



House of Commons  
Environmental Audit  
Committee

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**EU and UK  
Environmental Policy**

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**Third Report of Session 2015–16**





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**Third Report of Session 2015–16**

*Report, together with formal minutes  
relating to the report*

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## The Environmental Audit Committee

The Environmental Audit Committee is appointed by the House of Commons to consider to what extent the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development; to audit their performance against such targets as may be set for them by Her Majesty's Ministers; and to report thereon to the House.

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### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/ecom](http://www.parliament.uk/ecom) and in print by Order of the House. Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

### Committee staff

The current staff of the Committee are David Slater (Clerk), Carl Baker (Second Clerk), Tom Leveridge (Senior Committee Specialist), Stanley Kwong (Committee Specialist) Talia Dundoo (Committee Researcher), Ameet Chudasama (Senior Committee Assistant), Baris Tufekci (Committee Assistant), and Nicholas Davies (Media Officer).

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# Contents

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<b>Summary</b>	<b>3</b>
<b>1 Introduction</b>	<b>5</b>
<b>2 The development of EU and UK environmental policy</b>	<b>6</b>
The development of EU environmental policy	6
Subsidiarity and the Balance of Competences	6
Impact of EU Membership on the UK Environment	8
Conclusion	9
The UK and the EU's international policies	9
<b>3 The design of EU and UK environmental policy</b>	<b>12</b>
UK influence on EU environmental policy development	12
UK Stakeholder influence on EU policy	14
Flexibility of EU environmental policy and national differences	14
Advantages and Disadvantages of EU Policy Processes	15
Conclusion	16
Devolution	16
<b>4 The implementation and evaluation of EU environmental policy</b>	<b>19</b>
Responsibility for implementing EU policy	19
Proportionality and businesses	20
Issues with interpretation and enforcement	20
Post-evaluation of environmental policy	22
Conclusion	23
<b>5 The future of EU and UK environmental relations</b>	<b>24</b>
Recent developments in EU environmental policy	24
UK renegotiation process	25
Conclusion	26
<b>Conclusions</b>	<b>28</b>
<b>Formal Minutes</b>	<b>31</b>
<b>Witnesses</b>	<b>41</b>
<b>Published written evidence</b>	<b>43</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>45</b>





## Summary

The UK's membership of the EU has been a crucial factor in the shaping of its environmental policy since it joined the Union in the 1970s. The overwhelming view of our witnesses was that EU membership has been positive for the UK environment. None of the witnesses to our inquiry, even those who made criticisms, made an environmental case for leaving the European Union.

The influence of the UK in EU policy-making has been a central theme of this inquiry. The process of EU environmental policy development has been a two-way street. On the one hand, the EU has led the UK to improve environmental standards in areas such as air and water pollution and biodiversity. It has also given the UK a platform to pursue its environmental objectives internationally and has provided access to a useful pool of knowledge. On the other hand, the UK has been a major player in the EU, influencing the strategic and long term direction of EU environmental policy and the design of specific laws and policies. The UK's membership of the EU has ensured environmental action was taken on a faster timetable and more thoroughly than would otherwise have been the case. There has been frustration that EU policy can be difficult to change once introduced, but this also has benefits, allowing longer-term planning and greater certainty for businesses looking to make green investment decisions.

Despite the UK's relatively good performance, environmental standards could be improved if the UK Government took a more ambitious approach to implementation. Many of the concerns raised with us around EU policy related to implementation. Some would like to see EU law applied more rigorously to protect the environment. Others saw reducing the costs to business as key. Tighter drafting of directives and better use of evidence in developing directives and implementing them at a member state level would address some of these issues. The direction of travel at a European level is towards more revision of policy in order to reduce the regulatory costs placed on businesses. As a Committee we welcome more efficient regulation if and where it is needed, but it should not compromise key environmental protections.

The UK Government is broadly satisfied with EU environmental policy. It was not included in the recent renegotiation. Contingency planning in the case of the UK voting to leave the EU appears to have been limited. The Government's view was it would result in a "long and tortuous" negotiation. We heard concerns from businesses and NGOs that a UK outside the EU would still have to follow rules over which our influence would be significantly diminished. Businesses felt that this could remove long term certainty. There are significant unanswered questions about what relationship a UK outside the EU would have with it and with the rest of the world, just as there are unanswered questions as to how our relationship with the EU might develop.

The EU has a long history of developing environmental policy to promote the Single Market and to protect the environment. Legal authority to legislate in this area was eventually given to the EU by the member states in the recognition that there were significant benefits to solving some environmental problems multilaterally. The overwhelming majority of witnesses who gave evidence to our inquiry, and to the previous Government's Balance of Competencies Review, stated that these benefits remain. There are differences of opinion about precisely where the boundaries between

national and EU level action should be drawn. The overwhelming majority of our witnesses also believed that the UK's membership of the EU has improved the UK's approach to environmental protection and ensured that the UK environment has been better protected.

# 1 Introduction

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1. Our intention in publishing this report is to inform the debate ahead of the referendum on the UK's membership of the European Union (EU) that will be held on 23rd June 2016. We explore the design, implementation and evaluation of environmental policy at EU level and its resulting impact on the UK. We also discuss the past and future of EU environmental policy and the implications for the UK in light of a potential change to its current membership status. We draw on the previous Government's Review of the Balance of Competences but do not seek to replicate it. We do not set out to provide an economic assessment of EU environmental policy or to set out future scenarios of different membership options. We also excluded the Common Agricultural Policy (CAP) and Common Fisheries Policy (CFP) from the scope of this inquiry, owing to other Select Committees' ongoing work in this area.

2. The terms of reference for the inquiry can be found on our website. We held six public hearings with academics, UK and EU stakeholders, business groups, the EU Commission, and the Parliamentary Under-Secretaries of State for Environment, Food and Rural Affairs (DEFRA) and for Energy and Climate Change (DECC). In addition, we received a range of written evidence which is published on our website. A full list of witnesses can be found at the end of this report. We are grateful to all those who gave evidence to this inquiry. We would also like to thank our specialist adviser, Professor Andrew Jordan, Professor of Environmental Sciences at the University of East Anglia.

## 2 The development of EU and UK environmental policy

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### The development of EU environmental policy

3. The sum of EU environmental laws and policies (sometimes referred to as the ‘acquis’), is made up of legislation, legal acts, and court decisions.<sup>1</sup> This body of EU law is broad and diverse.<sup>2</sup> The then-European Economic Community (EEC) began to adopt environmental policies in the late 1960’s, in response to a recognition that many environmental issues such as air, water and marine pollution cross national boundaries<sup>3</sup>, despite the fact that it had no specific treaty competence to do so. Over time, more policy was made at a European level. Initially, environmental measures were justified as creating a level playing field within the Common, later Single, Market, and with the stated objectives of protecting the environment.<sup>4</sup>

4. Early legislation evolved from the Articles dealing with the functioning of the Common Market. The first Environmental Action Programme (EAP) was published in 1973, following a declaration by the Heads of State and Government.<sup>5</sup> Explicit authority to legislate for environmental protection was enshrined in an amendment to what is now called The Treaty on the Functioning of the European Union (TFEU)<sup>6</sup> made by the Single European Act (SEA) of 1987.<sup>7</sup> The Amsterdam and Nice Treaties established the principles of Co-decision and Qualified Majority Voting (QMV) for the making of environmental legislation.<sup>8</sup> This is now referred to as the Ordinary Legislative Procedure. The Lisbon Treaty amended the predecessor to the TFEU to set out the current objectives of the EU.<sup>9</sup> These state that environmental requirements must be integrated into all EU policies “with a view to promoting sustainable development”.<sup>10</sup>

### Subsidiarity and the Balance of Competences

5. The principle of subsidiarity aims to ensure that the EU does not take action unless it is justified by being more effective than action taken at national, regional or local level.<sup>11</sup> In February 2014, the Coalition Government published a review of EU environment and climate change legislation to assess whether the EU’s authority (and competence) was appropriate in this area. Based on evidence from a large range of stakeholders, the then-Government concluded:

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1 DEFRA ([AEP0022](#)), European Commission ([AEP0059](#))  
 2 DEFRA ([AEP0022](#)), Institute for European Environmental Policy ([AEP0053](#))  
 3 Q2 (Mr Haigh), Friends of the Earth (England, Wales and Northern Ireland) ([AEP0002](#)), Professor Henrik Selin ([AEP0062](#))  
 4 DEFRA ([AEP0022](#)), Wildlife & Wetlands Trust ([AEP0019](#)), Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#))  
 5 Institute of European Environmental Policy, [Manual of European Environmental Policy](#) (2012), p 1  
 6 Originally the Treaty Establishing the Economic Community  
 7 Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#)), European Commission ([AEP0059](#)), Institute of European Environmental Policy, [Manual of European Environmental Policy](#) (2012), p 1  
 8 Institute of European Environmental Policy, [Manual of European Environmental Policy](#) (2012), p 1  
 9 Article 11, Treaty on the Functioning of the European Union  
 10 Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#)), Environmental Industries Commission ([AEP0040](#)), Mr Nigel Haigh ([AEP0042](#)), European Commission ([AEP0059](#))  
 11 Article 5, Treaty on the European Union

The evidence showed that a large number of organisations representing all sectors considered that it is in the UK's national interest for the EU to have a degree of competence in the broad areas of environment and climate change because of the advantages that this brings for the Single Market and environmental protection.<sup>12</sup>

Nonetheless, the Report went on to note that there was “considerable debate” about how far EU competency should extend.<sup>13</sup> Some considered that it should only address environmental issues with a cross-border impact.<sup>14</sup> Others argued that the functioning of the Single Market justified European legislation where there were no explicit cross-border impacts.<sup>15</sup> However, the Committee did not have time to analyse which competences could be better exercised at a national level and witnesses did not proactively offer any examples.

6. Proposed new environmental legislation is assessed and evaluated by the Commission against the principle of subsidiarity. The Commission has a requirement to undertake consultation as part of its assessment. Since the Lisbon Treaty came into force in December 2009, Member State Parliaments can object to legislative proposals on the grounds they breach the principle of subsidiarity through the “yellow card” procedure.<sup>16</sup> A “yellow card” is triggered once a threshold (at least one third of the votes allocated to national Parliaments)<sup>17</sup> is met.<sup>18</sup> The EU Commission told us, “National Parliaments can formally express their reservations if they feel that it would be better to deal with an issue at national rather than EU level.”<sup>19</sup> However, Dr Charlotte Burns, Senior Lecturer in Environment from the University of York, and Ms Viviane Gravey, PhD researcher from the University of East Anglia, highlighted that the process is only successful when sufficient numbers of national Parliaments engage.<sup>20</sup> They stated:

[The yellow card system] has only been triggered twice due to low numbers of national Parliaments engaging with it.<sup>21</sup>

7. In the House of Commons, the European Scrutiny Committee (ESC) proposes draft Reasoned Opinions, which are then considered by the House. None of the 16 Reasoned Opinions issued by the House of Commons over the period from 2010 to the present has related to the environment.<sup>22</sup> Where the House of Commons is unable to meet the eight-week deadline for submitting a Reasoned Opinion, the ESC sends its Opinions to the European Commission as part of a process of Political Dialogue whereby the Commission delivers a substantive response.<sup>23</sup> Of the five such Opinions delivered by the ESC, one—relating to a proposal on the restructuring of the taxation of energy and electricity—related to the environment.<sup>24</sup> This proposal was withdrawn by the Commission in March 2015.

