHA related to the socio-economic</p>	<p>Involvement also allows UK experts to make comments on draft evaluation decisions, particularly where that might impact a supply chain of interest to a British company.</p> <p>In total the ECHA is referred to in about 100 EU Regulations as well as 19 Directives, and 16 domestic pieces of legislation.</p> <p>See also, the <a href="#">evidence of ECHA, EA and HSE</a> at the Environmental Audit Committee inquiry on the Future of Chemical Regulation.</p> <p>As Andreas Herdina, Director of Co-operation said at the Environmental Audit Committee inquiry on the Future of Chemical Regulation:</p> <p><i>Norway is, as an EEA member, both in our management board and in the scientific committees influencing all our decisions as an EEA member. I think one of the concerns that I would have from a British point of view is that now the UK specialists make comments on draft evaluation decisions that we have, but in future they would not be in the room to make any comments there even if the draft decision might impact on a company in the supply chain of interest to a British company.</i></p>	<p>include provisions for EEA/EFTA states. Instead it would appear that this is achieved through Article 106 which sets out an alternative form of involvement with the ECHA. It states:</p> <p><i>The Management Board may, in agreement with the relevant Committee or the Forum, invite representatives of third countries to participate in the work of the Agency.</i></p> <p>Note that the <a href="#">General Report of the ECHA 2016</a> shows that although Norway and Iceland have observer status on the Management Board by virtue of being an EEA/EFTA country the latter has members on other Committees (the MSC, RAC, SEAC, BPC) and the Forum (page 112). The ECHA website <a href="#">states</a> that European Economic Area countries "participate in these bodies and networks without the right to vote".</p> <p>This may be the mechanism through which involvement in Committees or the Forum of the ECHA can be achieved. However, it is not clear whether, as a matter of law, involvement through Article 106 would necessarily preclude voting rights etc., particularly on bodies other than the MB.</p>	

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	<p>impact of possible legislative actions on chemicals. The final decisions are taken by the European Commission.</p> <p>The Biocidal Products Committee (BPC) prepares the opinions of ECHA related to several BPR processes. The final decisions are taken by the European Commission. The processes include, <i>inter alia</i>: applications for approval and renewal of approval of active substances; identification of active substances which are candidates for substitution; and scientific and technical matters concerning mutual recognition in accordance with Article 38.</p> <p>The Forum for Exchange of Information on Enforcement (Forum) is a network of authorities responsible for the enforcement of the REACH, CLP and PIC regulations in the EU, Norway, Iceland and Liechtenstein.</p>		<p>Furthermore, Article 120 addresses cooperation, and particularly information sharing, with TP countries and international organisations:</p> <p><i>Notwithstanding Articles 118 and 119 [Access to Information and Electronic Public Access], information received by the Agency under this Regulation may be disclosed to any government or national authority of a third country or an international organisation in accordance with an agreement concluded between the Community and the third party concerned under Regulation (EC) No 304/2003 of the European Parliament and of the Council of 28 January 2003 concerning the export and import of dangerous chemicals or under Article 181a (3) of the Treaty, provided that both the following conditions are met:</i></p> <p>a) <i>the purpose of the agreement is cooperation on the implementation or management of legislation concerning chemicals covered by this Regulation;</i></p> <p>b) <i>the third party protects the confidential information as mutually agreed.</i></p>	

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			<p>The ECHA's <a href="#">Factsheet</a> on International Cooperation expresses the body's support for the <a href="#">EU's external relations policy</a>, including the enlargement policy and the European Neighbourhood Policy, as well as engaging countries at the immediate external border of the EU. Engaging with the ECHA in this way would involve an European Neighbourhood and Partnership Instrument (ENPI).</p> <p>The UK could seek a cooperation agreement with the ECHA. Activities under these agreements are focused on exchanging information, best practice and scientific knowledge. The ECHA has cooperation agreements with regulatory agencies in four countries: Australia, Canada, Japan and the United States of America (MOUs and Statements of Intent with peer agencies in these counties can be found <a href="#">here</a>).</p> <p>It should be noted that Article 94 states that the route of appeal, once the internal Board of Appeal route is exhausted, is the CJEU. It is not clear whether and to what extent involvement or cooperation would necessitate an acceptance of CJEU jurisdiction. Current Article 120 MOUs do not require this, however it is unclear whether Article 106 would require this.</p>	

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<p><b>European Environmental and Sustainable Development Advisory Councils Network (EEAC)</b></p>	<p>EEAC is a network of advisory bodies established by national or regional governments. The EEAC was established in 1993 and has evolved over more than two decades.</p> <p>EEAC members offer independent advice to their respective national or regional governments and parliaments related to the environment and sustainable development.</p> <p>Members of the EEAC provide policy advice, steer public and stakeholder dialogues, and exchange knowledge and experience on environmental and sustainable development debates, including:</p> <ul style="list-style-type: none"> <li>• the state of relevant indicators and targets;</li> <li>• the identification of favourable and unfavourable trends as well as emerging issues;</li> <li>• the assessment of strategies, roadmaps and policies;</li> <li>• policy recommendations;</li> <li>• better governance, including policy coherence between different layers and sectors of government and public participation;</li> <li>• research and education.</li> </ul>	<p>EEAC Network provides an operational framework for joint activities, knowledge sharing, dialogue, informed debate and deliberation among different stakeholders and disciplines. It seeks to bridge the gap between scientific knowledge and policymaking and to enrich the advice that individual advisory bodies can give to their governments by encouraging exchange of experience among members.</p> <p>The EEAC Network also enables its members to better anticipate and prepare for forthcoming strategic issues at the European level and in international and global sustainable development related negotiations and debates.</p>	<p><b>Future participation in the EEAC would be possible, as membership is not confined to bodies within EU Members States, or the implementation of specific legislation.</b></p> <p>Membership is determined by the <i>Framework for the European Environment and Sustainable Development Advisory Councils (EEAC) Network</i> [not available online]. Rule 3.1 states that a national advisory councils engaged in giving environmental policy advice and/or giving advice on sustainable development issues are eligible to become members of the EEAC Network. Rule 3.2 sets out the institutional characteristics of an advisory council:</p> <ol style="list-style-type: none"> <li>a it is established by a national, subnational or local government or by a national or subnational parliament for the tasks of giving advice on environmental and/or sustainable development issues, stimulating informed debate and/or communicating with a wider public and fostering the involvement of civil society;</li> <li>b it is composed of council members who are appointed,</li> </ol>	<p><b>MEDIUM LOW</b></p>

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	<p>The network brings together expert representatives from academia, civil society, the private sector and public bodies.</p> <p>Fourteen advisory bodies from eleven European countries and regions are member of the EEAC Network. At present there is no UK Member Council, although The Royal Commission on Environmental Pollution and the Sustainable Development Commission was actively involved before its abolition in 2011.</p> <p>A key mechanism of collaboration in the EEAC network are working groups, which bring together the views of individual advisory bodies on selected and strategic topics (i.e. circular economy, energy and climate change, marine and water affairs and sustainable development).</p>		<p>nominated or elected and who come to decisions and opinions on the basis of their own internal procedures. Council members represent a spectrum of disciplines and expertise, often including civil society organizations and /or stakeholders; and</p> <p>c it has a secretariat which facilitates the deliberations and activities of the council.</p> <p>Rule 3.3 states that in order to become an EEAC Network member, a council must have the characteristics of an advisory council as described in Articles 3.1 and 3.2, support the principles and objectives of the EEAC Network, and make subscriptions payments.</p> <p>At present, membership includes bodies from states which are within the European geographical region which are not member states. For example, the Montenegro National Council for Sustainable Development and Climate Change is a member.</p> <p>Therefore an officially established advisory council giving policy advice on environmental policy or sustainable development issues within the UK could apply for membership.</p>	

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<p><b>The European IPPC Bureau (the Seville Process)</b></p>	<p>The European IPPC Bureau was established in Seville to organise an exchange of information between Member States and industries to set standards for Best Available Techniques (BATs) for industrial processes under the IED (formerly the IPPC Directive). BATs are technical prescriptions for different kinds of industrial processes designed to prevent or reduce emissions and environmental impacts.</p> <p>The Information Exchange Forum (“Art 13 Forum”) is the formal expert group which generally oversee the information exchange process on BAT. The Forum is composed of representatives from MSs, industry and eNGOs. The Forum has a crucial role delivering opinions on the rolling work programme for the elaboration and review of BAT Reference Documents (BREFs) and on the proposed content of the final draft BREFs. This last opinion has to be made publicly available by the Commission and has to be taken into account for the purposes of adopting decisions on the BAT conclusions through the IED Article 75 Committee.</p> <p>The IED “Art 75 Committee” is a body established by Article 75(1) of the IED, assisting the Commission in elaboration</p>	<p><b>Continued participation would give the UK some degree of influence over future EU BAT Reference Documents that set standards for industrial processes.</b></p> <p>It is possible that future BAT Reference Documents might be applied in the UK after Brexit, for example if a trade agreement were to require that UK standards converge with EU standards; under a soft Brexit where the UK remains a member of the EEA; or, because it is deemed appropriate to align with future EU standards as a matter of domestic policy.</p> <p>Should UK and devolved governments decide to set industrial process standards domestically, future BAT Reference Documents may well form the starting point when considering what our domestic standards should be.</p> <p>UK experts who participate in the TWG for each BREF will bring to the table the BREF end-user perspective. This has been particularly important for the UK, for example, <a href="#">as IEMA reports</a>, UK participation in the TWG for the LCP BREF review has been extensive.</p> <p>Note that even if the UK joins the European Economic Area the IED would</p>	<p><b>Not without amendment to underpinning legislation, in particular the Industrial Emissions Directive</b></p> <p><u>Article 13 Forum</u> The Art 13 Forum is established pursuant to Art 13(3) of the IED Directive which states:</p> <p><i>The Commission shall establish and regularly convene a forum composed of representatives of Member States, the industries concerned and non-governmental organisations promoting environmental protection.</i></p> <p>This was put into effect by <a href="#">Commission Decision 2011/C 146/03</a>. Article 4(1) of this decision shows that membership is established in line with Art 13(3). This would <i>prima facie</i> preclude the UK from retaining membership after withdrawing from the EU, unless the legislation was changed:</p> <p><i>Members shall be Member States, international organisations representing industries concerned by the activities covered by Annex I of the Directive and non-</i></p>	<p><b>HIGH</b></p>

