



Environmental Audit Committee

Oral evidence: Assessment of EU/UK environmental policy inquiry, HC 537

Tuesday 12 January 2016

Ordered by the House of Commons to be published on 12 January 2016.

Written evidence from witnesses:

- [Angus Evers](#)
- [Dr Diane Mitchell](#)
- [Martin Harper](#)

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Members present: Huw Irranca-Davies (Chair), Peter Aldous, Mary Creagh, Geraint Davies, Margaret Greenwood, Caroline Lucas.

Questions 174 – 256

Examination of Witnesses

Witnesses: **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, gave evidence.

Q174 Chair: Good morning to you. Welcome to this morning's session. This is the Environmental Audit Committee's continuing inquiry into our assessment of EU/UK environmental policy. A particular welcome back to our witnesses this morning, who we had to send away last time—they very kindly agreed to come back—after we were curtailed in a previous session through a combination of votes and people flying off to exotic places—or maybe not, I do not know, but they were flying off. Thank you very much for coming back. We have in front of us once again 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. You are very welcome again.

Q175 We are going to pick off where we left off and then continue, if we may. Could I begin by asking you in this reconvened session a quite fundamental question for all of you: what is the balance—what do you think should determine whether a piece of environmental law is determined at a UK or an EU level? Where does the balance lie for you? What should make that determination? Could I begin with Dr Mitchell from the National Farmers Union, because the NFU has been supportive of the environmental role that the farming community in its diversity has to play, but you have also sometimes been critical over what you regard as the encumbrance of some of the regulations? What, for you, determines where environmental policy should be made?

Dr Mitchell: I would start with saying that if the decision is made that there is a common framework that is needed across the EU to implement common roles so that there is fairness and a level playing field, I think that is a fairly fundamental basis on which to make the decision, so it is about fairness. I guess it is also about transparency, and it is about making sure that there is no unevenness in the level playing field.

Q176 Chair: Just to follow up on that, do you think that the current balance of competencies is the right balance, or is it too broad or narrow?

Dr Mitchell: I would say that there is a fairly comprehensive set of environmental legislation set at an EU level. I think perhaps some people might say that there are still a few gaps, but I would say that the environmental legislation that is in place is very comprehensive and also sets fairly ambitious standards that have to be met, so there are some aspects of environmental policy that we do believe should be set at a national level. One of those I would say is soil policy. We were very concerned about the Commission's proposals for the introduction of an EU soil framework directive a number of years ago. Obviously the Commission has changed its mind and changed its view and direction on that now, but we fundamentally believed that that was an issue for member states to deal with.

Q177 Chair: That is a great example. Can I just push you on that? Why do you think the soil directive was not one that should have been for EU competence, but should have been for the member state? We have heard from other witnesses that, frankly, there is no area of environmental law that can be purely down to one sovereign state, as what affects one affects all, even if it is in terms of that idea that we all need to up our game together. Why do you think soil should be just for the UK?

Dr Mitchell: Soils differ across the EU and there are different issues affecting different member states. I do not think having a common framework in place to address soil is a very easy thing to do. In fact, I think the Commission found it very difficult and there were a number of concerns—not just from the UK, but other member states—on the draft directive as it was set out.

I think the other aspect—NFU has done a bit of work on this—looking at how other EU policies impact on soil, is that although there is not an EU soil framework directive, we have looked at a number of other EU policies and how they directly or indirectly impact on soil. There is lots of protection for soil at an EU level, whether it is in cost compliance or agri-environment schemes, or even the water framework directive and waste framework directive. I am quite happy to share that analysis with you if you would find that helpful.

Q178 Chair: Before I pass on to Mr Harper, are there any other areas about which the NFU would say, “We should be determining this far more at a UK-only level”?

Dr Mitchell: I cannot think of any right at the moment, but soil was the one at the top of my mind.

Q179 Chair: That was the clear one.

Mr Harper, what are your feelings both on the balance of competencies and also where policy should be determined?

Martin Harper: It is a good question and I think it is right for you to challenge us on this. I have three themes, one of which is where the issue is genuinely transnational. For example, if there is a threat, whether it is related to climate or the trade in invasive species, it makes sense to co-operate to try to deal collectively with that threat. Also, if there is a shared resource, whether it is migratory birds or fish stocks, again it would make sense to have some sort of common framework within which you can make judgments about how do you look after that or benefit from that shared resource. Then, finally, there is the point that my colleague, Diane, made around common standards: if you have ambition and you want a trade to operate freely across the European Union area, having common standards is sensible to allow you all to feel as though you are operating on a level playing field. Those three themes, I think, are the principles.

Q180 Chair: We are quite interested in specific examples as well. If you look at something like the soil directive, or there may be another one, there may be examples of where it is better for the UK to carve its own path.

Martin Harper: The national discretion that member states have within existing law to try to realise that ambition through local circumstances is appropriate, so whether it is around designing your scheme to suit the individual situation that farmers face, for example for agri-environment schemes, or whether it is designing the environmental institutions to fit with the culture of that member state, and indeed for you to identify what you deem to be nationally important, it makes sense for an individual member state to set environmental ambition, standards and policies to service those measures. We have a number of nationally important species in this country, for example, which are not protected under the habitats and birds directive, but that we as a nation deem to be important, so we will have policies to look after those. That would be the approach that I would adopt.

Q181 Chair: Could you deal with some specifics again? For example, the soil directive is interesting because of the difficulty that you talked about, Dr Mitchell, that they had at a European level of getting to the specifics of it, but there is a question over whether it is right to set—at least overall—high-level objectives that everybody should be aiming for on improvement in soil quality, avoiding denudation and so on. But let me just throw the devil’s advocate question at you: if you look at birds, what right do we have to interfere in Malta and its approach to birds and wildlife, what they do in terms of their traditions, and this, that and the other?

Martin Harper: What happens in parts of the European Union affects our birds when they return on passage. For example, many of our summer migrants will spend only about four

months of the year in the United Kingdom and the rest of the time flying across the Mediterranean into Africa.