12 HM Government, [Review of the Balance of Competences between the United Kingdom and the European Union Environment and Climate](#), February 2014, p 5–6

13 HM Government, [Review of the Balance of Competences between the United Kingdom and the European Union Environment and Climate](#), February 2014, p 6

14 As above

15 As above

16 Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#))

17 Each Chamber of a bi-cameral Parliament has one vote; uni-cameral Parliaments have two

18 European Commission, ‘[The Subsidiarity Control Mechanism](#)’, accessed 7 March 2016

19 European Commission ([AEP0065](#))

20 Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#))

21 As above

22 Figure supplied by United Kingdom National Parliament Office

23 European Commission ([AEP0065](#))

24 Figure supplied by United Kingdom National Parliament Office

8. The majority of witnesses told us the EU had struck the right balance across environmental policy as a whole.<sup>25</sup> Where concern was expressed, it tended to be around the operation of individual directives, rather than the overall picture.<sup>26</sup> Nigel Haigh, Honorary Fellow at the Institute for European Environmental Policy (IEEP), argued that assessing any balance between common EU frameworks and distinct national approaches, ultimately, came down to a value judgement which needed to be made on a case-by-case basis.<sup>27</sup>

9. The UK Government's view, as expressed to us by Rory Stewart MP, Parliamentary Under-Secretary at DEFRA, was that, in general, the correct balance between common EU frameworks and distinct national approaches had been broadly achieved in the environmental sphere.<sup>28</sup> He said, "We have not concluded that we need to return competencies from the European Union in relation to the environment."<sup>29</sup>

## Impact of EU Membership on the UK Environment

10. Witnesses told us that membership of the EU had strengthened the UK's approach to environmental protection.<sup>30</sup> According to Angus Evers, Member and Co-convenor of the Waste Working Party at the UK Environmental Law Association (UKELA), the UK transitioned from the image of the "Dirty Man of Europe"<sup>31</sup> in the 1970s to "becoming one of the leaders of European environmental policy."<sup>32</sup> Professor Colin Reid, Professor of Environmental Law at the University of Dundee Law School, argued, "EU involvement certainly ensured that action was taken on a faster timetable and more thoroughly than would otherwise have been the case."<sup>33</sup> Professor Andreas Kraemer, Founder and Director Emeritus, Ecologic Institute, Institute for Advanced Sustainability Studies (IASS), suggested that, "[EU environmental policy had] stimulated a modernisation of environmental administrative law, monitoring and enforcement, and an improvement in business practice in pollution control [in the UK]."<sup>34</sup>

25 For example: Q64 (Mr Angus Evers), Q82 (Professor Bruyninckx), Recolight Ltd ([AEP0003](#)), Country Land and Business Association ([AEP0007](#)), DS Smith ([AEP0009](#)), CHEM Trust ([AEP0010](#)), Chartered Institute of Ecology and Environmental Management ([AEP0017](#)), Wildlife Trusts ([AEP0018](#)), Institute of Environmental Management and Assessment ([AEP0021](#)), Chartered Institution of Wastes Management ([AEP0028](#)), Chartered Institution of Building Services Engineers ([AEP0032](#)), Environmental Industries Commission ([AEP0040](#)), Valpak Ltd ([AEP0045](#)), WWF-UK ([AEP0051](#)), Institute for European Environmental Policy ([AEP0053](#)), European Commission ([AEP0059](#))

26 CHEM Trust ([AEP0010](#)), UK Major Ports Group ([AEP0011](#)), Chartered Institute of Ecology and Environmental Management ([AEP0017](#)), Institute of Environmental Management and Assessment ([AEP0021](#)), Resource Association ([AEP0025](#)), Packaging Federation ([AEP0031](#)), National Farmers Union ([AEP0052](#)), Energy UK ([AEP0055](#)), European Commission ([AEP0065](#))

27 Q48 (Mr Haigh)

28 Q333 (Mr Rory Stewart)

29 Q333 (Mr Rory Stewart)

30 Friends of the Earth (England, Wales and Northern Ireland) ([AEP0002](#)), Chartered Institute of Ecology and Environmental Management ([AEP0017](#)), Wildlife Trusts ([AEP0018](#)), Wildfowl & Wetlands Trust ([AEP0019](#)), Resource Association ([AEP0025](#)), Aldersgate Group ([AEP0046](#))

31 Q54 (Mr Evers), See also: Friends of the Earth (England, Wales and Northern Ireland) ([AEP0002](#)), Chartered Institute of Ecology and Environmental Management ([AEP0017](#)), Wildlife Trusts ([AEP0018](#)), Wildfowl & Wetlands Trust ([AEP0019](#)), Resource Association ([AEP0025](#))

32 Q54 (Mr Evers)

33 Professor Colin Reid ([AEP0060](#))

34 Mr Andreas Kraemer ([AEP0041](#))

11. Witnesses gave specific examples, including improvements in bathing water and air quality as well as waste disposal.<sup>35</sup> In addition, the Royal Society for the Protection of Birds (RSPB) said, “the Nature Directive has provided [the UK with a] much stronger protection for sites than is afforded by national legislative protection alone”<sup>36</sup>, whilst the Environmental Services Association (ESA) cited, “the Landfill Directive [which] has [led to] a huge reduction in UK methane emissions from landfill.”<sup>37</sup> Christian Hudson, Senior Fellow at the Ecologic Institute, argued that EU policy created a larger market for eco-innovation.<sup>38</sup> Daniel Calleja Crespo, Director General (DG) for the Environment at the European Commission, added that, the UK benefited over the past years from “€500 million in projects and environmental innovation” from the EU Budget.<sup>39</sup>

## Conclusion

12. **The EU has a long history of developing environmental policy to promote the Single Market and to protect the environment. Legal authority to legislate in this area was eventually given to the EU by the member states in the recognition that there were significant benefits to solving some environmental problems multilaterally. The overwhelming majority of witnesses who gave evidence to our inquiry, and to the previous Government’s Balance of Competencies Review, stated that these benefits remain. There are differences of opinion about precisely where the boundaries between national and EU level action should be drawn. The overwhelming majority of our witnesses also believed that the UK’s membership of the EU has improved the UK’s approach to environmental protection and ensured that the UK environment has been better protected. We noted that many witnesses implied that if the UK were free to set its own environmental standards, it would set them at a less stringent level than has been imposed by the EU.**

## The UK and the EU’s international policies

13. The EU is party to over 55 multilateral environmental treaties. Many witnesses praised the EU’s role as an international environmental negotiator.<sup>40</sup> Professor Sebastian Oberthuer, Professor of Environment and Sustainable Development at the Institute for European Studies (IES), gave examples of the EU’s success in international negotiations such as the “protection of biological diversity (the Convention on Biological Diversity and its Cartagena Protocol on biosafety and Nagoya Protocol on genetic resources), [and the] international governance of chemicals (Rotterdam, Stockholm and Minamata Conventions) [...]”<sup>41</sup> Similarly, Mr Haigh at the IEEP, stated that, in 1990, the EU’s decision

35 Q48 (Mr Haigh, Professor Lee, Professor Oberthuer), Friends of the Earth (England, Wales and Northern Ireland) ([AEP0002](#)), Chartered Institution of Water and Environmental Management ([AEP0004](#)), Country Land and Business Association ([AEP0007](#)), Chartered Institute of Ecology and Environmental Management ([AEP0017](#)), Consumer Council for Water ([AEP0030](#)), UK Environmental Law Association ([AEP0057](#)), European Commission ([AEP0059](#))

36 RSPB ([AEP0050](#))

37 Environmental Services Association ([AEP0005](#))

38 Mr Christian Hudson ([AEP0058](#))

39 Q293 (Mr Crespo)

40 Chartered Institution of Water and Environmental Management ([AEP0004](#)), Environmental Services Association ([AEP0005](#)), DS Smith (AEP0009), Wildfowl & Wetlands Trust ([AEP0019](#)), EDF Energy ([AEP0024](#)), Mr Andreas Kraemer ([AEP0041](#)), RSPB ([AEP0050](#)), Institute for European Environmental Policy ([AEP0053](#)), Professor Sebastian Oberthuer ([AEP0056](#)), Mr Christian Hudson ([AEP0058](#)), Professor Henrik Selin ([AEP0062](#))

41 Professor Sebastian Oberthuer ([AEP0056](#))

to cap greenhouse gas emissions by 2000 provided a “cornerstone of the 1992 UN climate convention.”<sup>42</sup> The Wildfowl and Wetlands Trust argued the EU was also a key negotiator in the agreement of binding international targets under the Kyoto Protocol in 1997.<sup>43</sup>

14. The EU is the world’s largest consumer market, and we were told it is perceived to be a world leader on many environmental issues.<sup>44</sup> Some witnesses argued that the EU was able to operate as a more effective negotiator on the international stage than individual member states.<sup>45</sup> Professor Oberthuer at the IES, said “[if member states] were to negotiate individually it is obvious that they would not have had the same impact.”<sup>46</sup> The European Environmental Bureau (EEB) argued that the EU offers greater influence on environmental policies in other parts of the world by virtue of its size.<sup>47</sup>

15. A number of our witnesses, including Ministers, told us that the UK was a key player in influencing and supporting the EU’s role as an international environmental negotiator.<sup>48</sup> They argued that the UK enhanced the EU’s influence as an international negotiator through its diplomatic networks, expertise and links to other Commonwealth countries. As a result, the UK had a lot of influence on the shape of the EU’s external environmental policies.<sup>49</sup> Professor Kraemer at the IASS, said:

UK government delegations and UK experts have shaped EU positions in international negotiations more than any other country. This has helped the UK to gain much more influence than it would otherwise have had, and has allowed the EU to be more effective in international negotiations [...].<sup>50</sup>

Mr Crespo, DG at the European Commission, said:

The outreach that the European Union has attained in international negotiations is due partly to the efforts of the UK and thanks to the skills, pragmatic approach, and priority that the UK has given to this file.<sup>51</sup>

16. We were told this influence was most notable in relation to international negotiations on climate change.<sup>52</sup> The IEEP said:

[The] UK’s ability to influence the positions and priorities adopted by the EU in international negotiations on the environment, and on related issues such as trade, have provided much greater scope for the UK influencing international

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42 Mr Nigel Haigh ([AEP0042](#))

43 Wildfowl & Wetlands Trust ([AEP0019](#))

44 Q42 (Professor Oberthuer), Q54, (Mr Evers), EDF Energy ([AEP0024](#)), European Environmental Bureau ([AEP0054](#)), Professor Sebastian Oberthuer ([AEP0056](#)), Professor Henrik Selin ([AEP0062](#))

45 Chartered Institution of Water and Environmental Management ([AEP0004](#)), Environmental Services Association ([AEP0005](#)), RSPB ([AEP0050](#)), Institute for European Environmental Policy ([AEP0053](#)), Professor Sebastian Oberthuer ([AEP0056](#)), Mr Christian Hudson ([AEP0058](#))

46 Q42 (Professor Oberthuer)

47 European Environmental Bureau ([AEP0054](#))

48 Q88 (Professor Bruyninckx), Q326 (Lord Bourne of Aberystwyth), Friends of the Earth (England, Wales and Northern Ireland) ([AEP0002](#)), Institute of Environmental Management and Assessment ([AEP0021](#)), Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#)), Mr Andreas Kraemer ([AEP0041](#))