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	<p>of implementing acts. The Committee is composed of the Member States and is chaired by the Commission. The Committee adopts decisions on BAT conclusions. For each BREF, the European IPPC Bureau sets up a Technical Working Group (TWG) to carry out the exchange of information on BAT. A TWG usually consists of between 100 to 200 experts representing Member States, industries, non-governmental organisations (NGOs) promoting environmental protection and the Commission. TWG members are nominated to participate in the information exchange primarily based on their technical, economic, environmental or regulatory expertise (especially in permitting or inspecting industrial installations) as well as on their ability to bring into the information exchange process the BREF end-user perspective.</p> <p>The EUIPPCB exists to catalyse an exchange of information between MS and the industries concerned on BAT as required by Article 13(1) of the IED. The Bureau organises the work of the TWGs, fosters the exchange of information, makes a scientific and technical analysis of the vast amount of information exchanged, proposes compromise solutions on issues when views of TWG</p>	<p>continue to apply, but the UK would have little influence over new rules. Business organisations, such as the BDI in Germany, would prompt changes to the BREF process but it is likely that after Brexit the UK would be excluded from talks.</p>	<p><i>governmental organisations promoting environmental protection.</i></p> <p>The UK cannot attend the Art 13 Forum under separate rules for non-members. Articles 5(3) and (4) of Commission Decision 2011/C 146/03 set out the means by which EEA (EU and EFTA countries) and accession countries are respectively invited to attend meetings of the forum. Norway attends by virtue of Article 5(3), and Turkey by virtue of Article 5(4). Unless the UK joins the EEA it cannot rely on these provisions.</p> <p><u>Technical Working Group (TWG)</u> TWGs were established under Art 13(1) of the IED Directive which similarly limits state-level participants to MSs:</p> <p><i>In order to draw up, review and, where necessary, update BAT reference documents, the Commission shall organise an exchange of information between Member States, the industries concerned, non-governmental organisations promoting environmental protection and the Commission.</i></p>	

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	<p>members differ, and writes the BREF. The European IPPC Bureau acts as a neutral, technically competent and permanent body to all TWGs.</p>		<p><u>Article 75 Committee</u>  The Art 75 Committee is established by Art 75(1). Art 75(2) defines the regulatory procedure to follow by reference to Articles 5 and 7 of <a href="#">Decision 1999/468/EC</a>. This precludes the UK from retaining membership after withdrawing from the EU. Art 5(1) states:</p> <p><i>The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission.</i></p> <p><u>General constraints</u>  If legislative change were possible to allow UK participation in all (or even some) of the Seville Process, it appears likely that the UK would have to apply the IED domestically, as part of the relevant <i>acquis</i>, as well as accepting the jurisdiction of the CJEU in relation to dispute resolution.</p>	

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<p><b>European Network for the Implementation and Enforcement of Environmental Law (IMPEL)</b></p>	<p>IMPEL is an international association of environmental authorities. Set up in 1992 as an informal body acting as an inter-governmental, non-integrated EU cooperation network, in 2008 it transformed into an international association of environmental authorities. IMPEL has developed into a well-regarded organisation in the environment field and is mentioned in a number of EU legislative and policy documents.</p> <p>The objective of IMPEL is to create the necessary impetus in the EU to make progress on ensuring a more effective application of environmental legislation.</p> <p>The core of IMPEL's activities take place within a project structure and concern awareness raising, capacity building, peer review, exchange of information and experiences on implementation, international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.</p> <p>IMPEL organises its work into five thematic areas: industry regulation; waste and TFS; water and land; nature protection; and, cross-cutting tools and approaches.</p>	<p><b>Membership of IMPEL would continue to be beneficial for maintaining best practice in the implementation and enforcement of environmental law in the UK.</b></p> <p>The EA is a founding member of IMPEL and remains active in the organisation.</p> <p>After the UK leaves the EU there may be regulatory divergence on environmental law between the UK and the EU, depending on the agreement reached between the UK and the EU, but there is likely to be significant similarities in the difficulties faced in implementing and enforcing these laws in both the UK and EU MS.</p> <p>Regulators in the UK benefit from exchanges of information and capacity building in relation to the enforcement of environmental law with their European colleagues and counterparts. Continued participation in IMPEL makes UK prosecutors better informed and therefore more effective regulators. The topics which IMPEL continues to work on (see '<a href="#">Outlook 2015 - An overview of IMPEL projects</a>') will continue to be relevant to the UK after Brexit, if all EU law is rolled-over as retained EU law.</p>	<p><b>UK environmental authorities cannot participate in IMPEL as a full member without amendment to the underpinning statute of the organisation. However, amendment would appear to be an achievable hurdle, notwithstanding possible issues with LIFE+ funding. The UK could alternatively seek observer status.</b></p> <p>IMPEL currently has 51 members from 36 countries including all EU Member States, the former Yugoslav Republic of Macedonia, Serbia, Turkey, Iceland, Kosovo, Albania, Switzerland and Norway. There are two observers, the European Federation of Environmental Health (EFEH) and the Themis Network.</p> <p>While working closely with EU institutions IMPEL is not itself an EU institution. The 2009 <a href="#">Memorandum of Understanding</a> on cooperation between IMPEL and the Commission formalises the close relationship IMPEL has with the Commission (areas including informing the Commission's Annual Work Programme and consulting on new policy initiatives and legislative development: see Art 2). Article 3 makes clear that the</p>	<p><b>MEDIUM HIGH</b></p>

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	<p>In the area of international shipments of waste, IMPEL has signed a <a href="#">MOU</a> with the Basel Convention Secretariat and is it a member of the <a href="#">Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic</a> (ENFORCE).</p> <p>IMPEL also actively engages with other strategic partners such as ENPE and EUFJE. In December 2015 IMPEL formalised its cooperation with the <a href="#">THEMIS</a> Network by signing an MOU.</p>	<p>The UK feeds into IMPEL a lot and it is understood that the other members of IMPEL see UK agencies as valued members. For instance, the EA has done some of the major prosecutions under the TFS waste regime, and one EA prosecutor has done several officer-level training workshops around Europe for IMPEL on TFS.</p> <p>Continued membership by UK regulators could facilitate continued alignment with best practice and co-ordination which is particularly problematic in cross-border environmental problems.</p> <p>In relation to the devolved administrations, it has been noted that continued involvement in IMPEL after Brexit could enable Scotland to continue engaging in European environmental governance, and aligning with EU environmental regulations and policies on devolved matters, although it is suggested that this relationship could be pursued both 'informally' and 'autonomously' (this point is made in 'The implications of Brexit for environmental law in Scotland' (SULNE, 2017), pages 3-4ff). It is suggested that regulatory alignment would be particularly important however in relation to Northern Ireland.</p>	<p>Commission is only an observer in IMPEL projects, meetings and events.</p> <p>IMPEL is registered in Belgium and its legal seat is in Brussels (Legal Registration No: 6/CH/15.598/S, Registration Date: 09/05/08, Company #898.135.767).</p> <p>The <a href="#">original statute for IMPEL</a> has been <a href="#">amended</a>, and a <a href="#">consolidated statute</a> has been in force from June 2016 (note that an English language version of the statute was obtained from the Secretariat, but is not available online). Article 4 of the consolidated precludes the UK from being a member after Brexit:</p> <p><i>(1) A member of the Association can be an Environmental Authority or association of Environmental Authorities which:</i></p> <p><i>(a) is based in:</i></p> <ul style="list-style-type: none"> <li><i>(i) a Member State of the European Union;</i></li> <li><i>(ii) an acceding country or candidate country of the European Union, or</i></li> <li><i>(iii) an EEA or EFTA country or,</i></li> </ul>	

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		<p>IMPEL is the recipient of LIFE+ funding from the Commission, a tool designed to finance environment-related projects. This accounts for between up to 70% of the network's funding. Commission's financing differ to some extent from the budgetary rules applicable for LIFE+ project funding in the EU Member States.</p> <p>Continued participation in IMPEL would not bind the UK or UK-based environmental authorities in any way that could be considered an encroachment on UK sovereignty.</p>	<p><i>(iv) a Potential Candidate to join the European Union</i>  <i>(v) a Potential Candidate to join the European Union, as indicated in the European Council Conclusions at Thessaloniki in 2003[] and specifically those in the Western Balkans: Albania, Bosnia and Herzegovina and Kosovo[]</i></p> <p><i>(b) is, according to the national law of the country concerned, a legal entity or part of a legal entity. In this latter case, the application for membership is on behalf of the legal entity.</i></p> <p><i>(2) In derogation of article 4, paragraph 1b, a Member can also be a legal entity to which an Environmental Authority belongs, which after admission as member, is represented by that authority.</i></p> <p>However under Article 5 the UK may be able to get observer status to the General Assembly.</p> <p><i>The General Assembly may admit observers to the Association</i></p>	

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			<p>Article 8(3)(a) states that it is for the General Assembly to validate applications for either membership or observer status. It may also be possible for amendment to the Statute to be requested to allow for continued participation by UK agencies. Article 21(1) states that:</p> <p><i>Amendments to the Articles and the dissolution of the Association require a two-thirds majority of the National IMPEL Coordinators or the National IMPEL Representatives present.</i></p> <p>It appears that Article 21(1) was used to amend Article 4 from the original text before. In addition to adding what is now Art 4(a)(iv), the amendment removed a list of founding members of IMPEL from Art 4(3), which included the "Environment Agency of England and Wales".</p> <p>It should be noted that this is in line with IMPEL's strategic direction. <a href="#">'Better implementation for the future - a new strategic direction for IMPEL'</a>, published in August 2014, sets out the priority of "Improving the level of engagement with IMPEL's members and with others... take forward opportunities to develop partnerships</p>	