Q182 Chair: Mr Evers, do you have any thoughts on that balance of competencies and where policy should be determined?

Angus Evers: It is a very difficult question to answer in any particular case. There are no really clear-cut answers that are universally applicable to that. With any environmental policy or environmental aspect, there will always be some aspects or factors that have purely local impacts and some that have a wider or possibly even a cross-border impact. One example I can think of is air quality. We need a framework across Europe to deal with transboundary air quality issues, for example pollution from power stations in the UK being blown by the wind across the North Sea into Europe and vice versa, and it is appropriate to have legislation like the industrial emissions directive and the national emission ceilings directive to deal with that. However, there will also be cases of air quality involving small emitters that are more appropriately dealt with at a local level, and in the UK, we have the local authority air pollution control regime that falls outside the industrial emissions directive. I think there is a balance to be struck. Do we have it right? I think in some aspects, like air quality, we probably have.

Q183 Peter Aldous: Just so that it is on the record, I am a partner in a family farm who are members of the NFU.

Just taking the Chairman's line of enquiry further, can each of you give examples of where the EU has adopted or retained environmental policies that are against the clear wishes of the UK, so specific examples where it has pursued a particular approach that, as I said—

Angus Evers: One example I am aware of is the 1999 landfill directive about which, as I recall, the UK was—shall we say?—less than enthusiastic. Up until the 1990s and when the landfill directive came in, the UK was heavily reliant on large-scale landfill for its waste treatment. There was very little recycling and very little alternative treatment, such as energy from waste, and we felt that because of our geological condition, landfill was the appropriate disposal option for this country. Obviously other European countries, like the Netherlands, which is mostly underwater, took a different view, because technically landfill was not an option for them, so most of their waste was recycled or incinerated.

Q184 Peter Aldous: What would have been the cross-border impact if a different approach had been pursued in the UK on that particular example?

Angus Evers: Waste is not only something that needs to be got rid of. It is also a resource, and there are huge trans-frontier movements of waste. The figures have yet to be published, but some estimates say that we exported approximately 2 million tonnes of waste to the continent last year, so waste treatment does have a transboundary impact.

Q185 Chair: We might return to that whole issue of waste because it is an interesting area of policy. In response to Peter's question, are there other areas?

Martin Harper: There is either the example of the EU introducing a moratorium to stop the use of neonicotinoids—a class of pesticides—against the wishes of the United Kingdom, or the example of the European Union not listening to the successive UK Government demands for reform to the common agricultural policy to try to shift more of

that public money towards delivery of public good. That is two contrasting examples from the agricultural field.

Q186 Peter Aldous: Just on the first one, if the UK had pursued a different approach, would there have been a cross-border impact?

Martin Harper: I have thought about this and found it quite difficult to get the right answer. I think one could answer it in terms of the fact that the European Union has come up with an independent assessment of the science and has made a judgment, and therefore it is in the interests of European wildlife to phase out this use of neonicotinoids. Then you could ask, “Who is it for the European Union to say that they should impose that view?” and you could say, “It prevents a vested interest lobbying at a member state level to try to get their wishes.” However, I think there was a feeling that your yield potential might be affected by the use of neonicotinoids and that potentially affects your competitiveness, and therefore if you are operating within a common agricultural policy framework, you should be applying similar standards and rules.

Q187 Peter Aldous: On your second one, which very much gets to the heart of CAP, what would have been the cross-border impact if the UK had adopted a different approach on that?

Martin Harper: They cannot, and that is one of the deep challenges. However, I think it is in the interests of the environment for the common agricultural policy to be reformed and, as I say, UK Governments I think have been broadly on the right track. They have not always gone about European politics in the right way to get the reform, but their ambition is right.

Dr Mitchell: I have been thinking quite hard about this. I am not too sure if the example that I have is one that the UK disagreed with at the time, but I certainly think that they had a number of concerns about it, and that is the environmental liability directive. There were ongoing negotiations over a long period—negotiations from the time that the directive was first thought about as a Green Paper through to when it was agreed. Perhaps the UK was not against the premise or the principle of the directive, but I think there were a number of concerns about how the text was drafted and what the impacts might be on smaller businesses that could be swept up in the requirements of the directive. I think perhaps there were some concerns there, but I cannot say for sure whether the UK disagreed with it in the final stages, although there were certainly fundamental concerns about it.

Angus Evers: If I can come in there as well, I think another reason why the UK was reluctant to adopt the environment liability directive was because we felt that what the directive covered was already covered in our own domestic law.

Chair: Okay, very interesting. Mary, you wanted to come it?

Q188 Mary Creagh: Just a very quick question to Mr Evers, please. You said we exported 2 million tonnes of waste to the continent. Do you mean the EU or Europe in general, and do you have the figures for how much we exported to the rest of the world? I know they are massive—the container ships that are going to Africa and back to China and

all over the place. I am just trying to get a scale of how much goes to Europe and how much goes to the rest of the world for reprocessing.

Angus Evers: I do not have the figures for the rest of the world, for example to Africa and China. The exports to Europe I think were predominantly to Germany and the Netherlands, and it was what is called refuse-derived fuel for incinerators.

Mary Creagh: Right, thank you.

Q189 Geraint Davies: I would like to ask about the precautionary principle and whether you think it is being applied proportionately or inappropriately. I should mention that some years ago I introduced the endocrine-disrupting chemicals Bill to apply a precautionary principle to the use of chemicals that emerging science suggests are dangerous to the food chain. I was also interested in whether you think the precautionary principle should be applied to shale gas fracking in terms of methane, water quality and so on. I just want to get a feel for whether you feel, as I say, that the precautionary principle is being appropriately applied and how it should be applied in future. Perhaps I can start with Dr Mitchell.