49 Q92 (Professor Bruyninckx, Mr Nesbit), Mr Andreas Kraemer ([AEP0041](#)), Professor Henrik Selin ([AEP0062](#))

50 Mr Andreas Kraemer ([AEP0041](#))

51 Q281 (Mr Daniel Calleja Crespo)

52 Q72 (Mr de Pous), Q88 (Professor Bruyninckx), Q326 (Lord Bourne of Aberystwyth) Institute of Environmental Management and Assessment ([AEP0021](#)), Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#)), RSPB ([AEP0050](#)), National Farmers Union ([AEP0052](#)), Institute for European Environmental Policy ([AEP0053](#)), UK Environmental Law Association ([AEP0057](#))



regimes such as the UN Framework Convention on Climate Change, the Convention on Biodiversity, and the WTO's treatment of environmental standards.<sup>53</sup>

17. Lord Bourne of Aberystwyth, Parliamentary Under-Secretary of State at the Department of Energy and Climate Change (DECC), added that its recent success at the 2015 United Nations Climate Change Conference (COP21) in Paris exemplified the UK's continued influence and collaboration with member states.<sup>54</sup> He said:

We have a very clear domestic agenda, which chimes very much with the EU agenda. We had some very specific UK lines on wanting a long-term goal, wanting a rules-based system, and we came away with very much what we wanted. That was very much also part of what the EU wanted. I think it is more than happy coincidence. Obviously, climate change is an issue that does not stop at national boundaries, so it is very natural that we want to be part of a unit like Europe in terms of climate change negotiations to push the agenda forward. [...] I think that it certainly helped being part of that very strong, united EU team. [...].<sup>55</sup>

**18. The EU is regarded as a leader in international environmental diplomacy, providing the UK with a platform to pursue its national environmental interests at an international level. The UK is widely regarded as one of the most influential member states in shaping the EU's environmental international policies. The UK's skills and expertise in international negotiations have been a major factor in developing its influence. The Government highlighted the UK's role in shaping the EU's international negotiations at Paris COP21 in December 2015 as an example of this influence.**

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53 Institute for European Environmental Policy ([AEP0053](#))

54 Q326 (Lord Bourne of Aberystwyth)

55 Q326 (Lord Bourne of Aberystwyth)

## 3 The design of EU and UK environmental policy

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### UK influence on EU environmental policy development

19. As set out in the previous chapter, academics, NGOs, and business stakeholders all believed that cross-border environmental issues benefited from multilateral action.<sup>56</sup> EU and UK environmental policy making have become more intertwined since the 1972.<sup>57</sup> According to analysis by the IEEP, EU policy-making in this area accelerated during the late 1980s, 1990s and first half of the 2000s.<sup>58</sup> We were told by the IEEP that “UK environmental issues are now almost certainly addressed more by EU policies than national ones.”<sup>59</sup> Professor Maria Lee, Professor of EU Environmental Law at University College London (UCL), stressed “EU law is not foreign law, it is domestic law.”<sup>60</sup>

20. The UK has the ability to influence EU environmental policy directly through UK Ministers sitting on the EU Council and UK MEPs, and indirectly through NGO and business stakeholder pressure on the Commission.<sup>61</sup> The ordinary legislative procedure (OLP) means both the European Parliament and Council have to agree on EU environmental legislation before it becomes law.<sup>62</sup> The Council typically agrees via QMV.<sup>63</sup> Dr Burns at the University of York and Ms Gravey at the University of East Anglia, argued that the use of QMV had benefited environmental protection, meaning the “EU [does] not slide to the lowest common denominator as so often happens in international environmental negotiations where consensus is required.”<sup>64</sup> On the other hand, “a disadvantage is that states can be outvoted, although analysis of voting in Council between 2009 and 2015 found that the UK was on the losing side on environmental issues in only 6 per cent of cases.”<sup>65</sup> Professor Oberthuer at the IES, argued, “on several occasions the UK vote has also been decisive in order to garner a qualified majority in the Council of Ministers.”<sup>66</sup>

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56 Friends of the Earth (England, Wales and Northern Ireland) ([AEP0002](#)), Chartered Institution of Water and Environmental Management ([AEP0004](#)), Joint Links ([AEP0006](#)), Country Land and Business Association ([AEP0007](#)), Convention of Scottish Local Authorities ([AEP0014](#)), Chartered Institute of Ecology and Environmental Management ([AEP0017](#)), Wildlife Trusts ([AEP0018](#)), Wildfowl & Wetlands Trust ([AEP0019](#)), Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#)), Environmental Industries Commission ([AEP0040](#)), Aldersgate Group ([AEP0046](#)), RSPB ([AEP0050](#)), WWF-UK ([AEP0051](#)), National Farmers Union ([AEP0052](#)), Institute For European Environmental Policy ([AEP0053](#)), Mr Christian Hudson ([AEP0058](#)), Professor Henrik Selin ([AEP0062](#))

57 Professor Maria Lee ([AEP0047](#)), Institute For European Environmental Policy ([AEP0053](#))

58 Institute of European Environmental Policy, [Manual of European Environmental Policy](#) (2012), p 2

59 Institute For European Environmental Policy ([AEP0053](#)), European Environmental Bureau ([AEP0054](#))

60 Q15 (Professor Lee)

61 Q31 (Professor Lee), Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#))

62 Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#))

63 Q280 (Mr Crespo), Professor Sebastian Oberthuer ([AEP0056](#))

64 Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#))

65 Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#))

66 Professor Sebastian Oberthuer ([AEP0056](#))

21. Many witnesses argued that the UK has been influential in the development of new EU environmental policies.<sup>67</sup> The Commission stated:

The UK either leads or is a partner with others in a wide range of entities with whom the Commission consults while formulating policy. By being an important part of the policy-making process in this way, the UK is able to shape EU-wide policy.<sup>68</sup>

We were told this process had given the UK the ability to push for key environmental directives and policy approaches which suit its national interest.<sup>69</sup> TechUK, the trade association for the UK tech sector, said that, “being at the table while new regulations are being drafted and developed” gave the UK an opportunity to shape and influence design.<sup>70</sup> They gave the example of the Directive on the Restriction of the use of certain Hazardous Substances in Electrical and Electronic Products (RoHS).<sup>71</sup>

22. The previous Government’s Balance of Competences Review cited a number of pieces of EU legislation which have been based partly (or in full) on preceding UK policy and legislation.<sup>72</sup> These included the UK Emissions Trading Scheme, which acted as a forerunner of the EU’s Emissions Trading Scheme.<sup>73</sup> Similarly, the EU’s integrated pollution prevention and control regime (now incorporated into the Industrial Emissions Directive) was heavily influenced by the UK’s system of integrated pollution control under the Environmental Protection Act 1990.<sup>74</sup> Professor Oberthuer from the IES, said that:

It is highly plausible that EU environmental policy would, on average, feature lower standards and take a different shape without UK influence.<sup>75</sup>

23. We also heard examples where the UK had used its influence to delay or block directives which it did not consider were in its national interest.<sup>76</sup> This was sometimes regretted by stakeholders—primarily NGOs, who saw this as holding back stronger environmental protection. Friends of the Earth gave examples of the EU Fuel Quality Directive and the EU Energy Efficiency Directive.<sup>77</sup>

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67 Q46 (Professor Oberthuer), Q52 (Mr Harper), Q54 (Mr Evers), Q69 (Mr Nesbit), Q281 (Mr Crespo), Country Land and Business Association ([AEP0007](#)), Institute of Environmental Management and Assessment ([AEP0021](#)), Mr Andreas Kraemer ([AEP0041](#)), TechUK ([AEP0043](#)), Institute for European Environmental Policy ([AEP0053](#)), Professor Sebastian Oberthuer ([AEP0056](#)), Professor Henrik Selin ([AEP0062](#))

68 European Commission ([AEP0065](#))

69 Institute of Environmental Management and Assessment ([AEP0021](#)), Mr Andreas Kraemer ([AEP0041](#)), TechUK ([AEP0043](#))

70 TechUK ([AEP0043](#))

71 TechUK ([AEP0043](#))

72 HM Government, [Review of the Balance of Competences between the United Kingdom and the European Union Environment and Climate](#), February 2014, p 23

73 Q69 (Mr Nesbit), Q281 (Mr Crespo), Institute for European Environmental Policy ([AEP0053](#)), HM Government, [Review of the Balance of Competences between the United Kingdom and the European Union Environment and Climate](#), February 2014, p 23

74 Institute of Environmental Management and Assessment ([AEP0021](#))

75 Professor Sebastian Oberthuer ([AEP0056](#))

76 Friends of the Earth (England, Wales and Northern Ireland) ([AEP0002](#)), RSPB ([AEP0050](#))

77 Friends of the Earth (England, Wales and Northern Ireland) ([AEP0002](#)), RSPB ([AEP0050](#))

24. The UK’s approach to the development of EU environmental policy has been described as ‘pragmatic’ by the Commission.<sup>78</sup> In recent years, the Government has asserted a cross-cutting position to push for better regulation principles to improve how the EU develops and implements environmental policy (described in chapter 5).<sup>79</sup> DEFRA stated in the written evidence:

The UK has played a significant role in getting better regulation higher up the European Commission’s agenda. [...] However, we do believe the Commission can go further: we will seize every opportunity to press them to deliver a more ambitious better regulation agenda.<sup>80</sup>

### UK Stakeholder influence on EU policy

25. The Commission described the development of EU environmental legislation as an inclusive process informed by robust impact assessments.<sup>81</sup> It stated:

[There is] extensive consultation of both the public and interested stakeholders [...]. Groups of experts advise on technical issues [and] the Commission ensures that legislative proposals correspond to the needs of those most concerned and avoids unnecessary red tape.<sup>82</sup>

26. UK stakeholders—NGOs and business representatives alike—believed they had good engagement with the EU institutions on environmental policy development.<sup>83</sup> Dr Diane Mitchell, Chief Environmental Adviser at the National Farmers Union (NFU), argued that there had been significant improvements in the Commission’s engagement with UK stakeholders over the past few years, and that there were many opportunities to discuss how EU directives work and to provide evidence to the Commission.<sup>84</sup> Similarly, Mr Evers at the UKELA viewed the Commission as much more open and transparent in engaging with stakeholders than it had been in the past.<sup>85</sup> He said, “If you take the recent example of the circular economy package, [...] the Commission held two public consultations [...] and a stakeholder engagement day in Brussels, which I believe more than 500 people attended.”<sup>86</sup> A minority of witnesses were more critical, with the ESA, in particular, criticising the Commission’s consultation processes for not being thorough enough.<sup>87</sup>

### Flexibility of EU environmental policy and national differences

27. We heard from EU and UK stakeholders that, in the majority of cases, the UK has considerable flexibility in implementing the minimum standards set by EU directives.<sup>88</sup>

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78 Q281 (Mr Crespo)

79 DEFRA ([AEP0022](#))

80 DEFRA ([AEP0022](#))

81 European Commission ([AEP0059](#))

82 European Commission ([AEP0059](#))

83 Q28 (Professor Lee), Q55 (Mr Harper, Dr Mitchell), Q56 (Mr Evers), Q248 (Ms Danger), Recolight Ltd ([AEP0003](#)), TechUK ([AEP0043](#)), WWF-UK ([AEP0051](#)), National Farmers Union ([AEP0052](#)), Mr Christian Hudson ([AEP0058](#)), European Commission ([AEP0059](#))