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			<p>and joint working with other networks that are working in the field of environmental protection and enforcement in Europe and internationally”.</p> <p>It is therefore possible for UK agencies, or the UK Government to seek amendment to this constitution to allow for EU agencies to remain involved. <i>Prima facie</i> there is no reason why doing so would require either formal application of the same environmental legislation, or accepting the jurisdiction of the CJEU.</p> <p>It should be noted that a MOU reached with the Commission clearly envisages membership of IMPEL to be limited to certain states. Recital 5 of the MOU states that IMPEL is “a legal entity in the form of an international non-profit association under Belgian law composed of environmental authorities in the EU Member States, EEA EFTA countries and acceding countries, which promotes the independent status of IMPEL and its full ability to act on its own.” However, Article 1(2) of the MOU says that nothing in it “shall prejudice the manner in which the Statutes of IMPEL are applied and interpreted”. And 1(4)</p>	

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			<p>says that the MOU “is by its nature not a contract and does not have any legally binding effect”.</p> <p>There may be a further complication in relation to the delivery of LIFE+ funding in two ways. First, in relation to whether the delivery of that project is through a UK agency. If this is the case, and this funding would be disrupted, then it may be advantageous for the UK to continue participation in IMPEL. Second, there may be interaction with applicable terms to funding agreements under LIFE+, such as a clause limiting the use of those funds by non-MSs. On the standard terms of a LIFE+ Grant Agreement (which can be found <a href="#">here</a>) we note the possibility of term I.10 for situations where beneficiaries are non-MS, but that this may not be contained in agreements entered before Brexit. Furthermore, it is likely that LIFE+ funding will form part of the Article 50 negotiations between the UK and the EU. The LIFE 2014-2020 <a href="#">Regulation (EC) No 1293/2013</a> restrict scope for funding activities beyond the EU and would likely allow the Commission some scope to terminate projects if it wishes.</p>	

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<p><b>The European Network of Prosecutors for the Environment (ENPE)</b></p>	<p>ENPE assists connections between environmental prosecutor practitioners; shares experiences and data on environmental crime; and looks at crucial issues linked to the environment and human health.</p> <p>ENPE seeks to:</p> <ul style="list-style-type: none"> <li>• support the operative work of environmental prosecutors;</li> <li>• promote the exchange of information and experience of the enforcement and prosecution of environmental crime between members;</li> <li>• foster knowledge of environmental law among prosecutors and promote the development of environmental criminal law as an integral part of criminal law enforcement generally;</li> <li>• share experience of investigations, prosecutions and sanctions in the field of environmental criminal law;</li> <li>• contribute to better understanding, implementation and enforcement of environmental criminal law;</li> <li>• encourage and support co-operation between Members and facilitate capacity building in relation to the prevention and prosecution of environmental crime;</li> </ul>	<p><b>Membership of ENPE would continue to be beneficial for maintaining best practice in the prosecution of environmental crime in the UK.</b></p> <p>Membership of ENPE is for agencies within countries (such as the Environment Agency, the Crown Prosecution Service, the Scottish Environment Protection Agency, Natural Resources Wales, Northern Ireland Environment Agency) rather than the UK itself. The organisation is cooperative and aims to share information, therefore its programme does not constrain the actions of the UK, but rather enhances them.</p> <p>The UK-based EA was a founding member of ENPE, and its work programme has been driven by UK regulators, in collaboration with EU partners.</p> <p>Because environmental crime does not recognise international boundaries, agencies across the ENPE network are strengthened by having contacts and colleagues in ever more countries. This applies whether the UK is an MS or not.</p> <p>After the UK leaves the EU there may be regulatory divergence on environmental law between the UK and the EU, depending on the agreement reached</p>	<p><b>The EA will be able to continue participation in ENPE as a Full Member after Brexit, although it looks unlikely that SEPA, NRW and NIEA will be able to continue Supporting Membership without amendment to ENPE’s statute. There will be no UK Directors able to vote on the ENPE board unless there is amendment to the rules.</b></p> <p>Under the <a href="#">Articles of Association</a>, membership is defined at Article 1(4) by reference to Article 6. The first sentence of Article 6.1.1 states that “Full Membership is granted to the Founding Members as a result of the due signature and execution of these Articles of Association.” As the EA is a founding member of ENPE it can <i>prima facie</i> retain full membership.</p> <p>Other UK environmental prosecutors should qualify as ‘Supporting Members’ under Article 6.1.2 (a country is only allowed one ‘Full Member’, representing the country as a whole, but any number of other environmental prosecutors within that country may qualify as ‘Supporting Members’). This would normally be achieved under Article 6.1.2(2) which states that “any Organisation, which</p>	<p><b>MEDIUM</b></p>

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	<ul style="list-style-type: none"> <li>• facilitate collection of data about environmental crime across Europe and enforcement action taken in relation to environmental crime;</li> <li>• identify and develop good (and whenever possible, best) practice, for successful prosecutions and produce guidance, tools, common standards and approaches to the prosecution of environmental offences; and</li> <li>• share training programmes in relation to environmental criminal law.</li> </ul>	<p>between the UK and the EU. Nevertheless UK-based environmental prosecutors will benefit sharing experiences and data on environmental crime, and the same may be true vice-versa.</p> <p>Other ENPE members and the Board are likely to want to ensure continued UK involvement after Brexit. Anne Brosnan, Chief Prosecutor at the EA, is the current President of ENPE.</p> <p>There is an ongoing LIFE-ENPE project, a multi partner project aimed at improving compliance with EU Environmental Law by addressing uneven and incomplete implementation across MS through improvements to the efficiency and effectiveness of prosecutors and judges in combating environmental crime. The running of this project is led by the England-based EA and involves a consortium of 4 other partners, including EUFJE. It runs until July 2020, with a budget of over 1 million Euros.</p> <p>Continued participation in ENPE would not bind the UK or UK-based environmental prosecutors in any way that could be considered an encroachment on UK sovereignty.</p>	<p>would be eligible for Full Membership save for the fact that the Association has already admitted a Full Member in respect of that Organisation's Qualifying Country". Neither NIEA nor SEPA are founding members of ENPE, and therefore would not be eligible as Full Members under Article 6.1.1. Supporting Membership for these organisation would need to be achieved under Article 6.1.2(c) (sic), on a case-by-case basis and at Board discretion.</p> <p>Note that the situation is different for representation on the Board under Article 10. First, note that the UK will no longer be a 'Qualifying Country' within the meaning of Article 1(7), unless it remains in the EEA/EFTA, or retains membership of the European Environment Agency. Second, note that the composition of the Board is defined by Article 10.1.1 as being composed of Directors. Finally, Article 10.2.2(6) automatically terminates the term of office of a Director if she "ceases to be a qualified lawyer involved in the prosecution of environmental crimes in a Qualifying Country". <i>Prima facie</i> this would remove any UK representatives from the Board.</p>	

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			<p>Modification of these rules to allow the UK would be possible in accordance with Article 14(1), which states that any amendment would be made by a vote of the Board of Directors by a simple majority. We are aware of the 'supplementary agreements' between the EA and ENPE, and with the Commission for the provision of LIFE+ funding. On issues relating to LIFE+ funding and the mechanics of UK-based organisations retaining membership, see discussion under IMPEL, above.</p>	

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<p><b>The European Union Forum of Judges for the Environment (EUFJE)</b></p>	<p>The purpose of the EUFJE is to promote, in the perspective of sustainable development, the implementation of National, European and international Environmental Law.</p> <p>EUFJE particularly seeks to:</p> <ul style="list-style-type: none"> <li>• share experience on judicial training in environmental law;</li> <li>• foster the knowledge of environmental law among judges;</li> <li>• share experience on environmental case law; and</li> <li>• contribute to a better implementation and enforcement of International, European, and national environmental law.</li> </ul> <p>Lord Carnwath of the Supreme Court is one of four founding members of EUFJE. Other judges in the UK are also members of EUFJE.</p>	<p><b>Membership of EUFJE would continue to be beneficial for UK judges to continue to develop their knowledge and experience of environmental case law.</b></p> <p>After the UK leaves the EU there may be regulatory divergence on environmental law between the UK and the EU, depending on the agreement reached between the UK and the EU. Nevertheless UK judges may benefit from better understanding the implementation of EU law in other jurisdictions, and the same may be true vice-versa.</p> <p>Continued participation in EUFJE would not bind the UK or UK judges in any way that could be considered an encroachment on UK sovereignty to make and implement laws.</p>	<p><b>UK-based judges will not be able to remain members of EUFJE, without amendment to the Forum's bylaws.</b></p> <p>Participation in EUFJE is governed by the <a href="#">Bylaws</a>. Article 4 sets out that judges satisfying the following criteria can be Member of the Association:</p> <p><i>...every judge interested in environmental law who is member of the Court of Justice of the European Communities, the European Court of Human Rights or a court or tribunal of a Member State of the European Union or a Member State of the European Free Trade Association."</i></p> <p>There are other provisions in Article 4 which grant Observer Status to judges from accession countries and members of European and international organisations. However, Lord Carnwath, who is set out in Article 4 as a Founding member, would not satisfy any of these criteria, and it is unlikely than any other judge in the UK which works in the field is likely to qualify.</p> <p>Under Article 18 a two-thirds majority vote of the General Assembly is needed to amend these rules.</p> <p>There is no requirement for judges to be from a states that either applies EU law, or accepts the jurisdiction of the CJEU.</p>	<p><b>MEDIUM</b></p>