Dr Mitchell: The example that I have on the precautionary principle and its use is in relation to the habitats directive, and it might be an issue about interpretation. That might be the underlying concern about the precautionary principle because we have had one example where a small farmer has had to challenge the precautionary principle under the habitats directive. Basically, he has had to prove a negative—that his farming activities have not had an impact on a nearby protected habitat. That is a really difficult thing to do. Given the complexities of an ecological system, to prove that his own activities are not having an impact on a nearby protected habitat is difficult. It has been technically difficult and it has been incredibly costly, so this might be an issue about the interpretation of the precautionary principle, but it does have difficulties. We do have examples.

Q190 Geraint Davies: Can I ask, on that example, what precisely is he doing and what is the habitat, just so we can understand?

Dr Mitchell: I cannot remember what type of habitat it is exactly. I would probably say the wrong thing, so I had better not say, but he is undertaking an abstraction activity, so he is abstracting water.

Q191 Chair: It is interesting that you are saying—sorry, Geraint—from an NFU perspective that it may be to do with the interpretation rather than the actual directive.

Dr Mitchell: Yes.

Chair: So it is really to do with the interpretation and implementation here in the UK, rather than what Brussels is telling us to do?

Dr Mitchell: Yes. It may well be, so although there are these principles set out within the directive—there are lots of principles set out within the directive—it is important if you have an overarching directive and a set of principles—

Q192 Geraint Davies: Your concern does not seem to be very different from those people who might be concerned about the impact of fracking on national parks, does it?

Dr Mitchell: I perhaps do not know enough about the particular example that you have just given, but—

Q193 Geraint Davies: What I am getting at is if the issue is whether the abstraction of minerals or whatever has an impact on a habitat. Perhaps, Mr Harper, you could give us your perspective in terms of these precautionary principles.

Martin Harper: When you have accompanying the precautionary principle a set of tests that act as a decision tree—which, for example, the habitats directive has—I think it provides the context within which those decisions can be made. For example, if an activity is likely to cause environmental harm, you need to explore alternatives, and then if no alternatives are found to meet your objective, you have to demonstrate it is of overriding public interest, and if the development goes ahead, you have to compensate. That, to my mind, is a way in which you bring to life the precautionary principle. I think that time and again the directives have stood up to scrutiny. I do not know the case that Diane is referring to, but I would be interested to find out at what level did it break down?

There is sometimes a bit of a challenge of at what level you apply the precautionary principle when you have two potentially conflicting environmental priorities. For example, there is the desire to generate energy from renewable sources—windfarms—and at the same time try to protect the habitat or the species where that wind development wants to go ahead. Sometimes you get a clash of the precautionary principle: is it better to act and cause a little bit of harm to nature, or is it best to try to slow down your generation of renewable electricity? To be honest, we have not had sufficient guidance from the European Union to help us to resolve some of those tensions and, indeed, I think that individual member states have not done enough to collect the information to inform that decision-making process.

Q194 Geraint Davies: You have mentioned the competing environmental imperatives, but do you have a view to the future about TTIP—the Transatlantic Trade and Investment Partnership—and the powers in that for investors to trump completely the precautionary principle? By way of example, in America now you have TransCanada fining the US Government for \$15 billion because they have decided not to implement a pipeline for sand oil, and this is done in an independent arbitration tribunal. If those powers come in, do you think when the investors come in that they will be able to use those powers to trump all this discussion about the precautionary principle, protecting habitats and so on?

Martin Harper: If I am genuinely honest, I am not in a position to comment on TTIP. I can do fracking, but I cannot do TTIP because we have no policy position on it.

Q195 Chair: Turning to Mr Evers, are you in a position to respond to that issue on TTIP and how—

Angus Evers: I am afraid I do not know enough about TTIP to be able to comment on it properly. There are others in my firm who are specialists in investment treaty disputes who would be far better placed than me to comment, but I do not feel qualified, I am afraid.

Chair: It would be good if there was somebody within your organisation, or the legal aspect of it, or perhaps others who are listening to this inquiry, who might be able to submit

something to us regarding their view of whether it does impact on the UK's ability to do what it needs to in terms of environmental policy.

Q196 Geraint Davies: What about the current status quo then, Mr Evers, just on the precautionary principle? What is your view, from a waste point of view, of whether it has been applied proportionately and appropriately at the moment before it is trumped?

Angus Evers: Again, this goes back to the issue we were talking about in our previous session on implementation and enforcement. The balance is probably right in terms of the letter of the law and the directives, and the way they have been implemented into national legislation. I think where sometimes some of the issues arise, as Diane and Martin were alluding to, is in the enforcement where there are sometimes over-cautious regulators who just find it easier to say no, rather than allowing innovation, and who use the precautionary principle as an excuse.

Q197 Geraint Davies: Is it easier in the EU than elsewhere? Is this a common standard or is Britain easier to innovate in, or is elsewhere more difficult in terms of the precautionary principle and waste?

Angus Evers: I think perhaps we do take a slightly more cautious approach to waste regulation and in particular concepts such as the end of waste than other member states. I think Germany takes a much more purposive and pragmatic approach, for example.

Chair: It is curious that it is coming down to this issue of interpretation and implementation once again, which was stressed in the NFU's written evidence as well. It is not necessarily, from what the three of you are saying, to do with the headline objectives—the directives themselves—but to do with the way it is applied and the detail on the ground. Anyway, Caroline, you want to come in.

Q198 Caroline Lucas: Just one thing that Martin said about the habitats directive—the condition about whether or not something overrides the national public interest. I just wondered if you have any evidence of the way in which that gets interpreted in different member states, because it has always struck me that it is quite a subjective analysis of whether something is in the public interest, and how is that defined. Has that been interpreted differently across different member states?

Martin Harper: In short, I would have to check. I am happy to go away and have a little look at that. I am not aware of a review of how that has been applied, but I assume national interest is at the discretion of the member state. I will go away and check this with my colleagues in BirdLife.

Angus Evers: The relevant article is article 6(4) of the habitats directive and it does refer specifically to economic and social reasons and that being in the public interest.