84 Q55 (Dr Mitchell)

85 Q56 (Mr Evers)

86 Q56 (Mr Evers)

87 Environmental Services Association ([AEP0005](#)), TechUK ([AEP0043](#))

88 Q11 (Mr Haigh), Q64 (Mr Evers), Chartered Institution of Building ([AEP0032](#)), Services Engineers Institute For European Environmental Policy ([AEP0053](#)), European Commission ([AEP0059](#)), Professor Henrik Selin ([AEP0062](#))

Trevor Hutchings, Director of UK and EU Advocacy at WWF-UK, said this allowed member states to implement directives, “in the way that suits them best.”<sup>89</sup> In the context of agri-environment schemes, Martin Harper, Director of Conservation at RSPB, said flexibility allows schemes to be tailored to the different geography and farm situations.<sup>90</sup> Martin Nesbit, Senior Fellow and Head of Environment and Climate Governance Programme at the IEEP, suggested this allowed member states to be more ambitious than pre-existing national approaches, but not less ambitious.<sup>91</sup> This flexibility has had advantages and disadvantages, as we discuss when we come to implementation. Witnesses had also observed that some directives were inflexible and prescriptive.<sup>92</sup>

## Advantages and Disadvantages of EU Policy Processes

28. We heard from academics and business stakeholders that EU directives ensure that a common approach is adopted by member states when addressing cross border environmental problems.<sup>93</sup> Nick Molho, Executive Director at the Aldersgate Group, said, “this [provided] clear market signals as to where innovation is required.”<sup>94</sup> We heard that this common framework also brings benefits to the research community. The British Ecological Society argued that, “the Habitats and Birds directives and the Natura 2000 network of conservation sites provide a framework to prioritise applied research in ecology and conservation biology.”<sup>95</sup>

29. One of the key differences identified by our witnesses between domestic and EU policy-making was the effort required to change policy once it had been made.<sup>96</sup> There was a clear view that changing EU policy was more difficult. Many of our witnesses saw this as an important source of stability. Susan Danger, EU Managing Director at the American Chamber of Commerce EU (AmChamEU), stressed the importance of stability for US businesses operating in the UK and EU, under EU law.<sup>97</sup> She said, “[businesses need] a consistent environment and a predictable environment, harmonised where necessary. [...] It is much easier to deal with one set of standards and rules [...]”<sup>98</sup> Similarly, the RSPB argued that “many EU businesses support tackling environmental problems at EU level since it provides stability, certainty and a level playing field.”<sup>99</sup> Mr Molho at the Aldersgate Group, suggested that stability in decision making was beneficial to investor and business confidence.<sup>100</sup> The Country Land and Business Association suggested that the inability of directives to be easily changed was mostly a positive thing.<sup>101</sup> They stated:

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89 Q112 (Mr Hutchings)

90 Q67 (Mr Harper)

91 Q93 (Mr Nesbit), Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#))

92 Environmental Services Association ([AEP0005](#)), EDF Energy ([AEP0024](#)), National Farmers Union ([AEP0052](#)), Energy UK ([AEP0055](#))

93 Q44 (Professor Oberthuer), Q67 (Mr Harper), Q112 (Mr Austin), Q179 (Mr Harper), Q259 (Mr Crespo), EDF Energy ([AEP0024](#))

94 Q158 (Mr Molho)

95 British Ecological Society ([AEP0026](#))

96 Q369 (Mr Stewart), Country Land and Business Association ([AEP0007](#))

97 Q232 (Ms Danger)

98 Q232 (Ms Danger)

99 UK Major Ports Group ([AEP0011](#)), RSPB ([AEP0050](#))

100 Q158 (Mr Molho)

101 Country Land and Business Association ([AEP0007](#))

It allows EU action to offer the stable conditions required to consolidate environmental progress whilst at the same time giving business long term certainty.<sup>102</sup>

30. Some witnesses argued that inability to change directives had led to out-dated legislation which had proved hard to update. Dr Mitchell at the NFU cited the example of the Nitrates Directive as legislation which was “process driven” and “quite old fashioned and out of date.”<sup>103</sup> The Government also suggested seeking change was a frustrating process.<sup>104</sup> Mr Stewart, Minister at DEFRA, said:

Trying to change a directive is an incredibly burdensome, painful business. You have to bring all the other member states on side and you have to make sure that, when you open it up again, they do not make it worse than it was in the first place.<sup>105</sup>

## Conclusion

31. **A large proportion of UK environmental policy is shaped at EU level. This is a two-way process in which the UK has significant influence through the Council of Ministers, its MEPs and stakeholders, such as NGOs and business representatives. Depending on how they have seen the national interest, the UK Government has led the way in developing key pieces of EU environmental legislation in some areas and have held back or amended measures in others. The Environment, Food and Rural Affairs Minister was clear that the UK Government’s current approach was to press the EU to deliver a more ambitious better regulation agenda. As such, the UK has a reputation for taking a pragmatic approach to environmental law making. Many pieces of environmental legislation allow significant flexibility for member states to implement them in ways that reflect national circumstances.**

32. **Changing policy in a multi-national context is often more complex, time-consuming and difficult than within a single nation-state. Whilst this has sometimes been a source of frustration for Government Ministers, it has had benefits, particularly for businesses, resulting in policy stability, boosting investor confidence and enabling a degree of long-term planning.**

## Devolution

33. The Commission asserted that the national governments of EU member states have “ultimate responsibility” for the design and implementation of EU policy irrespective of specific arrangements within that country.<sup>106</sup> The Commission “[tries] to ensure that any contact is centrally coordinated through the United Kingdom’s Permanent Representation in Brussels (UKREP).”<sup>107</sup> Despite this, the Commission can, and does, meet individual devolved authorities to discuss specific environmental issues.<sup>108</sup> Other member states including Belgium, Germany, Austria, Italy and Spain have had many of

102 Country Land and Business Association ([AEP0007](#))

103 Q211 (Dr Mitchell), National Farmers Union ([AEP0052](#))

104 Q369 (Mr Stewart)

105 Q369 (Mr Stewart)

106 Q321 (Mr Crespo), European Commission ([AEP0065](#))

107 European Commission ([AEP0065](#))

108 Q320 (Mr Crespo), European Commission ([AEP0065](#))

their environmental powers devolved to a regional level.<sup>109</sup> The Commission suggested that this has created challenges in other member states in both design and implementation, especially where conflicts in approach exist between the national and regional levels.<sup>110</sup> Mr Evers from the UKELA, said “even if we look within the UK itself at how the devolved Administrations have implemented the revised waste framework directive, we can see that in some respects there is a divergence in the approach.”<sup>111</sup>

34. While many EU directives are flexible in implementation, they also ensure a common approach is adopted by member states when addressing cross border environmental problems. Professor Reid, from the University of Dundee Law School, argues that EU frameworks reduces “disparity and fragmentation” between UK devolved Administrations when implementing environmental laws in structure and content.<sup>112</sup> He stated:

The need to fit within the EU framework has ensured that such divergence will be kept within limits. In the absence of the EU framework, those affected by environmental laws may be much more concerned at the prospect of increased disparities.<sup>113</sup>

35. The countries of the UK currently discuss the design and implementation of EU environmental policy through informal relationships.<sup>114</sup> We heard during the inquiry that there are efforts to formalise these discussions between all the devolved Administrations in the UK.<sup>115</sup> Mr Stewart, Minister at DEFRA, said, “almost every week I am writing around to the devolved Administrations and following up with phone calls. [...] we have had a position where we talk honestly and openly and we get an agreed common position.”<sup>116</sup> Similarly, Lord Bourne, Minister at DECC, said:

I am looking at the possibility of formalising this so that we can discuss issues of common concern on a more regular basis because it seemed to me that is a very constructive way of making devolution work.<sup>117</sup>

36. Lloyd Austin, Convenor of Scottish Environment Link’s Governance Task Force at the Wildlife and Countryside Link (WCL), highlighted the need for more transparency and engagement in this process:

[...] there will be a need for us to be more formal in the way our Administrations work together on European issues. [...] It will need to be more transparent and with more opportunities for engagement by stakeholders in intra-UK discussions in terms of how they decide on a common UK position and how they then implement the forthcoming European legislation.<sup>118</sup>

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109 European Commission ([AEP0065](#))

110 European Commission ([AEP0065](#))

111 Q64 (Mr Evers)

112 Professor Colin Reid ([AEP0001](#))

113 Professor Colin Reid ([AEP0001](#))

114 Q147 (Mr Austin)

115 Q346 (Mr Stewart, Lord Bourne of Aberystwyth)

116 Q346 (Mr Stewart)

117 Q346 (Lord Bourne of Aberystwyth)

118 Q112 (Mr Hutchings)

Similarly, the Convention of Scottish Local Authorities (COSLA) argued that there should be “arrangements to involve local government or its representative bodies [...] in drafting UK negotiating positions.”<sup>119</sup>

**37. EU directives have provided a framework within which the UK’s devolved Governments have developed different approaches towards achieving the common environmental objectives set out in EU policy. We welcome the Government’s moves towards establish a more formal and more proactive mechanism for integrating devolved Administrations’ priorities into the UK’s national positions. The Committee noted that the UK has found considerable scope for devolving environmental policy to devolved administrations. However, some EU witnesses could not envisage a single EU competence which could be devolved to Member States.**

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119 Convention of Scottish Local Authorities ([AEP0014](#))



## 4 The implementation and evaluation of EU environmental policy

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### Responsibility for implementing EU policy

38. Mr Crespo, DG at the European Commission, told us that, “it is the member state who ultimately has responsibility [for compliance with EU legislation].”<sup>120</sup> The Commission reported that EU environmental policy has been particularly prone to implementation problems across the EU.<sup>121</sup> The RSPB highlighted the implications of this and pointed out that, “weak implementation and enforcement at the member state level has meant the environmental benefits have not been fully realised.”<sup>122</sup>

39. IEEP told us that “on balance the UK has a reasonable record in comparison with other member states.”<sup>123</sup> This was supported by Professor Oberthuer at the IES, who reported that based on the available data the UK did not face any “exceptional challenges.”<sup>124</sup> He continued, “the number of pending infringement proceedings is much higher for other member states that generally seem to face greater challenges in implementation.”<sup>125</sup> Some witnesses gave examples where the UK approach to implementation had shown benefits. The Chartered Institution of Building Services Engineers (CIBSE) pointed to the implementation of the Energy Performance of Buildings Directive (EPBD) which, it argued, had positive knock-on effects on energy security and the Government’s ability to meet our legally binding climate change commitments.”<sup>126</sup>

40. Despite the UK’s relatively good performance, the majority of stakeholders to this inquiry took the view that environmental standards could be improved if the UK Government took a more ambitious approach to implementation.<sup>127</sup> WWF-UK and the Wildlife Trusts noted under-implementation, a lack of ambition and excessive complexity in respect of the Water Framework Directive.<sup>128</sup> The RSPB highlighted the Sustainable Use Directive (SUD) on the use of pesticides as “a missed opportunity to set UK farming on a more sustainable, wildlife-friendly footing.”<sup>129</sup> The IEEP argued that the main issue with implementation in the UK tended to be in areas which involved significant infrastructure expenditure, and cited the case of the Urban Waste Water Treatment Directive, and the achievement of air quality standards.<sup>130</sup> WWF-UK also argued that the UK’s reliance on voluntary measures could slow progress.<sup>131</sup>