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<p><b>ENVI CrimeNet (ECN)</b></p>	<p>ECN is an informal network connecting police officers and other crime fighters in the field of environmental crime to learn from each other about the extent and nature of environmental crime, and the best practices to combat it.</p> <p>Key areas of the ECN's work include:</p> <ul style="list-style-type: none"> <li>• the illegal import and export of waste products;</li> <li>• the smuggling of protected animal and plant species;</li> <li>• the forgery of transport documents pertaining to waste products, and protected animal and plant species; and</li> <li>• waste-related crime.</li> </ul> <p>ECN aims to improve the results of the fight against environmental crime by, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>• ensuring that member states become aware of the fight against environmental crime at the strategic level;</li> <li>• mutual sharing of expertise;</li> <li>• establishing relevant risk assessments that can be exchanged amongst the participants;</li> <li>• learning from one another in the fields of risk assessments and intervention strategies;</li> </ul>	<p>In relation to global issues such as climate change and damage to biodiversity it is important that police forces are involved in a coordinated effort to combat environmental crime.</p>	<p><b><i>Unknown, no rules of membership were found. However as an informal network it is likely that the UK will be able to continue to participate.</i></b></p>	<p><b>MEDIUM HIGH</b></p>

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	<ul style="list-style-type: none"><li>• establishing tactical analyses of particular forms of environmental crime;</li><li>• establishing joint investigations into environmental crime;</li><li>• exchanging investigation methods;</li><li>• exchanging information prior to initiating the operational phase;</li><li>• to create the right training and schooling possibilities in cooperation with Cefpol.</li></ul>			

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<p><b>European Food Safety Authority (EFSA)</b></p>	<p>EFSA is an independent EU agency. It was set up in 2002 to be a source of scientific advice and communication on risks associated with the food chain following a series of food crises in the late 1990s. The agency was legally established by the EU under the General Food Law – Regulation 178/2002.</p> <p>The General Food Law created a European food safety system in which responsibility for risk assessment (science) and for risk management (policy) are kept separate. EFSA is responsible for the former area, and also has a duty to communicate its scientific findings to the public.</p> <p>In their role as risk assessor the EFSA produces scientific opinions and advice that form the basis for EU policies and legislation. This remit covers: food and feed safety; nutrition; animal health and welfare; plant protection; and, plant health. The EFSA also considers, through environmental risk assessments, the possible impact of the food chain on the biodiversity of plant and animal habitats.</p>	<p><b>Continued participation in EFSA is important.</b></p> <p>Scientific opinions of the EFSA are likely to have a continued impact on producers in the UK, exporting to the single market. The decisions taken by the EFSA are likely to have an impact of policy formation.</p> <p>If the UK’s Food Safety Agency assumes the jobs currently undertaken by the EFSA then questions need to be answered in relation to capacity.</p> <p><a href="#">It has been suggested</a> by the Chair of the Food Standards Agency board that the relationship between the FSA and the EFSA will continue in some form after Brexit.</p> <p><a href="#">Statistics generated by the EFSA</a> suggest that the body may be open to UK continued participation. The UK has the highest share of organisations in the Article 36 list (11%); the value of contracts signed with UK contractors represents 19% of the total budget consumed under EFSA science procurements in the period 2012-2016; and the value of awarded EFSA grants to UK beneficiaries represents 23% of total budget consumed under EFSA grants in the period 2009-2016. UK staff also make up a high percentage of the Scientific Panel of Experts.</p>	<p><b>UK membership OF EFSA is unlikely, however the UK could participate as a third country, provided it continued to implement the relevant <i>acquis</i> and EU policy to qualify for a third country agreement.</b></p> <p>The EFSA is governed by the General Food Law (Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety).</p> <p>Full membership of EFSA is premised on being a member state.</p> <p>Article 49 governs the participation of third countries in EFSA. This states that EFSA shall be open to the participation of countries “which have concluded agreements with the European Community by virtue of which they have adopted and apply Community legislation in the field covered by this Regulation”. The second paragraph states that such arrangements will include provisions “specifying in particular the nature, extent and</p>	<p><b>MEDIUM HIGH</b></p>

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		<p>Participation in the rapid alert system is also of high importance. Although created by the same legislation as EFSA, this is in fact a separate entity.</p>	<p>manner in which these countries will participate in the Authority's work, including provisions relating to participation in the networks operated by the Authority, inclusion in the list of competent organisations to which certain tasks may be entrusted by the Authority, financial contributions and staff."</p> <p><b>Article 50 also provides for a rapid alert system, notifying members of a direct or indirect risk to human health deriving from food or feed. This network, RASFF, is a separate entity to EFSA, however article Article 50 allows for the participation of non-member states, including third countries, on the basis of agreements between the EU and a third country: this may form part of an agreement under Article 49.</b></p>	

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<p><b>Water Framework Directive Common Implementation Strategy (WFD CIS)</b></p>	<p>The Water Framework Directive sets a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater. This framework approach leaves important matters of detail for member states.</p> <p>In order to ensure a consistent approach to implementation of the Directive, Member States, the European Commission and Norway have agreed on a Common Implementation Strategy (CIS).</p> <p>The four main activities of the CIS are:</p> <ul style="list-style-type: none"> <li>• information sharing;</li> <li>• developing guidance on technical issues, such as monitoring, status assessment and exemptions to the environmental objectives;</li> <li>• information and data management; and,</li> <li>• application, testing and validation.</li> </ul> <p>The Communication and Information Resource Centre for Administrations, Businesses and Citizens (CIRCABC) is the web-based platform provided by the European Commission used to share documents (including meeting documents) under the WFD CIS.</p>	<p>If domestic authorities (i.e. EA, NRW, SEPA and NIEA) were able to remain members of the CIS this would enable continued access to information from EU member states about the water environment, best practice for regulating it etc. This information can better inform domestic regulatory decisions.</p> <p>UK participation would also enable a continuing UK influence in the development of future CIS guidance documents. These documents, though not legally binding, in practice set the approach regulators take to implementing the Directive. It may make sense for regulators to continue to follow CIS guidance documents when implementing the Directive after Brexit, so as to benefit from developing EU wisdom (albeit it would be open to the UK and devolved administrations to direct them not to do so).</p>	<p><b>Membership by UK authorities does not appear possible, unless specially negotiated.</b></p> <p>The <a href="#">WFD CIS page on the Europa website</a> indicates that:</p> <p><i>Organisations interested in joining the Strategic Co-ordination Group, or any of the Working Groups under the Common Implementation Strategy must fulfil the eligibility criteria set out in the Rules of Procedure.</i></p> <p>The link on that webpage connects with the <a href="#">Strategic Co-Ordination Group Rules of Procedure</a>. This states at 2.2 that:</p> <p><i>The strategic co-ordination group is chaired by the Commission and a Member State representative, proposed by the Member States and for a minimum period of 18 months. The group includes representatives of all Member States, EFTA countries, acceding, candidate and potential candidate countries, stakeholder organisations representing Business and Industry (B&amp;I), non-governmental organisations</i></p>	<p><b>MEDIUM</b></p>

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	<p>The CIS also supports the implementation of the <a href="#">Floods Directive</a> (and to a lesser extent the Daughter Directives on <a href="#">Groundwater</a> and on <a href="#">Priority Substances</a>).</p>		<p><i>(NGO) and inter-governmental organisations (IGO), as well as the leaders of the CIS Working Groups.</i></p> <p>Under the text that follows it is clear that the UK Government would not qualify for membership under any of these heads.</p> <p>UK-based NGOs, business and industry group (and possibly UK-based regulators) may qualify under the “General Interest Organisations” [2.2.1] and “Technical Interest Organisations” [2.2.2] provisions for organisations wishing to participate specific working groups, although the criteria for the former are likely to prohibit many UK-based organisations.</p>	

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<p><b>Marine Strategy Framework Directive Common Implementation Strategy (MSFD CIS)</b></p>	<p>The <a href="#">Marine Strategy Framework Directive</a> (MSFD) requires from MS detailed and coordinated input to manage the marine environment. The aim of the Common Implementation Strategy (CIS) is to allow, as far as possible, a coherent and harmonious implementation of the MSFD within the EU. The MSFD CIS is an informal programme of coordination.</p> <p>The highest level political group in the CIS are the Marine Directors who focus on ensuring the overall implementation of the Directive. The main role of the Marine Directors is their function as the initiators and drivers of the CIS, focusing on more political and high level issues or difficult technical issues that could not be resolved in MSCG.</p> <p>Within the CIS there are also three Working Groups which prepare common methods for implementation of the MSFD. These are:</p> <ul style="list-style-type: none"> <li>• Good Environmental Status, to support Member States in the determination of GES;</li> <li>• Economic and Social Analysis, to develop common methodologies and approaches to carry out the economic and social analysis of the</li> </ul>	<p>Benefits of continued membership are similar to those of the Water Framework Directive (see above). Developing common approaches and sharing information is perhaps even more important given the number of countries whose waters are part of the North-East Atlantic Ocean.</p> <p>The MSFD CIS Strategic document (including a work programme for 2014 and beyond) "<a href="#">Learning the lessons and launching a re-enforced phase of implementation</a>" states in the introduction that:</p> <p><i>The CIS together with similar ways under other directives of working between the European Commission, the Member States and other interested parties, are recognised as a useful process to implement EU legislation and an example of good governance at EU level.</i></p>	<p><b>No, not without amendment to the rules. Highly unlikely that the UK could participate with the Marine Directors, and Rules of Procedure adopted by the Marine Directors preclude UK participation in the Marine Strategy Coordination Group and at least one Working Group.</b></p> <p>It is unclear how the Marine Directors are established. However, as a high level political group, it is highly probable that this is limited to MSs.</p> <p>Article 2(2) of the <a href="#">Rules of Procedure for the Marine Strategy Coordination Group</a> restricts membership of the MSCG to MSs, and the UK would not qualify as an observer under criteria (a)-(c) for admitting representatives of third countries.</p> <p>The WG GES follows the rules of the MSRG. Annex 3, Part 1, section 4 of "<a href="#">Learning the lessons and launching a re-enforced phase of implementation</a>" says that in relation to the Mandate of the Working Group on Good Environmental Status "the WG is organised in line with the MSCG rules of procedures".</p>	<p><b>MEDIUM LOW</b></p>