Q199 Caroline Lucas: But that is my worry. When we were talking about two environmental objectives, how do you analyse that? That is very difficult, but it seems to me in my own experience in the UK that when it is an economic objective versus an environmental one, you can usually put your money on the economic one winning out. I just wondered if that was a common result across the EU. Maybe it is not your experience, but—

Dr Mitchell: Just on that, we have done quite a lot of analysis on the impact of the habitats and birds directives, which we used to feed into the fitness check undertaken by the European Commission. We still have some concerns about the disproportionate impacts of those directives, perhaps on smaller businesses and smaller farmers. I can understand that there has been a lot of concern about the fact that changing these directives at this stage might lead to a lot of uncertainty, particularly for those who are used to the directives, because they have been in place for a number of years now. I think perhaps there are still some disproportionate impacts on some smaller businesses, including farmers, so perhaps the economic argument does not always win out over environment.

Q200 Chair: Before we close this particular line of questioning, could I just ask you for a very quick response and—this is a classic question that politicians get asked—give us a yes or no answer? I am going to try, but you are not politicians, so you can add a few words if you want to. You sometimes hear from people who say, “The precautionary principle itself is anathema to UK interests. It acts against us, whether it is in innovation, science and technology, going further and doing things differently.” Is the precautionary principle against UK interests, Mr Harper?

Martin Harper: No.

Chair: Dr Mitchell?

Dr Mitchell: I would say yes, in some circumstances that I am aware of.

Chair: Yes, in some circumstances. Mr Evers?

Angus Evers: I would say generally no and that it can drive innovation.

Chair: That is good, thank you very much. We are going to move on slightly now to what is happening within Europe. Margaret, you have a question.

Q201 Margaret Greenwood: Mr Harper, the reduction of regulatory burdens has been one of the themes of the UK Government’s negotiations with the EU. To what extent is this agenda already under way in the environmental sphere through the REFIT process?

Martin Harper: There is a REFIT process, which is a European Commission-led review of regulation, and one could objectively say that it is sensible to look every now and again at the functioning of regulation. However, the context of the existing REFIT, particularly regarding the habitats and birds directives, was the President Juncker mandate letter that he gave out to the various commissioners when he was appointed as President of the European Commission. That was a heavily skewed agenda towards economic objectives and it hardly referenced environment at all—it mentioned the words “climate change”. In the mandate letter to Commissioner Vella, he did specifically ask him to look at considering a merger of the two directives to see if they could come up with a modern piece of legislation. The implication of all that was that this was very much seen as a burden on business and, “Therefore you should think about reform.” We saw that as a signal that it would result in a weakening.

An enormous amount of energy has gone into this and I wish as much energy had gone into focusing on implementation, rather than just reviewing it, but I think an enormous

amount of evidence has come to light to say that it is good for people and good for business and, of course, that it is working for wildlife. At the meeting of Environment Ministers, I think on the same day that we were with you last time round, all member states essentially said, “We think the habitats and birds directives are fit for purpose and the focus should be on implementation. That is entirely consistent with the environmental action framework that the European Union has adopted. In summary, I think it is fine objectively to review legislation every now and again, but the political context was very much looking to skew it towards economic purposes.

Q202 Margaret Greenwood: Great, thank you. I suppose a supplementary question would be that a lot of the campaigning in relation to the REFIT process on the birds and habitats directives has been aimed at protecting the existing directives against perceived watering down. To what degree do you think that is warranted?

Martin Harper: I think it is warranted because there have been successive attempts by various member states to try to change the directives, so I think it was right for us to respond as we did. It is true that not every company will get what they want and there will be a few examples where they have not been able to build that port or windfarm because they have not applied the terms of the directives properly. I think what we have found is that businesses that have invested time and effort to understand the regulations are now saying, “It is fine. We can work with it,” so the European Landowners’ Association, Energy UK and companies like CEMEX—these are big companies or big representative bodies—are all saying, “They are fine. We can work with them.” But every now and again, the company might want to shortcut it and go around it, and unfortunately the legislation will stop them from doing what they wanted to do.

Q203 Chair: Before we extend this question to the other two members of the panel, can I push you a little bit on this? One of the witnesses we have had in front of us representing the marine tidal sector was quite firm in her opinion that both the regulatory and the cost burden on those small wave tidal companies was disproportionate. While the overall assessment of costs on businesses are estimated at 1% to 2%, perhaps, when you look at environmental impact assessments, while that could certainly be the case if it was a large organisation, for a smaller company, they would argue—this is one sector and I know it will vary—the amount is disproportionate. Clearly the RSPB and others will have an interest in the marine environment as well. It comes back to what I was saying before: small, innovative companies that want to drive green renewal growth and so on are held back very much because of a different directive that is also to do with the green agenda well. Do you have any sympathy with that?

Martin Harper: I would have to look at the detail. I would start from the point of view of disagreeing with that perspective, because costs come on two grounds: costs to the environment; and obviously costs to the company. Obviously there has been a huge amount of debate over the last 10 to 15 years over extracting tidal power from the Severn Estuary—

Q204 Chair: I will give you the exact figures that she has submitted to us in written evidence as well, which is that whereas that 1% to 2%—she does not mention this—is pretty

much the agreed cost of environmental regulation broadly across different sectors, for small marine tidal, she cited figures that could be 20%, just to throw that back at you.

Martin Harper: I would need to look at the detail to understand that. I know there has been a huge amount of concern about the level of compensatory habitat required, for example if one was to install big tidal devices in places like the Severn. However, given the scale of the impact and given the potential benefits that those schemes could offer, it is an entirely sensible approach, but I will have to look in more detail at the costs.

Q205 Geraint Davies: Mr Harper, sorry, but can I press you on this and be devil's advocate? On the Severn barrage, we are talking about generating maybe 5% to 7% of the UK's energy needs, and we are talking about regenerating South Wales and the south-west with connectivity. We are talking about a situation where, because of climate change, we cannot pursue fossil fuels, and as regards nuclear, we are going to run out of uranium. In the round, it seems you can make a compelling argument that we should just go ahead and sidestep the habitats directive and hope the birds move to the other side of the estuary. Don't you think there is a strong case—an environmental imperative—to move forward and not let this habitats directive block the Severn barrage?