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120 Q321 (Mr Crespo)

121 Q310 (Mr Crespo)

122 RSPB ([AEP0050](#))

123 Institute for European Environmental Policy ([AEP0053](#))

124 Professor Sebastian Oberthuer ([AEP0056](#))

125 Professor Sebastian Oberthuer ([AEP0056](#))

126 The Chartered Institution of Building Services Engineers ([AEP0032](#))

127 Q112 (Mr Hutchings), The Packaging Society, Environment and Safety Forum ([AEP0015](#)), Institute of Environmental Management and Assessment ([AEP0021](#)), New Economics Foundation ([AEP0044](#)), Valpack Ltd ([AEP0045](#)), RSPB ([AEP0050](#))

128 Q112 (Mr Hutchings), Wildlife Trusts ([AEP0018](#))

129 RSPB ([AEP0050](#))

130 Institute of European Environmental Policy ([AEP0053](#))

131 WWF-UK ([AEP0051](#))

## Proportionality and businesses

41. Whilst witnesses speaking on behalf of businesses were often positive about EU environmental policy, some raised concerns that small businesses were being disadvantaged.<sup>132</sup> Dr Stephanie Merry, Head of the Ocean Energy Group at the Renewable Energy Association (REA) told us:

History demonstrates that expensive regulatory barriers have excluded SMEs from participation in the UK's offshore oil and gas industry and there is a danger that, in a similar fashion, demands for expensive Environmental Impact Assessment (EIA) procedures will kill off the UK's embryonic offshore renewable energy industry, where we currently lead the world.<sup>133</sup>

42. Mr Nesbit from the IEEP said that DEFRA and DECC were looking at reducing “the quantity of guidance that [...] businesses [use] to comply with legislation.”<sup>134</sup> Lord Bourne, Minister at DECC, argued that while “each case has to be looked at on its merits, [...] it is fair to say that larger enterprises will have more resources with which to comply.”<sup>135</sup> Mr Nesbit from the IEEP also suggested that the Commission should engage with a wider range of industry stakeholders from large to small businesses in order to improve UK and EU decision-making processes, and to facilitate greater innovation in the EU economy.<sup>136</sup> This was also the belief of Mr Stewart, Minister at DEFRA, who said, “our focus is on working with the Commission and other member states to make sure that we implement [directives] in a way that is flexible, realistic, brings the public with us and makes sure that we do not discredit good environmental projects by doing things that do not make sense.”<sup>137</sup>

43. The Aldersgate Group highlighted that the EU accounts for roughly one quarter of the global economy.<sup>138</sup> Common EU environmental standards have opened up international opportunities for UK businesses involved in the development and deployment of sustainable and environmental technology.<sup>139</sup> The Environmental Industries Commission cited the UK's supply of bus diesel retrofit technology in China where EU policy had given a “boost” to the UK in winning business overseas.<sup>140</sup> Mr Crespo, DG at the European Commission, described how the EU advised the Indian Government on water management plans in relation to the Water Framework Directive, which created opportunities for European businesses in the clean-up of the Ganges river.<sup>141</sup>

## Issues with interpretation and enforcement

44. As set out in the previous chapter, many EU environmental directives are open to interpretation and different approaches to implementation. We were told that ambiguity can occur because of the way the legislation has been written. The Aldersgate Group used the EU's waste legislation as an example.<sup>142</sup> They argued that “[a] key barrier for businesses

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132 Renewable Energy Association ([AEP0037](#))

133 Renewable Energy Association ([AEP0037](#))

134 Q106 (Mr Nesbit)

135 Q364 (Lord Bourne of Aberystwyth)

136 Q111 (Mr Nesbit)

137 Q335 (Mr Stewart)

138 Aldersgate Group ([AEP0046](#))

139 Aldersgate Group ([AEP0046](#))

140 Environmental Industries Commission ([AEP0040](#))

141 Q284 (Mr Crespo)

142 Aldersgate Group ([AEP0046](#))

wanting to improve their resource efficiency and make greater use of secondary materials is that these materials are often categorised as waste too early.”<sup>143</sup> DS Smith, a leading provider of corrugated packaging in Europe, also argued that there was “too much national latitude [...] in the interpretation of some waste and recycling legislation [regarding the] separate collections of recyclables.”<sup>144</sup> However, the Aldersgate Group noted further that “the EU is addressing this issue in its Circular Economy Package where it is proposing changes to end-of-waste rules and the introduction of new standards and innovation funding to incentivise a greater use of secondary materials.”<sup>145</sup>

45. Several witnesses argued that regulatory inconsistencies exist not only because of ambiguity in the underlying legislation, but because of national and local regulators who are given flexibility to interpret EU directives when they are enforcing them.<sup>146</sup> The REA said, “regulators often appear over-precautionary in their implementation of environmental policies. We conclude that this is in response to [concerns] about possible litigation at EU level.”<sup>147</sup> Energy UK reinforced this point, arguing in the case of the Environment Agency that it:

Relies too heavily on lawyers when interpreting directives and formulating guidance, and too little on the intent of the policy makers. This has resulted in decisions that do not produce the best environmental outcome and a risk-averse approach which imposes unnecessary costs and burdens on business. In some cases this is made worse by the lack of a clear policy steer by DEFRA.”<sup>148</sup>

46. Mr Molho at the Aldersgate Group stressed the importance for EU institutions to provide clearer rules on directives, and for national regulators to make “pragmatic and intelligent decisions in areas where they are given precisely the flexibility to interpret those directives.”<sup>149</sup> Energy UK stated, “although broad definitions may be useful as a means of providing flexibility for member states, the lack of clarity in many directives increases the likelihood of “gold-plating” when [...] regulators are required to interpret the requirements of directives in practice.”<sup>150</sup> They cited the example of “poor” drafting of waste legislation, which meant Regulators adopted an “overly-legalistic and negative approach to implementation.”<sup>151</sup> This is despite the Government’s efforts to be mindful of gold-plating.<sup>152</sup> The REA highlighted that this issue was of particular concern for small and medium sized businesses. They stated:

Legislation should be short and comprehensible because SMEs are at the forefront of developing marine renewable energy and they do not have the resources to deal with lengthy documentation, which may require expert interpretation.<sup>153</sup>

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143 Aldersgate Group ([AEP0046](#))

144 DS Smith ([AEP0009](#))

145 Aldersgate Group ([AEP0046](#))

146 Q164 (Mr Molho), DS Smith ([AEP0009](#)), The Cancer Prevention & Education Society ([AEP0008](#)), Confederation of Paper Industries ([AEP0023](#)), Renewable Energy Association ([AEP0037](#)), Energy UK ([AEP0055](#)), Aldersgate Group ([AEP0061](#))

147 Renewable Energy Association ([AEP0037](#))

148 Energy UK ([AEP0055](#))

149 Q164 (Mr Molho)

150 Energy UK ([AEP0055](#))

151 Energy UK ([AEP0055](#))

152 Q357 (Mr Stewart)

153 Renewable Energy Association ([AEP0037](#))

In general, this was also thought to be the case for larger businesses. Ms Danger from AmChamEU, argued that regulatory simplicity allows for “[a] business [to] knows where it stands and it is simpler for business to comply without having to comply with one level here and another level there.”<sup>154</sup>

## Post-evaluation of environmental policy

47. WWF-UK argued that the EU has enabled member states to better share information and pool knowledge.<sup>155</sup> For example, the British Ecological Society argued that the Marine Strategy Framework Directive and Water Framework Directive were important benchmarks around which UK scientists could design studies to help inform policy making.<sup>156</sup> The Government can also draw upon specific environmental policy expertise in the EU that is absent in the UK.<sup>157</sup> Mr Nesbit at the IEEP said:

The IMPEL<sup>158</sup> network of environmental inspectorates across Europe is a very good forum for exchanging information on implementation challenges, and there is a joint UK, Netherlands and Germany programme of work called the “Make it Work” project, which is looking at sharing experience among member states on improving implementation.”<sup>159</sup>

48. Professor Hans Bruyninckx, Executive Director at the European Environment Agency (EEA), suggested his organisation gained “essential knowledge components” from understanding cross-border dynamics.<sup>160</sup> He argued that it is important to understand how implementation and performance can be improved through better evidence. He stated:

Sometimes there is a large time lag effect [in implementation and performance], because if you have policies on biodiversity that needs to rebound, that might be 10, 20 or 30 years down the road. So good implementation requires a sophisticated, well understood and evidence-based approach.<sup>161</sup>

49. Professor Lee at UCL, acknowledged that evidence fed into the Commission could lead to better enforcement of EU directives. She stated:

Much of the Commission’s enforcement activity comes on the back of complaints, and the better those complaints are—the more convincing, the more evidence, the more information—presumably that does help the Commission to take action.<sup>162</sup>

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154 Q244 (Ms Danger)

155 WWF-UK ([AEP0051](#))

156 British Ecological Society ([AEP0026](#))

157 Dr Charlotte Burns and Ms Viviane Gravey ([AEP0027](#))

158 European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)

159 Q76 (Mr Nesbit)

160 Q87 (Professor Bruyninckx)

161 Q76 (Professor Bruyninckx)

162 Q25 (Professor Lee)

50. Despite the importance of evidence to support effective implementation, Mr Harper at RSPB argued that sometimes politics overruled the evidence-led process.<sup>163</sup> He stated:

There are many parallels with the UK situation in that you have an evidence-led process then a political process, and sometimes politics trumps the environment; at European level, that is pretty much the same.<sup>164</sup>

51. This was supported by the NFU, which raised concerns over “non-scientific” approaches and “poor” evidence bases when developing some new EU environmental policy proposals.<sup>165</sup> They continued “objective evaluations of costs and benefits of any new policy must be undertaken.”<sup>166</sup>

## Conclusion

52. **EU laws are addressed to member states. It is they who take the lead in negotiating them and, in general, it is they who are responsible for determining the means through which the objectives set out in them are to be achieved. The majority of concerns we heard about EU environmental policy were about their implementation by member states. NGOs gave examples where they felt member states including the UK were not implementing legislation sufficiently strongly to deliver environmental benefits. Businesses, on the other hand, were concerned about regulatory burdens arising from regulations that were being applied too stringently. The tension between these two interests is common to UK policy. However, we agree with the widespread view among witnesses that greater clarity in the drafting of directives and a better use of evidence at both European and UK levels would help address these issues.**

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163 Q55 (Mr Harper)

164 Q55 (Mr Harper)

165 National Farmers Union ([AEP0052](#))

166 As above

## 5 The future of EU and UK environmental relations

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### Recent developments in EU environmental policy

53. The 7th Environment Action Programme sets out EU environmental policy action to 2020. It lists nine priority objectives—including the protection of natural capital and the stimulation of a resource-efficient and low-carbon economy.<sup>167</sup> In this programme the Commission is focused on implementation and enforcement of existing policy, investment into priority areas and integration across similar sectors. Mr Nesbit of the IEEP, suggested that “the current Commission [is taking] a very corporate approach to the development of new proposals, and to limit the number of proposals that are tabled [...]”<sup>168</sup> This is something that the UK Government has continually pushed for and therefore welcomed:

On the basis of twin themes of protecting and unleashing the potential of the environment and enabling and facilitating trade and growth. [...] The UK welcomes First Vice President Timmermans’ work on better regulation and how this has been reflected in the Commission’s May 2015 better regulation package and the Commission Work Programme 2016.<sup>169</sup>

54. The Commission is implementing a Better Regulation programme, and Fitness Checks (also known as the Regulatory Fitness and Performance Programme ‘REFIT’) to ensure policies are still fit for purpose.<sup>170</sup> The Commission described this as, “action [...] taken to make EU law simple and to reduce regulatory costs, thus contributing to a clear, stable, and predictable regulatory framework supporting growth and jobs.”<sup>171</sup> The most prominent environmental legislation to go through this process is the Birds and Habitats Directive.<sup>172</sup> The Commission continued:

Environmental legislation is a key component of this exercise with nature legislation being the most prominent example currently under scrutiny. As part of that ‘REFIT’ process, the Commission is seeking evidence from all member states and actively seeks to learn from the best practice examples in leading member states, in a drive to upgrade EU performance by disseminating those best practices more widely. The ‘REFIT’ process is a key component of the ‘Better Regulation’ agenda which the UK helped to shape.<sup>173</sup>

Some of our witnesses welcomed the Commission’s current focus on better regulation and the REFIT process.<sup>174</sup> Others raised concerns that this process could undermine important directives.<sup>175</sup> Professor Reid at the University of Dundee Law School, argued, “a problem [with] the REFIT process [...] is the detail of the directives and exactly how well they

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167 European Commission ([AEP0059](#))

168 Q111 (Mr Nesbit)

169 DEFRA ([AEP0022](#))

170 European Commission ([AEP0059](#))

171 European Commission, ‘[REFIT – making EU law lighter, simpler and less costly](#)’, accessed 7 March 2016

172 Q206 (Dr Mitchell)

173 European Commission ([AEP0059](#))

174 Q206 (Dr Mitchell, Mr Evers), American Chamber of Commerce to the European Union ([AEP0064](#))

175 Q148 (Professor Reid), Q206 (Mr Evers)

work, [and whether it leads to] deregulation as opposed to environmental protection.”<sup>176</sup> Similarly, Mr Evers at the UKELA, welcomed the REFIT process, but only in-so far as it did not lead to deregulation, or removing regulation that protected the environment.<sup>177</sup>

55. In addition to Better Regulation and the REFIT process, there have also been more regular reviews written into the text of directives. Lord Bourne, Minister at DECC, said, “some of the more recent directives do have a built-in review clause, which is more often the case these days.”<sup>178</sup> The UK Government said that they have pushed for appropriate subsidiarity and proportionality considerations, so that EU level action is only taken where necessary to achieve desired environmental outcomes.<sup>179</sup> For example, with the EU Circular Economy Package proposals, the UK has responded to three public and member state consultations. It stated:

These responses recognised that EU-level action was necessary to improve harmonisation of policy frameworks and benchmarking, but also stressed the principles of subsidiarity and proportionality in allowing member states the freedom to reach common goals in the way most suited to them (with a particular emphasis upon easing burdens on businesses and SMEs).<sup>180</sup>

## UK renegotiation process

56. The Government’s renegotiation of the UK’s relationship with the EU did not explicitly include a reference to the environment. Mr Stewart, Minister at DEFRA, told us:

We are not intending to renegotiate those directives. [...] The basic structure of the competences, the basic structure of European environmental law in relation to our Department I think is very close to what we think is sensible. It is what we would intend to do in the United Kingdom.<sup>181</sup>

57. Lord Bourne, Minister at DECC, said, “in this area of energy and climate change, the UK’s interests are very much within a strong EU. [...] this area is not part of the renegotiation. We are very comfortable with the EU stance.”<sup>182</sup>

58. Mr Stewart, Minister at DEFRA, did not point to specific contingency plans that had been made in the case of the UK voting to leave the EU. He was confident that DEFRA was aware of which areas of EU environmental policy would be impacted in the UK.<sup>183</sup> However, he said that if the UK were to leave the EU, the process “would be a long, tortuous negotiation.”<sup>184</sup>

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176 Q148 (Professor Reid)

177 Q206 (Mr Evers)

178 Q369 (Lord Bourne of Aberystwyth)

179 DEFRA ([AEP0022](#))

180 DEFRA ([AEP0022](#))

181 Q335 (Mr Stewart)

182 Q325 (Lord Bourne of Aberystwyth)

183 Q345 (Mr Stewart)

184 Q345 (Mr Stewart)

59. The Commission told us they did not have a specific UK exit contingency plan in the environmental area. Mr Crespo, DG at the European Commission, said “we have not done any preparatory work on hypothetical issues. We do not comment, we do not suggest answers.”<sup>185</sup>

60. Some witnesses had also discussed the extent to which the UK would still be subject to a range of international agreements, even if it were outside the EU.<sup>186</sup> Mr Evers at the UKELA argued:

It would very much depend on what the nature of the UK’s ongoing relationship with the EU is post an exit. [...] There is a lot of international law out there that the UK has ratified. A lot of that has also been adopted by the EU, so it becomes part of domestic law that way, but a lot of our own domestic environmental law, if we were not part of the EU, would have to reflect our international treaty commitments.<sup>187</sup>

61. A particular concern of some witnesses was that the UK’s influence on EU environmental policy once outside the EU could be diminished, yet the UK might find itself still having to meet those standards.<sup>188</sup> Martin Nesbit was one of several who raised this point:

Were the UK to be outside the EU, you would end up in a situation where the UK was required to implement legislation without having that sometimes quite healthy influence of focusing on implementation during the writing of the legislation.<sup>189</sup>

62. Lord Bourne, Minister at DECC, said, “[...] a lot of what we do we would probably need to do if we were not part of the EU, the agreement we have just signed up to in Paris and so on.”<sup>190</sup> Mr Harper at RSPB argued ultimately it came down to a balance of risk and that in relation to the environment leaving the EU was the more risky option.<sup>191</sup> He stated:

One has to then look at the balance of risk, and where we are at the moment is that we say, based on an assessment of risk, the least risky option for the environment is to stay within the European Union.<sup>192</sup>

## Conclusion

**63. The Government was supportive of the role of the EU in environmental and climate change policy and its renegotiation of UK membership of the EU did not directly include the environment. Nonetheless, EU environmental policy has responded to the UK Government’s agenda of updating and revising existing regulations to make them less onerous. We support efforts by the Commission to revise and update EU regulations to ensure they are proportionate and effective. However, this process should not become a cover for weakening key environmental protections.**

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185 Q293 (Mr Crespo)

186 Q224 (Mr Evers), Friends of the Earth (England, Wales and Northern Ireland) ([AEP0002](#))

187 Q224 (Mr Evers)

188 Q24 (Professor Oberthuer), Q92 (Mr Nesbit), Q156 (Mr Austin), Q351 (Lord Bourne of Aberystwyth)

189 Q92 (Mr Nesbit)

190 Q343 (Lord Bourne of Aberystwyth)

191 Q224 (Mr Harper)

192 Q224 (Mr Harper)



64. Despite the key role that the EU has played in UK environmental policy, relatively little appears to have been done by way of planning in the case of the UK leaving. None of the witnesses to our inquiry made an environmental case for leaving the EU. The UK Government's view is that this would trigger a "long and tortuous" negotiation. There are, therefore, significant unanswered questions about what relationship a UK outside the EU would have with it and with the rest of the world, just as there are unanswered questions as to how our relationship with the EU might develop. Nonetheless, two points were made to us repeatedly. Firstly, the UK would still need to meet international environmental commitments made in the UN and elsewhere, many of which are reflected in EU law. Secondly, a UK outside the EU would still have to comply with some aspects of EU environmental legislation, particularly if it wishes to secure preferential access to the Single Market, but with significantly less ability to influence the process of its development.

# Conclusions

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## The development of EU and UK environmental policy

1. The EU has a long history of developing environmental policy to promote the Single Market and to protect the environment. Legal authority to legislate in this area was eventually given to the EU by the member states in the recognition that there were significant benefits to solving some environmental problems multilaterally. The overwhelming majority of witnesses who gave evidence to our inquiry, and to the previous Government's Balance of Competencies Review, stated that these benefits remain. There are differences of opinion about precisely where the boundaries between national and EU level action should be drawn. The overwhelming majority of our witnesses also believed that the UK's membership of the EU has improved the UK's approach to environmental protection and ensured that the UK environment has been better protected. We noted that many witnesses implied that if the UK were free to set its own environmental standards, it would set them at a less stringent level than has been imposed by the EU. (Paragraph 12)

## The UK and the EU's international policies

2. The EU is regarded as a leader in international environmental diplomacy, providing the UK with a platform to pursue its national environmental interests at an international level. The UK is widely regarded as one of the most influential member states in shaping the EU's environmental international policies. The UK's skills and expertise in international negotiations have been a major factor in developing its influence. The Government highlighted the UK's role in shaping the EU's international negotiations at Paris COP21 in December 2015 as an example of this influence. (Paragraph 18)

## The design of EU and UK environmental policy

3. A large proportion of UK environmental policy is shaped at EU level. This is a two-way process in which the UK has significant influence through the Council of Ministers, its MEPs and stakeholders, such as NGOs and business representatives. Depending on how they have seen the national interest, the UK Government has led the way in developing key pieces of EU environmental legislation in some areas and have held back or amended measures in others. The Environment, Food and Rural Affairs Minister was clear that the UK Government's current approach was to press the EU to deliver a more ambitious better regulation agenda. As such, the UK has a reputation for taking a pragmatic approach to environmental law making. Many pieces of environmental legislation allow significant flexibility for member states to implement them in ways that reflect national circumstances. (Paragraph 31)
4. Changing policy in a multi-national context is often more complex, time-consuming and difficult than within a single nation-state. Whilst this has sometimes been a source of frustration for Government Ministers, it has had benefits, particularly for businesses, resulting in policy stability, boosting investor confidence and enabling a degree of long-term planning. (Paragraph 32)

## Devolution

5. EU directives have provided a framework within which the UK's devolved Governments have developed different approaches towards achieving the common environmental objectives set out in EU policy. We welcome the Government's moves towards establish a more formal and more proactive mechanism for integrating devolved Administrations' priorities into the UK's national positions. The Committee noted that the UK has found considerable scope for devolving environmental policy to devolved administrations. However, some EU witnesses could not envisage a single EU competence which could be devolved to Member States. (Paragraph 37)

## The implementation and evaluation of EU environmental policy

6. EU laws are addressed to member states. It is they who take the lead in negotiating them and, in general, it is they who are responsible for determining the means through which the objectives set out in them are to be achieved. The majority of concerns we heard about EU environmental policy were about their implementation by member states. NGOs gave examples where they felt member states including the UK were not implementing legislation sufficiently strongly to deliver environmental benefits. Businesses, on the other hand, were concerned about regulatory burdens arising from regulations that were being applied too stringently. The tension between these two interests is common to UK policy. However, we agree with the widespread view among witnesses that greater clarity in the drafting of directives and a better use of evidence at both European and UK levels would help address these issues. (Paragraph 52)

## The future of EU and UK environmental policy

7. The Government was supportive of the role of the EU in environmental and climate change policy and its renegotiation of UK membership of the EU did not directly include the environment. Nonetheless, EU environmental policy has responded to the UK Government's agenda of updating and revising existing regulations to make them less onerous. We support efforts by the Commission to revise and update EU regulations to ensure they are proportionate and effective. However, this process should not become a cover for weakening key environmental protections. (Paragraph 63)
8. Despite the key role that the EU has played in UK environmental policy, relatively little appears to have been done by way of planning in the case of the UK leaving. None of the witnesses to our inquiry made an environmental case for leaving the EU. The UK Government's view is that this would trigger a "long and tortuous" negotiation. There are, therefore, significant unanswered questions about what relationship a UK outside the EU would have with it and with the rest of the world, just as there are unanswered questions as to how our relationship with the EU might develop. Nonetheless, two points were made to us repeatedly. Firstly, the UK would still need to meet international environmental commitments made in the UN and elsewhere, many of which are reflected in EU law. Secondly, a UK outside the EU

would still have to comply with some aspects of EU environmental legislation, particularly if it wishes to secure preferential access to the Single Market, but with significantly less ability to influence the process of its development. (Paragraph 64)

# Formal Minutes

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**Wednesday 23 March 2015**

Members present:

Mary Creagh, in the Chair

Peter Aldous	Mr Peter Lilley
Caroline Ansell	Caroline Lucas
Geraint Davies	John Mc Nally
Margaret Greenwood	Rebecca Pow
Peter Heaton-Jones	

Draft Report (*EU and UK Environmental Policy*), proposed by the Chair, brought up and read.