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	<p>use of the marine waters, and;</p> <ul style="list-style-type: none"> <li>• Data, Information and Knowledge Exchange, to support Member States with their data reporting obligations.</li> </ul> <p>There are also two Technical Subgroups, focusing on emerging areas of underwater noise and litter which are of particular concern.</p> <p>The link between Marine Directors and Working Groups is the Marine Strategy Co-ordination Group (MSCG) who prepare material for the Marine Directors and oversee the work of the Working Groups. This group (and its subgroups) is a Commission expert group within the meaning of Commission decision C(2016)3301.</p> <p>Similar to the WFD CIS the CIRCABC is used as the web-based platform provided by the European Commission to share documents (including meeting documents) under the MSFD CIS.</p>			

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<p><b>European Fisheries Control Agency (EFCA)</b></p>	<p>The EFCA is a European Union agency. The agency's mission is to promote the highest common standards for control, inspection and surveillance under the CFP.</p> <p>The agency, together with the national specialised services of Member States, ensures uniform and effective application of the rules of the CFP.</p> <p>Specifically it:</p> <ul style="list-style-type: none"> <li>• coordinates control and inspection by MSs relating to their control and inspection obligations;</li> <li>• coordinates the deployment of the national means of control and inspection pooled by the Member States concerned in accordance with the CFP;</li> <li>• assists MSs in reporting information on fishing activities and control and inspection activities to the Commission and third parties;</li> <li>• assists Member States and the Commission in harmonising the application of the CFP throughout the EU;</li> <li>• contributes to work by MSs and the Commission on research into and development of control and inspection techniques;</li> </ul>	<p><b>Membership of ECFA would continue to be beneficial for maintaining best practice in the control and inspection in the UK. However, much depends on the UK's future relationship with the EU in the area of fisheries.</b></p> <p>Much depends on the future of the UK's relationship with the EU in relation to fisheries, and specifically any divergence with the control and inspection obligations under the CFP and IUU regulations.</p> <p>To the extent that the EFCA coordinates the dissemination of best-practice amongst regulatory agency, or contributes to the training of inspectors, it may be beneficial for UK-based agencies to have observer status in EFCA.</p> <p>If the UK intends to maintain regulatory alignment with the EU's fisheries policy (for instance, to enable trade in fish and fisheries products) it may benefit the UK to contribute to the development of control and inspection techniques, if those techniques will need to be applied in the UK.</p>	<p><b>Participation by the UK on the Administrative Board of the EFCA is not possible without amendment to EU Regulations. Participation in the Advisory Board is contingent on the UK's participation in the Regional Advisory Councils under the CFP.</b></p> <p>The Community Fisheries Control Agency (CFCA) was established pursuant to Council <a href="#">Regulation (EC) No 768/2005</a> of 26 April 2005 which entered into force on 10 June 2005. Its objective is refined in Article 1 as: "organise operational coordination of fisheries control and inspection activities by the Member States and to assist them to cooperate so as to comply with the rules of the Common Fisheries Policy in order to ensure its effective and uniform application."</p> <p>Numerous activities with Third Parties are envisaged, without them being members of EFCA:</p> <ul style="list-style-type: none"> <li>• Under Article 4(1) the EFCA "shall, at the request of the Commission: (a) assist the Community and Member States in their relations with third countries and regional international fisheries organisations of which the Community is a member".</li> </ul>	<p><b>MEDIUM</b></p>

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	<ul style="list-style-type: none"> <li>• contributes to the coordination of inspector training and the exchange of experience between MSs; and</li> <li>• coordinates the operations to combat illegal, unreported and unregulated (IUU) fishing in conformity with Community rules.</li> </ul>		<ul style="list-style-type: none"> <li>• Under Article 4(2) the EFCA may also “at the request of the Commission, cooperate with the competent authorities of third countries in matters relating to control and inspection in the framework of agreements concluded between the Community and such countries.”</li> <li>• Under Article 7(d): In order to assist Member States to better fulfil their obligations under the rules of the common fisheries policy, the EFCA shall elaborate criteria for the exchange of means of control and inspection between Member States and between Member States and third countries and for the provision of such means by the Member States.</li> </ul> <p>The composition of the Administrative Board is governed by Art 24, which limits participation to MSs and the Commission.</p> <p>Article 31(1) states that the Advisory Board shall be composed of representatives of the Regional Advisory Councils provided for by Article 31 of Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy. This is on the basis of one representative designated by each Regional Advisory Council.</p>	

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<p><b>European Maritime Safety Agency (EMSA)</b></p>	<p>EMSA provides technical and scientific advice to the European Commission on safety at sea and the prevention of pollution by ships. It has some operational responsibility for, amongst other things, oil pollution response.</p> <p>EMSA also monitors the development and implementation of new maritime legislation and assists MSs in the implementation of forthcoming or newly adopted Legislation in the field of ship related pollution.</p> <p>EMSA also assists the Commission, MSs and the maritime industry in meeting, implementing and monitoring international and European legislation and initiatives. These include:</p> <ul style="list-style-type: none"> <li>• the reduction of SOx and NOx emissions;</li> <li>• development of alternative fuels for ships as well as abatement methods;</li> <li>• the EU MRV CO2 Regulation as well as the International context on future policy developments in this area;</li> <li>• the PRF Directive; and,</li> <li>• Ship Recycling, in particular regarding Title II of the regulation and the Inventories of Hazardous Materials.</li> </ul>	<p>In the environmental field it would be particularly beneficial for the UK to continue to exchange data in relation to monitoring situations involving oil spills.</p>	<p><b>UK participation with EMSA is unlikely. The UK could be a third party member of EMSA, however it would need to be implementing the correct legislation to qualify, which is unlikely, and this would require budgetary contributions to the operation of the agency. Alternatively the UK could attend meetings as an observer.</b></p> <p>EMSA is established by <a href="#">Regulation (EC) No 1406/2002</a>. Recital (4) states that the EMSA “should be open to the participation of these States and to other third countries which have concluded agreements with the Community whereby they adopt and implement Community legislation in the field of maritime safety and prevention of pollution by ships.”</p> <p>Article 17 provides the legal mechanism for the participation of third countries:</p> <ol style="list-style-type: none"> <li>1. <i>The Agency shall be open to the participation of third countries, which have entered into agreements with the European Community, whereby they have adopted and are applying Community</i></li> </ol>	<p><b>MEDIUM</b></p>

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			<p><i>law in the field of maritime safety and prevention of pollution by ships.</i></p> <p>2. <i>Under the relevant provisions of these agreements, arrangements will be developed which shall, inter alia, specify the nature and the extent of the detailed rules for the participation by these countries in the work of the Agency, including provisions on financial contributions and staff.</i></p> <p>Rule 4.2 of the EMSA <a href="#">Rules of Procedure</a> state that “Representatives of third countries having entered into agreements with the European Community in accordance with article 17 of the Regulation shall be entitled to attend Board’s meetings under the terms and conditions specified in such agreements.”</p> <p>However, under Article 13(5) the Administrative Board may also “invite any person whose opinion can be of interest to attend its meetings or part of its meetings as an observer”. Rule 4.3 of the Rules of Procedure prescribes certain categories of county</p>	

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			<p>to which this provision applies, however Rules 4.1 and 4.3 give the Board the broad discretion to invite “any person whose opinion can be of interest” and “Representatives of third countries [...] in case an agenda item is of particular interest to these countries”.</p> <p>Under Article 8 the CJEU has jurisdiction pursuant to any arbitration clause contained in a contract concluded by EMSA, and any cases of non-contractual liability relating to the compensation for damage. Under Article 18(1)(b) a third country could be required to contribute to the budget.</p> <p>Continued participation in EMSA would require participation in the budget of the organisation, under Regulation (EC) 911/2004.</p>	

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<p><b>Fisheries Advisory Councils (FACs)</b></p>	<p>Introduced by the CFP, FACs are stakeholder-led organisations which provide the Commission and MSs with recommendations on fisheries management matters.</p> <p>‘Stakeholders’ include both the fishing sector (including catching, processing and marketing sectors, and trade unions), and other groups of interest (environmental NGOs, consumers and civil society).</p> <p>Each of the different ACs have slightly different terms of reference, however goals broadly include conservation of marine biodiversity and the sustainable use of fishing resources, as well as combatting IUU fishing. As well as contributing data to support these goals, FACs may also provide advice on conservation and socio-economic aspects of management, and on simplification of rules.</p> <p>FACs are consulted in the context of regionalisation. The following ACs are of particular relevance to the UK:</p> <ul style="list-style-type: none"> <li>• the North Sea AC (NSAC);</li> <li>• the North-western waters AC (NWWAC);</li> <li>• the Pelagic AC (PAC); and</li> </ul>	<p>Membership of FACs may be beneficial for environmental goals, particularly the conservation of marine biodiversity, the sustainable use of fishing resources, and combatting IUU fishing. However, the true extent of any benefits depends largely on the UK’s future relationship with the EU in the area of fisheries, as the functionality of the FACs derives from their interaction with the CFP.</p> <p>The House of Lords European Union Committee report on “Brexit: Fisheries” sets out two different schools of thought on FACs before concluding that because fisheries management in UK-waters depends on the cooperation of other MSs, the UK would benefit from continued participation in FACs.</p> <p><i>192. Though some witnesses, notably UKIP, argued the UK should not spend its resources on influencing EU policy, Mr Landmark suggested that the internal regionalised processes in the European Union minimised the room for compromise between the EU and other parties about stock management. Norway was therefore looking for ways to influence the increasingly regionalised decision-making processes in the EU, though a solution had yet to be found. He</i></p>	<p><b>It is unlikely that organisations representing UK-based fisheries could continue to participate in FACs, without renegotiation.</b></p> <p>Part XI of the CFP sets out the rules governing FACs. Article 45(1) sets out the composition of FACs as:</p> <p>(a) <i>organisations representing the fisheries and, where appropriate, aquaculture operators, and representatives of the processing and marketing sectors;</i></p> <p>(b) <i>other interest groups affected by the CFP (e.g. environmental organisations and consumer groups).</i></p> <p>It is possible that ‘interest groups’ could continue to participate in FACs, although it is unlikely that UK-based ‘organisations representing fisheries’ could continue to participate. As WWF state in their evidence to the House of Lords enquiry:</p> <p><i>The regional decision-making lies with the so called High Level Groups, which are made up of Member State representatives. The UK would lose its seat in these High Level Groups and it is</i></p>	<p><b>MEDIUM</b></p>