Martin Harper: I do not think it is the habitats directive that is blocking the Severn barrage. I think previous studies have demonstrated it is the economics that has stopped the existing schemes, because the price of generating electricity from tidal systems outweighs the costs of generating electricity from other renewable sources. Lots of studies demonstrate that, including DECC's own feasibility study. However, the RSPB supports exploration of tidal power from the Severn estuary, and we think that the solution will be found in some of these innovative sources. Before Christmas I was speaking at an event specifically on this subject and I think there is greater understanding and acceptance from all parties now that we should not see the environment as a hindrance, but factor it into the design of these new schemes. I think that is going to drive innovation, and I am still optimistic we will have devices in the Severn that will generate lots of electricity, which we need from renewable sources, while at the same time looking after what is an internationally important environment for nature.

Chair: Margaret, did you want to extend your question on the REFIT process to our other two panellists?

Q206 Margaret Greenwood: Please, if you would like to comment.

Dr Mitchell: Yes. We very much welcomed the REFIT process. We think it is a good thing. We welcome the Commission's work on this, and what is interesting about it is that perhaps it puts the challenge back to member states as well as Parliament on better regulation, so I think it is useful. I think it is right to review existing legislation. Quite a lot of the EU legislation that we have has been in place for some time and I think it is right that we review its objectives to check not only that it is meeting its ambitions and is fit for purpose, but that it is still allowing businesses and industries to grow.

With the most recent example of the birds and habitats directives review, I was impressed with the way in which the Commission ran that review. It was very open and transparent. We had the opportunity to get involved in that discussion and, yes, it was a useful exercise for us

to be involved in. Obviously there are politics, and setting the politics aside, from our perspective it was a well-run exercise.

Angus Evers: We welcome the REFIT process, in so far as it results in better regulation, not less regulation or deregulation, or removing regulation that protects the environment. If it does result in better regulation, and so achieves the same or better environmental outcomes with lower cost to those affected by it, that is, in our view, a good outcome.

If you look at other EU environmental legislation, it has not stood still over time; it has evolved and been revised, so the original 1975 waste framework directive was revised in 1991 and again in 2008. It is looking like, as part of the circular economy package, it may well be revised again in the next few years. The same has happened with the environmental impact assessment directive, which has recently been revised, so the EU does keep a constant watch on environmental legislation, and if it needs updating or amending, that tends to happen. There are also pieces of EU environmental legislation—one that springs to mind is the environmental liability directive—that have in-built review mechanisms. There was a provision in the environmental liability directive saying that it had to be reviewed five years after it came into force, and that is just an isolated example. There are other pieces of legislation that have periodic reviews built into them.

Q207 Chair: Could I ask one brief supplementary, perhaps to Mr Harper, although I am happy if anybody else responds to this? Was any of the concern from the RSPB and other organisations with an environmental remit that as we went into the continuing REFIT discussions, it came on the back of a UK domestic agenda that was prefigured by things such as the red tape review? I am not making a value judgment, but at one time the red tape review was based on one in, one out, so if there was any one new piece of regulation, one would come out. It then became one in, two out. It just seemed to some commentators out there that while the idea of streamlining, simplification and reducing unnecessary burden is a good one for any Government, the arithmetic logic of simply saying, “For every one in you must take so many out,” became a little bit self-defeating in the overall objective of what you just said—good regulation, not necessarily less. Is your approach to what is happening in Europe prefigured by the UK, which in my understanding is playing a leading role in driving the REFIT agenda?

Martin Harper: I think that the better regulation agenda at a European level goes back about 10 or 15 years and it goes back under previous UK Administrations. I think there is fear within Europe that as part of the reform negotiations, particularly on the second objective that the Prime Minister has regarding competitiveness, something like a one in, two out type of principle might be applied at a European level. There is concern about that. However, I think specifically on the REFIT regarding the habitats and species directives, it would feel a bit odd that the UK would have been at the vanguard of negotiations, given the fact it ran its own review about the application of the habitats regulations in England and concluded that they were fit for purpose, and indeed its own balance of competencies review. I think there have been other member states that have been pushing this very hard.

Q208 Mary Creagh: Thank you very much. I want to follow on from some of the REFIT questions. It is a process that is going on, but there is only a summary in French and

in German, which is great for those of us who read French and German, but less good for the Brits. Is there any reason why the Commission has undergone this process and not written it in English that you can think of? I have just been skim-reading the French version. The process has been going on since the middle of 2014 and there have been interim reports, and now there is a kind of *synthèse*, I think you call it. Are you and your organisations aware of that? Have you read it? Have you translated it? Why is it not in English? Any ideas? Maybe we will ask the Commissioner tomorrow.

Martin Harper: Yes, get the Commissioner to do it. Up to now, most of the correspondence that we have seen relating to things like the draft report, and obviously the communications, I have read in English.

Mary Creagh: Good.

Martin Harper: That is a relief for someone like me who is not fluent in French or Spanish.

Q209 Mary Creagh: We have heard from other witnesses that EU directives are difficult to change or to adapt quickly to changing circumstances relative to domestic law. Do you agree? Perhaps I can ask Dr Mitchell.

Dr Mitchell: I think the process is very different at an EU level to the process at a UK level. It is quite complex, there are a number of different institutions involved and it can take place over a long period of time. In terms of whether it is difficult to change, yes, there is added complexity and added uncertainty to the process as well, so perhaps that is what they mean by difficult to change. As well as the EU institutions, there are obviously a great number of stakeholders who are also interested in EU environmental policy and legislation. Just the sheer number of people who are interested and can influence the process also makes it quite complex.

Mary Creagh: Thank you. Dr Evers?

Angus Evers: I would agree with Diane that the EU legislative process is much slower than the domestic legislative process. You have to carry the other 27 member states with you, so inevitably it is going to be harder to change directives or regulations than it is to change your own domestic legislation.