Draft Report (*EU and UK Environmental Policy*), proposed by Mr Peter Lilley, brought up and read, as follows:

## **EU and UK Environmental Policy**

I am submitting this dissenting Report because the draft submitted to the Committee reached conclusions which were mutually contradictory, which were not based on adequate research, and ignored some of the evidence we did receive.

### ***MUTUALLY CONTRADICTIONARY CONCLUSIONS***

The official draft report essentially concludes:

- a) that the EU has made Britain adopt higher environmental standards than we would have done voluntarily, and
- b) that Britain has made the EU adopt higher environmental standards than it would have done without us.

It is possible to argue one or the other—but not both at the same time.

Moreover, both are asserted with little evidence.

The Report opens with the assertion that thanks to EU membership “the UK has transitioned from the ‘Dirty Man of Europe’ to a leader in EU environmental policy”.

This is based on an unsubstantiated quote from a single witness<sup>1</sup>. It may or may not be true. But no effort has been made to check it.

My own recollection is that Britain was a more environmentally conscious nation prior to joining the EU than many of our partners. Symptoms of that were the National Trust, the Campaign for the Protection of Rural England, the Clean Air Acts, and the establishment of the Green Belt—all of which antedated our entry. They had few counterparts on the continent. However, that impression may be incorrect and would also need checking.

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<sup>1</sup> Q54 Angus Evers, Wildfowl & Wetlands Trust

### ***HAS THE EU INCREASED BRITISH INFLUENCE ON GLOBAL ENVIRONMENTAL POLICY?***

If the EU has been making Britain more environmentally friendly, it is hard to argue that Britain has been making the EU take the lead in environmentalism globally. We are either leader or follower, not both.

The Report says “the EU has also given the UK a platform to pursue environmental objectives internationally”. In fact, because we are a member of the EU we have lost our seat and/or vote on a number of international environmental bodies.

For example, because the EU claims exclusive competence over fisheries we no longer have a vote on ICCAT. We risk losing our vote on CITES and others. So, as the EU assumes the role of a single state, it is displacing member states votes and even voices on international bodies.

Indeed the EU already claims member states have a “duty of loyal co-operation”. So we can no longer pursue policies on international bodies which differ from those of the EU. In 2010, the commission went so far as to initiate infraction proceedings against the UK and Holland “for supporting stronger protection for endangered Bluefin tuna than the EU”<sup>2</sup>. This has had a chilling effect on member states’ willingness to pursue an independent line on environmental issues.

If the UK leaves the EU, we will be able to resume our leadership role on these bodies.

### ***NONE OF THE WITNESSES TO THE INQUIRY MADE AN ENVIRONMENTAL CASE FOR LEAVING THE EU***

To be fair, they were not asked to do so. To be frank, the Committee did not invite anyone likely to make such a case.

The majority of our witnesses had a vested interest, and many of their organisations depend on the EU for some of their income.

Christopher Snowden, author of “Euro-Puppets: the European Commission’s Remaking of Civil Society”, spelt out how the EU uses its financial muscle to manipulate opinion.

“Of the ‘Green 10’—the ten largest environmental non-profits—only Greenpeace does not receive EU funding and only because it has refused the offer. Originally, EU funding for these groups was limited to no more than 50 percent of their annual income, but when members of the Green 10 complained that they were unable to attract enough voluntary donations to match the EU’s grants, the limit was raised to 70 per cent.

The very fact that the EU is prepared to fund such groups implies that they are more open to their arguments, even though environmental groups are by no means guaranteed to offer expert impartial advice.

EU grants to the Green 10 are unrestricted and can be used for any purpose. It is the nature of campaign groups not only to persuade legislators but to

persuade the public, and the Green 10 spends much of its time on grassroots lobbying. This creates the illusion of grassroots support that helps to justify legislation that, in fact, is of very little interest to the general public.”

**Table 2: Full members of the Green 10**  
(proportion of income provided by the EU shown in parentheses)

Birdlife Europe	€332,163 (35 per cent)
CEE Bankwatch Network	€836,238 (45 per cent)
Climate Action Network Europe	€295,022 (33 per cent)
European Environmental Bureau	€894,000 (41 per cent)
European Federation for Transport and Environment	€275,516 (16 per cent)
Health and Environment Alliance	€362,992 (59 per cent)
Friends of the Earth Europe	€1,195,259 (46 per cent)
Naturefriends	€365,735 (41 per cent)
WWF European Policy Office	€599,954 (13 per cent)

These sums are only a small part of the Euro dependency culture. For example, ‘the RSPB netted over Euro 14 million from Commission controlled programmes between 2007–2012. Typical of these projects was the Euro 1,692,547 scheme ... “to raise awareness of the Birds Directive and promote positive land management” with an EU contribution of Euro 846,273’.<sup>3</sup>

### *CONFLICTS BETWEEN EU AND UK ENVIRONMENTAL POLICY*

In its research on this and other matters the Committee has come across a number of issues where UK and EU policy and interests conflict on environmental issues. But these are not mentioned in the draft official report.

- i) COP 21: All parties to the Paris COP 21 Conference submitted their Intended Nationally Determined Contributions for emission reductions. EU member states were the only countries not to do so. Instead, the EU itself submitted an overall ‘Intended Contribution’.

EU member states now have to allocate that quantum of CO<sub>2</sub> emissions amongst themselves. However, the UK has committed itself by law to a more ambitious path of emissions reduction than any other member state. In round figures, we are committed to reduce CO<sub>2</sub> emissions at twice the rate of the EU as a whole.

Unfortunately because we are doing more this simply means the total effort to be distributed among other member states will be less. Our greater effort will not reduce the total global emissions by a single molecule! We are simply making our partners’ life easier and their industry more competitive with ours.

By contrast, were we to leave the EU, other member states would all have to make a bit more effort to meet their INDC and the UK’s extra efforts would contribute to global decarbonisation.

- ii) Bio-Fuels: Our witness, George Monbiot, explained how the increasing acreage devoted to maize has contributed to flooding. He has also explained that the reason maize acreage has grown from 1400 hectares in 1970 to 160,000 hectares<sup>4</sup> is primarily due to subsidies for biofuel. He has “criticised the maths underpinning the idea that growing biogas maize actually saves any carbon at all; and the ridiculous double subsidies that support its production”<sup>5</sup>. On a global scale this diversion of land from food production to crops for biofuels has raised food prices, contributed to food riots and increased hunger.

The UK government would probably abandon this policy if not committed to it by EU law.

### *SUBSIDIARITY/INTERGOVERNMENTAL COOPERATION/SUPRANATIONAL CONTROL*

The key questions as far as environmental policy and EU membership is concerned are:

- Is there a cross-border aspect?
- Can that be handled by intergovernmental co-operation?
- Does it require supranational legislation?
- Subsidiarity—could it be handled adequately at a national level?

The Committee did not identify these questions, and then only partially, until late in its inquiry. So few witnesses were asked to address them.

Those who were, seemed puzzled by them. Apparently in environmental circles it is generally taken for granted that environmental issues cannot be handled at a national level and, if international, are always best handled supranationally by the EU rather than by inter-governmental cooperation. This may reflect the source of funding of many of the bodies from whom our witnesses were drawn. He who pays the piper calls the tune.

When asked why flooding and river management could not be left to the UK—given that the UK is an island nation with no major transnational rivers (even in Northern Ireland)—one witness extemporised that this was because flooding could increase silt discharge into the North Sea which might affect other countries. It is hard to believe that was more than an ad hoc excuse.

Although it is taken for granted that power over environmental matters cannot be devolved to member states, it is accepted without question that power on environmental issues can be devolved within member states. No-one suggested that devolution to Scotland, Wales or Northern Ireland caused any problems.

The apparent success of devolution within the UK on environmental issues suggests there must be substantial scope for devolution under the rarely-applied principle of subsidiarity within the EU.

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4 Monbiot. Guardian. 27th December 2015

5 Monbiot. Guardian. 22 January 2016



## CONCLUSION

Our inquiry failed to examine systematically the scope for devolving powers back to the UK if we remain within the EU or the merits of handling cross-border issues inter-governmentally if we leave. However, given the success of devolution within the UK, there is every reason to suppose that there is substantial scope for devolving power within the EU back to member states. Unfortunately, this is prevented by the doctrine of the ‘*acquis communautaire*’ which says that once a power has been acquired by the EU it cannot be returned to member states. Likewise, given that most environmental legislation originates through intergovernmental cooperation at a global level, there is every reason to suppose that if the UK leaves the EU environmental issues could be handled by intergovernmental cooperation between the UK and the EU. Moreover, the UK would be able to resume its seat and vote on these international bodies and exert greater influence than it does when its influence is only exerted indirectly, if at all, via the EU Commission.

Motion made, and Question proposed, That the Chair’s draft Report be read a second time, paragraph by paragraph.—(*The Chair.*)

Amendment proposed, to leave out “Chair’s draft Report” and insert “draft Report proposed by Mr Peter Lilley”. —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Main Question put and agreed to.

*Ordered,* That the Chair’s draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 5 agreed to.

Paragraph 6 read.

Amendment proposed, after line 14, insert “There is no mechanism for devolving power if a particular Member State could handle some policies at a national level (for example, because of its unique geography, the UK—as an island nation—could form its own policy on rivers, beaches and water quality, because it has no land boundary except with Ireland).” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraphs 6 and 7 agreed to.

Paragraph 8 read.

Amendment proposed, in line 2 after “as a whole.”, insert “This was no surprise in light of the IEA study “Euro Puppets: the European Commission’s remaking of Civil Society”, by

Christopher Snowden. This shows the scale of expenditure by the EU on environmentalist groups who are financed to create the illusion of public support by lobbying for environmental policies which the EU itself wants.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraph 8 agreed to.

Paragraph 9 read.