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
	<ul style="list-style-type: none"> <li>the Long Distance Fleet AC (LDAC).</li> </ul> <p>The CFP also envisages the creation of four additional FACs, of which those relating to Aquaculture, Markets and Outermost Regions may be relevant to the UK.</p>	<p><i>concluded that this was “a real obstacle to co-operation”.</i></p> <p><i>193. The Angling Trust argued that the Government should seek to preserve influence in EU fisheries management. The Trust argued that the UK should pursue a new approach to the EU’s Advisory Councils (ACs), including negotiating to become an observer in the North Sea, North Western Waters and Pelagic Advisory Councils<sup>5</sup> while the NEF suggested establishing “super-ACs”, which would include all countries in a region, regardless of EU membership. Continued influence and participation in the ACs, the Angling Trust suggested, could be an avenue for the UK to influence the EU’s approach to fisheries management outside the CFP.</i></p> <p><i>194. As we have concluded, fisheries management cannot be seen in isolation from that of neighbouring states. The UK could seek to negotiate continued participation in Advisory Councils in order to maintain a degree of influence over the regionalisation of fisheries management in the EU.</i></p>	<p><i>difficult to envisage an alternative. Similarly, UK stakeholders (industry and other interest groups) would lose their right to retain membership of any of the regional advisory councils, as they will not be EU members. There could be opportunities for stakeholders (and government representatives) to attend some of the AC meetings, but only as observers rather than active members.</i></p> <p>However, much depends on the re-negotiation of access rights and the process for catch allocation which emerges from the Withdrawal Agreement and any subsequent Trade Agreement between the UK and the EU.</p>	

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
<p><b>Euratom Supply Agency (ESA)</b></p>	<p>Established under Art 52 of the Euratom Treaty, the ESA ensures a regular and equitable supply of nuclear fuels to EU users in line with the objectives of Art 2(d) of the Euratom Treaty.</p> <p>The ESA focuses on enhancing the security of supply of users located in the European Union and shares responsibility for the viability of the EU nuclear industry.</p> <p>The ESA is responsible for the creation of a nuclear market observatory. It is mandated to exercise its powers to monitor the market to make sure that the market activities of individual users reflect security of supply.</p> <p>ESA also has a right of option to purchase nuclear materials produced in the Member States. The ESA monitors transactions involving services in the nuclear fuel cycle (enrichment, conversion and fuel fabrication).</p> <p>Operators are required to submit notifications giving details of their commitments. ESA verifies and acknowledges these notifications.</p>	<p>The environmental implications of continued participation in the ESA are beyond the scope of this paper, particularly as the UK's relationship with the ESA is bound up with matters relating to ownership and supply of special fissile materials.</p>	<p><b>It would not be possible under current rules for the UK to continue to participate in the ESA.</b></p> <p><a href="#">Council Decision of 12 February 2008 establishing Statutes for the Euratom Supply Agency</a> governs the functioning of the ESA. Chapter 3 establishes the Advisory Committee. Article 11 sets out the composition of the Advisory Committee from members of the MSs. Article 11(1) states that "The Committee shall be composed of members from the Member States as set out in the table below."</p>	<p><b>MEDIUM</b></p>

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
<p><b>European Nuclear Safety Regulators' Group (ENSREG)</b></p>	<p>ENSREG is an independent, expert advisory group created to facilitate consultation, coordination and cooperation of national regulatory authorities in the EU.</p> <p>All EU MSs that operate nuclear installations follow the basic principles set internationally for assuring nuclear safety and the safe management of radioactive waste and spent fuel. These principles are established in the Convention on Nuclear Safety and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management. ENSREG's role is to help to establish the conditions for continuous improvement and to reach a common understanding in these areas.</p> <p>As an independent authoritative expert body, ENSREG works to:</p> <ul style="list-style-type: none"> <li>• improve the cooperation and openness between Member States on nuclear safety and radioactive waste issues;</li> <li>• improve the overall transparency on nuclear safety and radioactive waste issues; and</li> <li>• as appropriate, advise the European Commission on additional European</li> </ul>	<p><b>Collaboration on safety issues is highly desirable.</b></p> <p>The <i>NIA say</i> that "The UK has a robust safety regime implemented by its independent Office for Nuclear Regulation, and its decision to leave Euratom will not result in the industry being less safe. Similarly, safety standards in the Euratom Community will not be impacted by the UK's withdrawal... However, the international nature of the nuclear sector means that going forward close co-operation and collaboration on safety and other regulatory matters is vital. The industry faces significant challenges and opportunities in the years ahead. The EU and the UK should strive to continue to work closely together on nuclear policy and regulatory issues. In particular there needs to be continued UK engagement on safety and regulation issues via WENRA and ENSREG (if at all possible), and on broader policy issues via a new UK-Euratom consultative body."</p> <p>As UKELA has previously said in our report <i>Exit from the Euratom Treaty and its Environmental Implications</i>: "Observer status' for experts from EEA states at certain high level meetings is permissible under the ENSREG Rules of Procedure<sup>19</sup>, but it is doubtful whether the UK's</p>	<p><b>The UK cannot retain membership of ENSREG or the Working Groups, unless Council Decision 2007/530/Euratom is amended. It may be possible for the UK to be nominated for observer status of each, without rule change.</b></p> <p>Article 2 of the <a href="#">Rules of Procedure</a> sets out the requirements for membership. Article 2.1 states: "Each EU Member State shall nominate two senior representatives as Members to the ENSREG having competence in the areas covered by the ENSREG." The <a href="#">Rules of Procedure for the ENSREG Working Groups</a> provide for parallel criteria at Article 2.1</p> <p>This reflects the legislative basis for ENSREG. <a href="#">Commission Decision 2007/530/Euratom</a> on establishing the European High Level Group on Nuclear Safety and Waste Management states at Art 3(1) that membership is for appointed representatives of EU member states.</p> <p>However, the rules may allow the UK to be nominated for Observer Status. Article 2.2 of the Rules of Procedure states "2.2 Senior representatives, nominated from EEA Member States,</p>	<p><b>MEDIUM HIGH</b></p>

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	<p>rules in the fields of the safety of nuclear installations and the safety of the management of spent fuel and radioactive waste.</p> <p>NSREG has established four working groups to undertake its work programme:</p> <ul style="list-style-type: none"> <li>• Nuclear Safety;</li> <li>• Management of spent fuel;Waste regulation; and</li> <li>• Transparency Arrangement.</li> </ul> <p>ENSREG’s role is to help to establish the conditions for continuous improvement and to reach a common understanding in the areas of nuclear safety and radioactive waste management.</p>	<p>participation at this level would be adequate. This collaboration on safety issues is essential and new arrangements will need to be devised.”</p> <p>However, the <a href="#">Nuclear Institute</a> advocate for the UK to “retain at least associate status at ENSREG meetings so as to maintain alignment with EU nuclear regulatory developments and in order to influence decisions that may have an effect on the UK”.</p>	<p>the States that are candidates for accession to the EU, and other European countries may be invited to participate as Observers.” As the UK will remain a European country outside the UK, <i>prima facie</i> it is eligible for nomination as an observer as an “other European” country.</p> <p>This reflects Commission Decision 2007/530/Euratom. Article 4(5) provides for the participation of observers. ENSREG has the power to set its own rules of procedure under Article 4(6).</p> <p>Under the first sentence of Article 4(5) “Experts from EEA States and States which are candidates for accession to the European Union may attend the meeting of the High Level Group as observers.” However the second sentence provides that: “The High Level Group and the Commission may invite <i>other experts and observers</i> attend its meetings” (emphasis added).</p>	

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
<p><b>The European Radiological Data Exchange Platform (EURDEP)</b></p>	<p>EURDEP is a network for the exchange of radiological monitoring data between European countries, developed and maintained by the Joint Research Centre of the European Commission.</p>	<p>The benefits of continued participation in EURDEP relate to issues beyond environmental protection; however data delivery during a radiological emergency is obviously extremely important.</p> <p>Participation in EURDEP also satisfies some of the UK's international obligations. EURDEP assumes the role of European Regional HUB for the International Radiation Monitoring Information System (IRMIS), under provisions given by the Conventions on Early Notification and Assistance in the case of a nuclear accident or radiological emergency (ENAC).</p>	<p><b>No, negotiations would be required for continued membership of EURDEP, although voluntary participation for non-EU countries is available.</b></p> <p>As the UKELA report <i>Exit from the Euratom Treaty and its Environmental Implications</i> states: "There are similar questions [vis-a-via ENSREG] as to the UK's future ability to deliver Safety were it no longer to be a member of the European Radiological Data Exchange Platform (EURDEP)<sup>20</sup>. Here too new arrangements for continued (voluntary) membership would be required."</p> <p>Participation in EURDEP is regulated by <a href="#">Council Decision 87/600/Euratom</a> on Community arrangements for the early exchange of information in the event of a radiological emergency. This Decision does not expressly set out membership requirements, but it refers to 'Member States' throughout. There are no provisions for associate membership, etc. of non-MSs.</p> <p>Article 5(1) provides for the transmission of information from outside the EU to MSs. This states that EURDEP "shall forward to all Member</p>	<p><b>MEDIUM</b></p>