Martin Harper: But at the same time, some of these pieces of legislation are still quite new, and we have pieces of legislation in this country that date back hundreds of years. I think what is quite clear is that the ambition on these pieces of legislation has not yet been realised, because the full power of some of them has just not been implemented. I think there has been an unhelpful focus on scrutiny in recent months, and as I said earlier, I wish as much energy was focused on how we get the ambition we want through better implementation. That is where I think the focus should be. We do reform legislation in this country, but we have legislation that spans decades and we are quite comfortable with that.

Q210 Mary Creagh: Thank you. Can you think of any particular countries that are particularly poor at implementation in any one or two areas? Obviously there is the Maltese bird thing. Are they in breach of the birds directive?

Martin Harper: They have a derogation that allows them to do spring hunting, so we would argue that that should be stopped. There will be other transgressions that take place

in this country and elsewhere, which is failure of enforcement, arguably, whether it is protected species that are being killed or whether it is failure of management, but that is an implementation and enforcement issue.

Q211 Mary Creagh: Perhaps I can ask Dr Mitchell and Mr Evers if you have any particular instances.

Angus Evers: You probably need to look at the statistics for infraction proceedings against member states, which I would have thought must be made available by the Commission.

Chair: Dr Mitchell, from the NFU perspective, you often hear from your members that there is an imbalance in implementation across member states.

Dr Mitchell: Yes, it is difficult. I would agree with Angus but, yes, perhaps you ought to look at the statistics, because I can think of some examples, but then I would be picking examples that might be unfair in the broad scheme of things. One of the directives that probably shows up as being an issue in terms of implementation is the nitrates directive. I think a number of member states have been subject to proceedings, and I think our response to that would be, as I have said in my previous session, that we think the nitrates directive is process driven. It is quite old fashioned and out of date, and perhaps it previously has not been properly costed out, so perhaps maybe is a broader issue with the nitrates directive other than just member states not being good at implementation. I think there are perhaps some more fundamental concerns there.

Q212 Mary Creagh: Are we one of the member states? I remember when this was brought in in the nitrate vulnerable zones, because one of them is in Wakefield. This is the issue of slurry and run-off, isn't it, which is obviously very live in Yorkshire at the moment because we have had an awful lot of run-off? Are we one of the states that has had infraction proceedings taken against us?

Dr Mitchell: I cannot recall off the top of my head. but I can get back to you.

Q213 Mary Creagh: I know the cost of digging slurry pits for small farmers was running into the tens of thousands of pounds, so you have to try to balance the management of slurry, which is obviously potentially lethal if it is in an enclosed space, versus the cost to the water companies of cleaning up nitrate run-off into the rivers.

Dr Mitchell: Yes. The real costs of the directive land on farmers, where they have to have adequate storage in place. That is very costly.

Q214 Mary Creagh: But that is a transfer of costs away from bill payers who pay their water bills, isn't it? It is a transfer on to the user away from the end user of the water.

Dr Mitchell: Yes. The other aspect of the nitrates directive is that there is a four-yearly review of the action programme, so every four years there is usually a change in what farms have to do to meet the directive requirements, and every four years generally there is a change in practices that farmers have to undertake and that adds costs. Usually every four years, there are additional costs added because the management practices have to be amended or changed according to the new rules, so it is an additional cost every four years.

Q215 Mary Creagh: Are those rules changed on the basis of scientific evidence about what works or what the output run-off is?

Dr Mitchell: One of the things that I know that England and Wales is doing is trying to make sure that we have good scientific evidence in place to make sure that where the Commission is asking for additional changes to that action programme, we have evidence to say whether it would work or not. It is very challenging. The discussions that take place, as I understand it, are very challenging and the UK as well as other member states are challenged by the Commission on the rules, so having that scientific evidence is very important.

Martin Harper: I think specifically regarding water, domestically the Government's approach to implementing the water framework directive and tackling things like nutrient pollution has been subjected to two legal challenges over the last seven years, both led by WWF and the Angling Trust. One was around failure of ambition and the most recent one was relating to the lack of full use of legal mechanisms at the disposal of the United Kingdom and the use of water protection zones. They were domestic challenges. They would not come up on Angus's list of infraction procedures, but essentially that is again examples of a failure of implementation. The RSPB has a couple of complaints out at the moment against non-implementation of European law, which is quite rare for us—we do not often do that—but we have a couple at the moment relating to the condition of our Upland Natura 2000 sites and also relating to the lack of implementation of marine protected areas offshore.

Chair: Thank you very much. I want to close the session with some fundamental questions that go to the heart of our inquiry from Peter, but just before I do, Geraint, you have one very specific question. You may or may not be able to answer this.

Q216 Geraint Davies: I want to ask Mr Evers a question I meant to ask under the issue around the precautionary principle and fracking, because there is a widespread concern that if we do go ahead with fracking, there will be major problems with water waste and indeed methane emissions and air quality. I was wondering what your perspective from a waste management point of view was, and how at least we would deal with the water, which would be contaminated obviously with hundreds of chemicals going into the ground in millions of gallons and half of it coming back. What are we going to do with the water and how will we convert it to a standard that is virtually drinkable and will not contaminate our water system?

Chair: If you would prefer to write to us on this, I am happy, if it is not within your remit or competence.

Angus Evers: I think there are others within UKELA who would be better placed than myself to comment on that. If I was able to submit something in writing afterwards, that would be preferable. There are experts in water and hydrogeologists—

Q217 Geraint Davies: Do you think that at least until we know what we are doing, the precautionary principle should be applied and we should therefore hold off on fracking until we know how to deal with this waste effectively?

Angus Evers: I think we are looking at how to deal with waste water from fracking operations. Whether we have found a solution yet and whether the water companies have found a solution yet for dealing with it in treatment works or however, I am afraid I do not know.

Chair: We appreciate your offer of seeing if somebody could write to us about that because it would be good to get a view. I could see, Mr Harper, that you were nodding to bits of that, so if you wanted to write, you do not need to answer now.