Amendment proposed, in line 5, after “environment” insert “This suggests that British environmental policy would not change significantly were the UK to leave the EU.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraphs 9 to 11 agreed to.

Paragraph 12 read.

Amendment proposed, in line 13, after “the EU.” insert “We do not have such a low opinion of the British electorate, but note the preference many of our witnesses had for overriding democratic processes.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraphs 12 and 13 agreed to.

Paragraph 14 read.

Amendment proposed, in line 7, after “member states” insert “but a country’s membership of the EU means renouncing its individual vote in some international bodies, thereby greatly reducing its influence.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Amendment proposed, in line 9, after “of its size” insert “though where the EU assumes the role of a single state it may end up with one vote instead of the 28 votes previously held by Member States.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraphs 14 to 17 agreed to.

Paragraph 18 read.

Amendment proposed, in line 2, leave out from “, providing” to “platform” and insert “. However, UK membership of the EU may deprive the UK of a vote and a platform on many international bodies” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Amendment proposed, in line 7, after “influence” insert “But witnesses did not say what would have been the EU’s position if the UK had not been a member.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraphs 18 and 19 agreed to.

Paragraph 20 read.

Amendment proposed, in line 12, after “of cases.”” insert “This suggests that if the UK were to leave the EU, we would continue to pursue similar environmental policies.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraphs 20 and 21 agreed to.

Paragraph 22 read.

Amendment proposed, after line 9, insert “Even had we not been members, Britain would have been able to innovate in environmental policy in ways in which the EU might have emulated. But, as the EU centralises policy, the scope for innovation by individual members will decline.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraphs 22 to 55 agreed to.

Paragraph 56 read.

Amendment proposed, after line 6, insert “He maintained that EU law has little impact on the UK policy either because of the flexibility it provides or because it accords with our own objectives.” —(*Mr Peter Lilley.*)

Question negatived.

Paragraphs 56 to 58 agreed to.

Paragraph 58 read.

Amendment proposed, in line 5, after “negotiation.” insert “ In practice, this would not be the case as the UK would simply transpose existing EU legislation into UK law and only amend it as and when it felt necessary.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraphs 58 and 59 agreed to.

Paragraph 60 read.

Amendment proposed, after line 9, insert “A lot of what the UK does is actually implementing legislation from international bodies over which we have very little say.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraph 60 agreed to.

Paragraph read, as follows:

“Since we finished taking evidence, the Government has published a document which suggests some alternative scenarios for the UK’s relationship outside the EU. Addressing membership of the European Economic Area as an alternative to EU membership, the Report stated:

Norway is also required to comply with EU legislation in areas not directly related to the Single Market, including [...] environmental standards.

It went on to state that UK businesses would have to continue to comply with EU rules on the environment if it wanted to access the Single Market, even under scenarios where it decided not to join the European Economic Area.”

Paragraph disagreed to.

Paragraph 61 read.

Amendment proposed, after line 8, insert “However, all WTO member states have ‘access to the Single Market’ without implementing its environmental legislation.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraphs 62 and 63 agreed to.

Paragraph 64 read.

Amendment proposed, in line 4, leave out “The UK Government’s view is that this would trigger a “long and tortuous” negotiation.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Amendment proposed, in line 7, after “the world” insert “just as there are unanswered questions as to how our relationship with the EU will develop as it becomes a more integrated state.” —(*Mr Peter Lilley.*)

Question proposed, That the Amendment be made.

Amendment proposed to the proposed Amendment, to leave out “as it becomes a more integrated state” —(*Peter Heaton-Jones.*)

Question put, That the Amendment to the proposed Amendment be made.

Question agreed to.

Proposed amendment, as amended, made.

Amendment proposed, in line 10, after “EU law.” insert “ This is true and shows that we would have more influence if we regained a direct say in the formulation of these international standards.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Amendment proposed, in line 10, leave out from “Secondly,” to end of paragraph. —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Paragraph 64, as amended, agreed to.

Summary read.

Amendment proposed, in line 5, after “European Union.” insert “However, that reflects who we invited, and the fact that most worked for organisations with a vested interest in EU membership and often dependent on it for grants.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Amendment proposed, in line 30, after “negotiation,” insert “however, in practice, lengthy negotiation would be unnecessary as the UK would simply transpose existing EU legislation into UK law and only amend it as and when it felt necessary.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Amendment proposed, in line 32, after “diminished,” insert “but the committee did not check this assertion.” —(*Mr Peter Lilley.*)

Question put, That the Amendment be made.

Question negatived.

Summary amended and agreed to.

*Resolved,* That the Report be the Third Report of the Committee to the House.

*Ordered,* That the Chair make the Report to the House.

*Ordered,* That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 12 April at 10.00 am

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the Committee's [inquiry webpage](#).

### Wednesday 2 December 2015

*Question number*

**Professor Maria Lee**, Professor of EU Environmental Law, University College London (UCL), **Professor Sebastian Oberthuer**, Professor of Environment and Sustainable Development, Institute for European Studies (IES), and **Nigel Haigh**, Honorary Fellow, Institute of European Environmental Policy (IEEP)

[Q1–51](#)

### Wednesday 16 December 2015

**Dr Diane Mitchell**, Chief Environment Adviser, National Farmers Union, **Angus Evers**, Member and Co-convenor of the Waste Working Party, UK Environmental Law Association, and **Martin Harper**, Director of Conservation, The Royal Society for the Protection of Birds

[Q52–67](#)

**Professor Hans Bruyninckx**, Executive Director, European Environment Agency, **Pieter de Pous**, EU Policy Director, European Environmental Bureau, and **Martin Nesbit**, Senior Fellow and Head of Environment and Climate Governance Programme, Institute for European Environmental Policy

[Q68–111](#)

### Wednesday 6 January 2016

**Lloyd Austin**, Convenor of Scottish Environment Link's Governance Task Force, Wildlife and Countryside Link, **Trevor Hutchings**, Director of UK and EU Advocacy, World Wildlife Fund UK, and **Professor Colin Reid**, Professor of Environmental Law, University of Dundee Law School

[Q112–156](#)

**Nick Molho**, Executive Director, Aldersgate Group, and **Dr Stephanie Merry**, Head of the Ocean Energy Group, Renewable Energy Association

[Q157–173](#)

### Tuesday 12 January 2016

**Angus Evers**, Member and Co-convenor of the Waste Working Party, UK Environmental Law Association, **Dr Diane Mitchell**, Chief Environment Adviser, National Farmers Union, and **Martin Harper**, Director of Conservation, The Royal Society for the Protection of Birds

[Q174–226](#)

**Susan Danger**, Managing Director, American Chamber of Commerce EU

[Q227–257](#)

### Wednesday 13 January 2016

**Daniel Calleja Crespo**, Director General for the Environment, European Commission, **Astrid Schomaker**, Director Strategy, Directorate General Environment, European Commission, and **Sybille Grohs**, Governance & Legal Issues, Directorate General Environment, European Commission

[Q257–323](#)

### Wednesday 20 January 2016

**Rory Stewart MP**, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs, **Lord Bourne of Aberystwyth**, Parliamentary Under-Secretary of State, Department of Energy and Climate Change, **Tom Bastin**, Head of the European Union and International Energy Efficiency Team, Department of Energy and Climate Change, and **Robert Hitchen**, Head of the Environment Team, European Union Strategy, Department for Environment, Food and Rural Affairs

[Q324–380](#)



## Published written evidence

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The following written evidence was received and can be viewed on the Committee's [inquiry page](#). AEP numbers are generated by the evidence processing system and so may not be complete.

- 1 Aldersgate Group ([AEP0046](#))
- 2 Aldersgate Group ([AEP0061](#))
- 3 American Chamber of Commerce to the European Union (AmCham EU) ([AEP0064](#))
- 4 British Ecological Society ([AEP0026](#))
- 5 Chartered Institute of Ecology and Environmental Management ([AEP0017](#))
- 6 Chartered Institution of Wastes Management (CIWM) ([AEP0028](#))
- 7 Chem Trust ([AEP0010](#))
- 8 CIBSE ([AEP0032](#))
- 9 CIWEM ([AEP0004](#))
- 10 CLA ([AEP0007](#))
- 11 Confederation of Paper Industries ([AEP0023](#))
- 12 Consumer Council for Water ([AEP0030](#))
- 13 Convention of Scottish Local Authorities (COSLA) ([AEP0014](#))
- 14 Crop Protection Association ([AEP0020](#))
- 15 Defra ([AEP0022](#))
- 16 Dr Charlotte Burns ([AEP0027](#))
- 17 DS Smith ([AEP0009](#))
- 18 EDF Energy ([AEP0024](#))
- 19 Energy UK ([AEP0055](#))
- 20 Environmental Industries Commission ([AEP0040](#))
- 21 Environmental Services Association ([AEP0005](#))
- 22 Environmental Services Association (ESA) ([AEP0029](#))
- 23 European Commission ([AEP0059](#))
- 24 European Commission ([AEP0065](#))
- 25 European Environmental Bureau ([AEP0054](#))
- 26 Friends of the Earth (England, Wales And Northern Ireland) ([AEP0002](#))
- 27 Institute for European Environmental Policy ([AEP0053](#))
- 28 Institute of Environmental Management and Assessment ([AEP0021](#))
- 29 Mr Christian Hudson ([AEP0058](#))
- 30 Mr Nigel Haigh ([AEP0042](#))
- 31 National Farmers Union (NFU) ([AEP0052](#))
- 32 New Economics Foundation ([AEP0044](#))
- 33 Nigel Haigh ([AEP0063](#))
- 34 Professor Dr Sebastian Oberthuer ([AEP0056](#))

- 35 Professor Colin Reid ([AEP0001](#))
- 36 Professor Colin Reid ([AEP0060](#))
- 37 Professor Henrik Selin ([AEP0062](#))
- 38 Professor Maria Lee ([AEP0047](#))
- 39 R. Andreas Kraemer ([AEP0041](#))
- 40 Recolight Ltd ([AEP0003](#))
- 41 Renewable Energy Association ([AEP0037](#))
- 42 Resource Association ([AEP0025](#))
- 43 RSPB ([AEP0050](#))
- 44 Sylvia Goddard ([AEP0013](#))
- 45 TechUK ([AEP0043](#))
- 46 The Cancer Prevention & Education Society ([AEP0008](#))
- 47 The Packaging Federation ([AEP0031](#))
- 48 The Packaging Society, Environment and Safety Forum ([AEP0015](#))
- 49 The Wildlife Trusts ([AEP0018](#))
- 50 UK Environmental Law Association ([AEP0057](#))
- 51 UK Major Ports Group ([AEP0011](#))
- 52 Valpak Limited ([AEP0045](#))
- 53 Wildfowl & Wetlands Trust ([AEP0019](#))
- 54 Wildlife and Countryside Link ([AEP0006](#))
- 55 WWF-UK ([AEP0051](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the Committee's website at [www.parliament.uk/eacom](http://www.parliament.uk/eacom).

### Session 2015–16

First Report	The Airports Commission Report: Carbon Emissions, Air Quality and Noise	HC 389
Second Report	The Future of the Green Investment Bank	HC 536
First Special Report	Local Nature Partnerships: Government Response to the Committee's Twelfth Report of Session 2014–15	HC 377
Second Special Report	Climate change adaptation: Government Response to the Committee's Tenth Report of Session 2014–15	HC 590