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
			<p>States any information it receives about significant increases in the level of radioactivity or about nuclear accidents in non-Community countries and especially those adjacent to the Community." There is no statutory basis for the external communication of information about radioactivity from within the EU.</p> <p>However, <a href="#">EURDEP's website states</a> that "The participation of non-EU countries is on a voluntary basis. There is however a gentlemen's agreement that participating to EURDEP automatically means that data delivery will continue during emergency."</p> <p>The statutory foundation of EURDEP also includes <a href="#">Recommendation 2000/473/ Euratom</a>.</p>	

Name	What does it do?	Benefits to UK of continued participation, including ramifications of not doing so	Is continued UK participation possible, including regulations	Priority
<p><b>European Community Urgent Radiological Information Exchange (ECURIE)</b></p>	<p>ECURIE the European early notification system in the event of a radiological or nuclear emergency. The system is the technical implementation of the Council Decision 87/600/Euratom on Community arrangements for the early notification and exchange of information in the event of a radiological or nuclear emergency.</p> <p>Decision 87/600/Euratom requires that ECURIE Member States promptly notify the European Commission and all the MSs potentially affected when they intend to take counter-measures in order to protect their population against the effects of a radiological or nuclear accident. The EC will immediately forward this notification to all Member States. Following this first notification, all MSs are required to inform the Commission at appropriate intervals about the measures they take and the radioactivity levels they have measured.</p>	<p>There are strong reasons for the UK to continue to participate in systems designed to provide any and all notification in the event of a radiological or nuclear emergency.</p>	<p><b>No, the UK cannot not remain a member of ECURIE. The UK could participate as a third country, however at present this is not possible unless the agreement allowing for such were amended.</b></p> <p>ECURIE is open to third country participation, although amendment to the statutory basis of third country participation would be necessary.</p> <p>28 EU Member States (as members of Euratom) as well as Switzerland and Croatia have signed the <a href="#">agreement</a> between the European Atomic Energy Community (Euratom) and non-member States of the European Union on the participation of the latter in the Community arrangements for the early exchange of information in the event of radiological emergency.</p> <p>Article 1 sets out that the agreement is applicable to “Participating Countries or a Member State of Euratom”. The Participating Countries are defined in the preamble, and does not include the UK. An amendment or protocol to this agreement would be necessary if the UK were to be able to participate in the agreement.</p>	<p><b>MEDIUM HIGH</b></p>



# Annex 2: EU funding mechanisms

Name	Environmental relevance	Is continued participation by the UK possible?
<p><b>LIFE</b></p>	<p>LIFE is the only EU fund dedicated to the environment which the EU bodies we are looking at receive funding through. LIFE aims to contribute to the implementation, updating and development of EU environment and climate policy and legislation, in particular the integration of the environment into other policies.</p> <p>IMPEL and ENPE currently deliver LIFE funded projects, which are set to continue until after the UK withdraws from the EU. The ENPE-LIFE project is aimed at improving compliance with EU environmental law by addressing uneven and incomplete implementation across Member States. It is delivered through improvements to the efficiency and effectiveness of prosecutors and judges in combating environmental crime. The project runs until July 2020, with a budget of over €1 million. Delivery of this multi-partner project is being led by the Environment Agency.</p> <p><a href="#">Commission Implementing Decision 2014/203/EU on the adoption of the LIFE multiannual work programme for 2014-17</a> sets the framework for the next four years for the management of the new LIFE Programme 2014-2020. Funds are made available for two sub-programmes: one for the environment and one for climate action.</p> <p>It is not known what work programme, if any, will be adopted for the period beyond 2020.</p>	<p><b>The UK is unlikely to be able to continue participating in LIFE funded projects, unless the UK retains membership of the European Environment Agency.</b></p> <p>The LIFE programme is administered in accordance with <a href="#">Regulation (EC) No 1293/2013</a>.</p> <p>Article 5 permits the participation of third countries which are EFTA members, countries to which the European Neighbourhood Policy applies, or members of the European Environment Agency. EFTA membership currently appears an unlikely outcome of Brexit negotiations, and the European Neighbour Policy currently applies only to Southern and Eastern neighbouring states. The most likely route for the UK to engage Article 5 is therefore continued membership of the European Environment Agency. Any such participation in LIFE under Article 5 is subject to bilateral or multilateral agreements establishing the general principles for such third countries participating in European Union programmes.</p> <p>Article 6 may be relevant to LIFE financing of activities outside the Union in British Overseas Countries and Territories in accordance with the Overseas and Association Decision (2001/822/EC, now 2013/733/EC) provided such activities are necessary to achieve the Union's climate change and environmental objectives.</p>

Name	Environmental relevance	Is continued participation by the UK possible?
<p><b>Horizon 2020</b></p>	<p>Horizon 2020 is the biggest EU Research and Innovation programme ever, with nearly €80 billion of funding available over the 7 year period covering 2014 to 2020.</p> <p>Applications for most H2020 funding must be done by a consortium of organisations, usually made up of at least three organisations from different countries. These may include private companies, universities, research organisations and public bodies.</p> <p>The scope of H2020 is not limited to environmental matters; but environmental programmes fall within the actions and opportunities for collaboration under the Societal Challenge ‘Climate action, environment, resource efficiency and raw materials.’</p> <p>This is an important funding stream. As the <a href="#">Institute for Government has reported</a>, in 2015 76% of the money the UK received from the EU for research and development came from Horizon 2020 (€1.2bn).</p>	<p><b>At present UK-based organisations will not be able to continue to receive Horizon 2020 funding after Brexit. However, it may be possible for the UK to negotiate participation in the programme as an associate member, or under the terms of cooperation with third countries.</b></p> <p>The Commission has confirmed that the UK-based organisations can “participate and receive funding in Horizon 2020” until the UK leaves the EU. However, it has also said that: “the eligibility criteria must be complied with for the entire duration of the grant. If the United Kingdom withdraws from the EU during the grant period without concluding an agreement with the EU ensuring in particular that British applicants continue to be eligible, you will cease to be eligible to receive EU funding (while continuing, where possible, to participate) or be required to leave the project on the basis of Article 50 of the grant agreement.” (<a href="#">Commission note to British applicants to Horizon 2020</a>, October 2017).</p> <p>The UK Government has responded, saying that this “simply refers to the existing terms and conditions of the EU research and innovation framework programme agreements”. In relation to any discontinuation of funding it has said that it has “[underwritten] the payment of such awards, even when specific projects continue beyond the UK’s departure from the EU” (<a href="#">DBEIS ‘Horizon 2020 Underwrite Q&amp;A’</a>, 23 October 2017). The UK <a href="#">Government has said that it wants to continue to participate in H2020</a>.</p> <p><a href="#">Regulation (EU) No 1291/2013</a> establishes the Horizon 2020 programme. Article 7 allows non-Member States to be classified as “Associate Countries”, but this is unlikely to be applicable to the UK post-Brexit. This association is open to acceding countries, candidate countries and potential candidates (not relevant here), countries covered by the European Neighbourhood Policy (currently only Southern and Eastern neighbouring countries) and EFTA Members. Association with Horizon 2020 takes place through the conclusion of an international agreement between the EU and the third country. This agreement specifies the</p>

Name	Environmental relevance	Is continued participation by the UK possible?
		<p>terms and conditions of participation of the associated country in Horizon 2020, including the financial contribution based on the GDP of the associated country.</p> <p>An alternative to associate membership of the H2020 programme would be international cooperation. Article 27 of Regulation 1291/2013 provides for international cooperation with third countries. Art 27(1) states that legal entities established in third countries are eligible to participate in indirect actions of Horizon 2020 under the conditions set out in Regulation (EU) No 1290/2013.</p> <p>Article 7 of Regulation 1290/2013 states that legal entities, regardless of their place of establishment, may participate in an action provided that conditions set out in the Regulation have been met, together with any conditions laid down in the relevant work programme or work plan. The relevant work programme may restrict the participation in Horizon 2020 or parts thereof of legal entities established in third countries where conditions for the participation of legal entities from Member States (or their affiliated entities established in a third country) in the third country's research and innovation programmes are considered to be prejudicial to the Union's interests. Article 10 states that any legal entity established in a third country identified in the work programme will be eligible for funding from the EU under H2020. In the case of a participating legal entity established in a third country that is not eligible for funding under that provision, funding from the Union may nevertheless be granted provided that either (a) the participation is deemed essential for carrying out the action by the Commission or the relevant funding body; or (b) such funding is provided for under a bilateral scientific and technological agreement or any other arrangement between the Union and the international organisation or, for entities established in third countries, the country in which the legal entity is established.</p>