Q218 Peter Aldous: Just exploring another way of looking at it, to what extent do you think that the EU environmental regulations have acted as a ceiling—a constraint—to member states' aspirations and ambitions? Do you think that that is an approach that one can pursue?

Martin Harper: There are examples of where our ambition on the environment has been constrained by European Union decisions, and I would cite the common agricultural policy as an example. We have not seen sufficient reform that leads to a change in land management, which I think we need. However, what I would also say is that over the past three or four decades, our environmental policy has pretty much co-evolved with European policy. Of course that is through negotiation, and as a result we would argue that environmental ambition has gone up and standards have gone up, and we have managed to slow and halt the decline of some of our species and habitats.

Q219 Peter Aldous: Taking that line, if I can, a step forward, if the UK was to come out of the EU, would that be as if one was breaking through a ceiling and it would enable one to pursue a much more ambitious environmental policy? You particularly mentioned the common agricultural policy. What would you be able to do to the environment and the rural scene without the constraint of the common agricultural policy?

Martin Harper: If I may, I think this is one of the big questions that will need to be addressed as part of the referendum debate by those who are going to be advocates for the Brexit scenario. They will have to be convincing about the way in which they would deliver the environmental ambitions, the way they would deal with transnational issues and the way in which they would ensure that the UK still plays a leadership role.

Q220 Peter Aldous: I am not trying to get a job for you, but do you think you could provide them with the information to be able to do that?

Martin Harper: On 9 March, a report will be launched by the Institute for European Environmental Policy, commissioned by the RSPB, WWF and the Wildlife Trust, and that will look at the issues—both the contribution that European Union membership has had on our environment, and also the risks and challenges associated with Brexit. I think that will be the first time we will have in the public domain some of the challenges and consequences of Brexit. What we will be doing is challenging both sides to say how they will address the environmental challenges going forward. I would hope there is a proper debate within the public about this so that when people go into the ballot box and decide how to vote, they have a very clear answer from both sides.

Q221 Peter Aldous: Just as a matter of interest, have you formulated your own views about the balance from an environmental perspective of whether we would be better inside or outside?

Martin Harper: Obviously it clearly affects our objectives in a rather dramatic way, hence the nature of this inquiry. The RSPB has always had an international perspective. We have always wanted to deal with transnational issues with mature and robust international agreements, but what it comes down to is a question of balance of risk. We have talked about a lot of the environmental benefits and some of the environmental downsides, and you could argue it is not clear cut, so what we have said is that we will challenge both sides during the course of the debate through referendum challenge, as we did in the debate on Scotland, so that both sides give their view.

Q222 Peter Aldous: Dr Mitchell, looking at it from an NFU perspective, do you feel that outside the EU the UK would be able to pursue more ambitious and better environmental policies?

Dr Mitchell: I do not think that we can answer that question. What the NFU has done is to assess our existing relationship with the EU. It has produced a document—I have it here—setting out for its members the pros and cons of our existing relationship with the EU. But there are still some fundamental questions, as Martin said, that have to be answered, so I am not too sure we can come to a view. All we can do is make an assessment of our existing relationship and set that out.

On the question about whether EU environmental regulation has acted as a ceiling to ambitions, if you have EU regulation, as I understand it, the scope and the flexibility to go outwith that is more difficult and more restrictive, but a directive does allow a certain amount of leeway and there is an opportunity to go above and beyond that in some circumstances.

In terms of how farmers view the environment going forward, I think there are a number of other drivers that impact on farmers. It is not just about EU policy or what happens here from a national Government perspective. There are a number of other drivers that will impact on farmers' environmental ambitions. Environmental improvements may come as a result of resource efficiency, and we have seen a number of changes in farmers' environmental performance over the past few years. Part of that is driven by the EU, but there are other reasons for that, and I think we also have to bear in mind that farmers do have to respond to their customers' needs as well. So there are lots of things that are going on; it is not just EU regulation that will influence environmental improvement.

Chair: Peter, I am sorry, but I am going to have to cut across slightly. We will go to Mr Evers now, but I want to ask one final question. Can we address Mr Evers, and then I am going to ask one final question?

Q223 Peter Aldous: Yes, just your perspective on that, Mr Evers. I will just put two questions: do you think that outside the EU, if you like, the UK would be free and without constraint to pursue more ambitious policies; and in doing so, would it have a greater or lesser influence to shape policy, both cross-border and internationally?

Angus Evers: It would very much depend on what the nature of the UK's ongoing relationship with the EU is post an exit. Would we be members of EFTA? Would we be

members of the EEA? Would we have some other relationship with the EU? We would also need to look at the UK's participation in a number of other international treaties and organisations, like the OSPAR convention, the Montreal convention and the Basel convention. 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.

There would, of course, be nothing to stop us from going further than we currently have to go as EU members. I think there may be some areas where we might want to do that. Clearly, even as an EU member, we have probably gone further than we have to in terms of our domestic climate change commitments, as the ambitions of the 2008 Climate Change Act go beyond what we have to do under EU climate policies. Conversely, there may be other areas where we think the EU has gone too far and we want to rein back on legislation.

Q224 Chair: Thank you very much. I am not going to ask a final question because I do not think we are going to get the answer. It is fascinating, as we get to this point, with some concerns in different ways about how the EU operates and interplays with UK domestic policy on the environment, on the wide range of environmental legislation and policy. But even after all the discussion, there is an element of hedging bets going on as to whether or not it is better to be part of some club, whether it is called the EU or anything else, that deals with it on an international basis, or whether we could come out—we would still be bound by many international treaties and obligations—and we could do our own thing. But there is an element of hedging the bets going on. Mr Harper?

Martin Harper: There are two levels of uncertainty. There is one level of uncertainty of what the result of the reform agenda is, and the other level of uncertainty is what scenario would be operating outside, hence the need for a challenge. 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.

Q225 Chair: Thank you. Dr Mitchell, have you done that sort of balance of risks assessment as to whether on balance is it better to stay in—better the devil you know—than to come out?