Name	Environmental relevance	Is continued participation by the UK possible?
<p><b>European Regional Development Fund (ERDF)</b></p>	<p>ERDF is one of the funds set up by the European Commission as part of the European Structural and Investment (ESI) fund. The current total budget for EU structural funds is €454bn and the majority of funds are allocated to three funds: ERDF, ESF and the Cohesion Fund (which the UK does not receive funding from). ESI funds are managed by Member States.</p> <p>This fund aims to strengthen economic and social cohesion within the EU by reducing imbalances between regions or social groups. Funding goes to projects that support current priority investment areas. One such priority is the low-carbon economy, such as the RE:FIT scheme that works to retrofit public buildings in order to make them more energy efficient. The objectives of the fund are pursued within the framework of sustainable development and the Community promotion of the goal of protecting and improving the environment.</p> <p>Specific funding opportunities relevant to the environment relate to three objectives, the most important of which is 'European territorial co-operation'. This objective aims to reinforce co-operation across national borders to promote common solutions to a range of shared economic, social and environmental problems.</p> <p>As well as cross-border and interregional cooperation, this objective also funds cross-border cooperation, including beyond member states' external frontiers.</p> <p>There are a number of EU Directives which have strong interactions with the ERDF because these funds play an important role in supporting their implementation. This includes the Birds, Habitats, IPPC, Waste Framework, Landfill, Water Framework, SEA and EIA Directives.</p> <p>Examples of projects that have received ERDF funding include £1m for the Port of Sunderland for the redevelopment with a low carbon business hub.</p>	<p><b>The UK is unlikely to be able to continue to receive funds from the ERDF, although it may be able to participate in programmes involving sea basin strategies and macro-regional strategies.</b></p> <p>The rules governing the ERDF are <a href="#">Regulation (EU) No 1301/2013</a> on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006.</p> <p>The Common Provisions Regulation lays down common principles, rules and standards for the implementation of the five European Structural and Investment Funds (<a href="#">Regulation (EU) No 1303/2013</a> of the European Parliament and of the Council). These funds are:</p> <ul style="list-style-type: none"> <li>• the European Regional Development Fund;</li> <li>• the European Social Fund;</li> <li>• the Cohesion Fund;</li> <li>• the European Agricultural Fund for Rural Development; and</li> <li>• the European Maritime and Fisheries Fund.</li> </ul> <p>After Brexit the UK will not receive a national allocation from the fund. Article 76 of the The Common Provisions Regulation empowers the Commission to commit resources directly to individual Member States in accordance with agreed national allocations ('enveloping') on the basis of which Member States determine their co-financing plans.</p> <p>There may be limited scope for UK participation in projects funded under the Common Provisions Regulation. Within these regulations the definitions of 'macro-regional strategy' and 'sea basin strategy' may encompass, where appropriate, third countries. Under Articles 47 and 48 third countries may be invited to participate in monitoring committees.</p>

Name	Environmental relevance	Is continued participation by the UK possible?
<p><b>European Social Fund (ESF)</b></p>	<p>ESF is one of two separate funds set up by the European Commission as part of the European Structural and Investment (ESI) fund.</p> <p>The ESF is the European Union's main financial instrument for supporting employment, enhancing education and skills, and improving job prospects. It is relevant to the environment only to the extent that its investment priorities shall be used to further the thematic objective of supporting the shift towards a low-carbon, climate-resilient, resource-efficient and environmentally sustainable economy, through the improvement of education and training systems necessary for the adaptation of skills and qualifications, the up-skilling of the labour force, and the creation of new jobs in sectors related to the environment and energy.</p>	<p><b>The UK is unlikely to be able to continue to receive funds from the ESF.</b></p> <p>The relevant rules are set out in <a href="#">Regulation (EU) No 1304/2013</a> on the European Social Fund. The mission of the ESF, as set out in Article 2, is applicable only to Member States; no provisions are made for Third Countries, non-Member States, or even accession countries in these rules.</p> <p>The ESF is governed by the Common Provisions Regulation (see above).</p>

Name	Environmental relevance	Is continued participation by the UK possible?
<p><b>European Agricultural Fund for Rural Development (EAFRD)</b></p>	<p>The European Agricultural Fund for Rural Development (EAFRD) is often referred to as the ‘second pillar’ of the Common Agricultural Policy (CAP) or the ‘Rural Development Regulation’ and provides a framework for providing support for farmers, foresters and other rural actors for undertaking activities that contribute to sustainable rural development.</p> <p>The main environmental objectives of the fund are to improve the competitiveness of agriculture and forestry; to improve the environment and countryside by supporting land management; and to improve the quality of life in rural areas and encourage diversification.</p>	<p><b>The UK is unlikely to be able to continue to receive funds from the EAFRD.</b></p> <p>The relevant rules are set out in <a href="#">Regulation (EU) No 1305/2013</a> of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD). The programming content, as referred to in Article 6, is restricted to actions within Member States. There is limited scope for support made to third countries under Articles 44 and 52; however, these are limited to applications of LEADER local development from the EAFRD, covering inter-territorial co-operation projects between groups in Member States and in third countries.</p> <p><a href="#">Commission Delegated Regulation (EU) No 807/2014</a> supplements Regulation (EU) No 1305/2013 and introduces transitional provisions, however these do not appear relevant to questions of third country participation.</p> <p>The EAFRD is governed by the Common Provisions Regulation (see above).</p>

Name	Environmental relevance	Is continued participation by the UK possible?
<p><b>European Maritime Fisheries Fund (EMFF)</b></p>	<p>The EMFF is a central element of the CFP structural policy. The EMFF seeks to assist those working in the fishing and aquaculture sectors and coastal populations to adapt to the CFP for the period 2014-2020.</p> <p>The EMFF co-finances projects with EU countries that provide national funding. EU countries draw up an operational programme stating how they intend to spend the money allocated. Once the European Commission approves these programmes, it is up to the national authorities to decide which projects will be funded.</p>	<p><b>The UK will not be able to co-fund projects under the EMFF. The allocation of resources under the EMFF is done by Commission Implementing Decision, which allocates funds to member state.</b></p> <p>Articles 5 and 6 of <a href="#">Regulation (EU) No 508/2014</a> of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund limit the objectives and priorities of the EMFF to Member States applying the CFP. There are only very limited provisions for engagements with third countries (such as cooperation activities for community-led local development within Member States under Article 64).</p> <p>The EMFF is governed by the Common Provisions Regulation (see above)</p> <p>Commission Implementing Decision <a href="#">2014/372/EU</a> of 11 June 2014 setting out the annual breakdown by Member State of the global resources of the European Maritime and Fisheries Fund available in the framework of shared management for the period 2014-2020 has not yet entered into force.</p>
<p><b>European Union Solidarity Fund (EUSF)</b></p>	<p>The European Union Solidarity Fund, created following the floods of 2002, provides financial assistance to EU countries facing major natural disasters with serious repercussions on the natural environment.</p> <p>Following the disbursement of funds the beneficiary state shall provide an implementation report which details, <i>inter alia</i>, the experience gained from the natural disaster and the measures taken or proposed to ensure environmental protection and resilience in relation to climate change and natural disaster.</p>	<p><b>The UK will not be able to access the EUSF after Brexit.</b></p> <p>The relevant rules are set out in <a href="#">Council Regulation (EC) No 2012/2002</a> of 11 November 2002 establishing the European Union Solidarity Fund, as amended by <a href="#">Regulation (EU) No 661/2014</a>. Under the amended Article 2(1) an 'eligible state' (formerly called a 'beneficiary state') is defined as a "Member State or country involved in accession negotiations with the European Union".</p>

Name	Environmental relevance	Is continued participation by the UK possible?
<p><b>Competitiveness of Enterprises and small and medium-sized enterprises (COSME)</b></p>	<p>COSME is the EU programme for the Competitiveness of Enterprises and SMEs, running from 2014 to 2020, with a budget of €2.3billion. COSME will support SMEs in the following areas: facilitating access to finance; supporting internationalisation and access to markets; creating an environment favourable to competitiveness; encouraging an entrepreneurial culture.</p> <p>Although it has minimal environmental implications it does provide for the creation of the Enterprise Europe Network (“the Network”), a one-stop-shop for business support by helping enterprises to improve their competitiveness and explore business opportunities in the internal market and beyond. Actions undertaken through the Network may include measures to increase SME access to energy efficiency, climate and environmental expertise.</p>	<p><b>The UK may be able to participate in COSME as a third country, or on a self-financing basis.</b></p> <p>The relevant rules are set out in <a href="#">Regulation (EU) No 1287/2013</a> of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 - 2020). Under Article 6, EFTA Countries, accession countries and countries with the scope of the European neighbourhood policies may (provided certain conditions are met) participate in COSME. If the UK remains in EFTA then it may be able to participate in their fund.</p> <p>Further information on third country participation in COSME is provided by the <a href="#">European Commission website</a>. After listing the criteria under Article 6 it says “At present, there is no legal basis for other countries to join the programme. However, COSME legal basis allows entities from other countries to participate in certain projects on a self- financing basis.”The basis for this appears to be Article 7.</p>





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for their assistance in publishing these reports.

# Brexit and Environmental Law: the UK and European Cooperation Bodies

This report examines the impact of Brexit on the UK's future involvement in a range of specialist cooperation bodies, networks and agencies relevant to environmental law.

The functions performed by the European bodies which the UK currently participates in vary greatly. Some bodies are informally constituted and focus on facilitating cooperation and best practice. Others are creations of specific legislative programmes, tasked with development, implementation and enforcement of the *acquis* across Member States. All form part of a complex network of environmental governance.

This report analyses the eighteen bodies and networks of greatest importance to environmental law and considers key questions in relation to each. Is it legally possible for the UK to continue to participate in some of these bodies as a non-EU Member State, whether as an observer or as a third country? What are the origins of the rules underpinning each body? What would the benefits be of continued participation in each of these bodies, and what functions would be lost if it left them?

A number of themes emerging from this analysis are explored in detail. The impact of uncertainty about the terms of withdrawal and the UK's future relationship with the EU is explored, including the implications different negotiated outcomes may have on the possibility of continued membership. Possible barriers to continued UK involvement in bodies are outlined, such as where third country membership may require ongoing alignment with the relevant *acquis*, oversight from the Court of Justice or future financial contributions to running costs; this is balanced against options for observer status and the possibility of participation without voting rights. The interaction between participation in environmental bodies and the rules governing EU funding mechanisms is also analysed.

These findings are set out in two comprehensive annexes accompanying the report. The data is also used to conclude on possible priorities for continued participation in each environmental body after Brexit, and to detail the difficulties faced in achieving this.

January 2018

The UK Environmental Law Association (UKELA) is the foremost body of environmental lawyers in the UK. UKELA aims to promote better law for the environment and to improve understanding and awareness of environmental law.

UKELA remained neutral on the Brexit Referendum. UKELA's Brexit Task Force was established in September 2016 to advise on all matters relating to and arising from the UK's decision to leave the European Union insofar as this impacts environmental law, practice and enforcement in the UK.

The Task Force has been examining the legal and technical implications of separating our domestic environmental laws from the European Union and the means by which a smooth transition can be achieved. The Task Force aims to inform the debate on the effect that withdrawal from the EU will have, and to draw attention to potential opportunities and problems which may arise.

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