Dr Mitchell: I do not think I can say. As I said earlier, the NFU has undertaken its own assessment of the current relationship with the EU and we have set out the pros and cons for our members, but we have not taken a view.

Q226 Chair: Dr Evers, the balance of risk?

Angus Evers: UKELA has not taken a view on this. It is purely looking at what the consequence is for—

Chair: Do you have an informed professional view on balance of risk? It may be terribly unfair to put you in that position, but if you want to answer, please feel free.

Angus Evers: I am not saying this as a UKELA member, but in my day job as a solicitor in private practice. I think the view of my firm and the view of most of my clients would

be that we are better off inside the EU because of the benefits that the single market provides.

Chair: Interesting, fascinating. We are going to have to stop it there because we are slightly overrunning. Thank you very much for returning to us today. If there are any other thoughts you have subsequent to this session that you think we have not covered, please write to us with them, but thank you very much again.

Examination of Witness

Witness: **Susan Danger**, Managing Director, American Chamber of Commerce EU, gave evidence.

Q227 Chair: We will proceed with our second panel session of evidence today in our inquiry into EU/UK environmental policy. We have with us Susan Danger, managing director of the American Chamber of Commerce. You are very welcome indeed, and we have a series of questions for you, but before we begin, I understand that you would like to make a brief opening statement.

Susan Danger: Thirty seconds just to clarify who I am representing. The American Chamber of Commerce to the EU represents exactly 166 companies—US companies invested in Europe—and about 1,000 direct members involved. We have 15 committees, so we are not specialised in environmental legislation—just to be clear, it is one of 15. We are an organisation that is multi-sectoral, across the entire supply chain, which means pretty much that there are 166 that would also have a voice in the environment committee, so I think that is important to note. We are quite wide in scope. I am not a specialist in environmental legislation, just to get the expectations clear. I am also British, as you can hear.

Chair: That is right.

Susan Danger: We represent companies that are all invested in Europe—investment of 2.3 billion—and many of the companies have been in Europe for over 100 years.

Chair: That is precisely the advantage of having you in front of us today, because with that broad sectoral and member interest, I think you can respond in a very well-informed way to some of the questions we have for you. We are not expecting you to be a technical expert, do not worry.

Susan Danger: That is right, yes.

Chair: If there are questions that we cover that you want to go back and reflect on and then write to us about, you can.

Susan Danger: Exactly, we can provide submissions.

Q228 Chair: Can we begin then with that range of member interests that you have explained that you represent, and the scope of them in all sorts of different sectors, but of course many of them will be affected by various types of environmental policy that emanate from the EU or here within the UK. Do you think that EU environmental policy has had an overall positive or negative impact on your membership?

Susan Danger: Overall, our membership is for environmental policy. Again, going back to who we are, you would have to ask individual companies. It depends on what piece of environmental legislation that is, because we are representing the whole supply chain, but we are for environmental policy. We are basically pro single market, so as far as we are concerned, environmental policy that is consistent across the 28 member states is an advantage for any company investing in Europe.

Q229 Chair: We will return to that issue of consistency because I know in your written evidence you have submitted material about your worries over consistency. Do you have examples from your members of being pro-environmental generally as a Chamber of Commerce, but where they feel that environmental legislation has been of benefit to them or, alternatively, whether it has been a disadvantage?

Susan Danger: Without going into specifics, not AmCham EU as a whole, but some companies, of course. On environmental legislation, we have companies that are right into renewables and renewable technology, so there are going to be some who are going to find certain pieces of environmental legislation advantageous in terms of them being able to invest in innovation and so forth, and there are other companies that are maybe more traditional—the heavy industry users. There there may be more challenges, so I would just like to stress that it is difficult to answer the question as a whole—it is going to vary—but as an organisation, this is one of the advantages of AmCham EU. We are always able to come to a position, not necessarily the lowest common denominator, but we are able to come to a position that everyone will agree upon on a piece of legislation that will suit everybody, including something like this.

Q230 Geraint Davies: To the extent that there are advantages and disadvantages from your members' point of view in environmental legislation, do you feel these could be resolved through a renegotiated UK membership or leaving the EU itself or neither?

Susan Danger: Just to be clear, we do not have a position of just environmental legislation or with concern to leaving, not staying in, or coming out of the EU as an organisation as a whole.

Q231 Geraint Davies: On the environmental front or generally.

Susan Danger: Not a specific one on the environmental front.

Geraint Davies: But generally do you have one?

Susan Danger: Generally we would be supportive—we have a position of saying that staying in the EU is advantageous and better for business, not specifically for environmental policy.

Q232 Geraint Davies: Is that because you would not have to deal with two sets of regulations?

Susan Danger: Yes, exactly. We are pro a single market. A single market and a competitive Europe is what is advantageous to business. Business needs a consistent environment and a predictable environment, harmonised where necessary. If business has to deal with 28 different sets of environmental legislation—not just the environment, and then you go into all the different areas that impact our business—that is huge in terms of costs, red tape and administrative burden. It is much easier to deal with one set of standards and rules and that is what we are for.

Geraint Davies: Obviously you prefer regulatory simplicity, as you said.

Susan Danger: Yes.

Q233 Geraint Davies: You may not know the answer to this, but there are concerns over this new EU-US free trade agreement, TTIP, and that that could have powers to drive a coach and horses over environmental protection and regulation in Europe. Does your organisation have a view or concern about that?

Susan Danger: We are very much engaged in TTIP. We see TTIP as a definite plus for business—not just for business, we are talking about the two economies in general. We have a whole position paper on TTIP—we would be very happy to share that with you as written evidence at any point—covering every sector. But as far as we are concerned, the Transatlantic Trade and Investment Partnership, in a globalised world, is the way to go to set global standards, not to be left behind. The EU and the US are already closer together in terms of economies, people and consumers than any other regions in the world, so all we need to do is to nudge a little bit closer together and we are setting global standards.

Geraint Davies: So there are clearly advantages in harmonisation.

Susan Danger: There are clearly advantages, yes.

Q234 Geraint Davies: Are there any perceived disadvantages where people are concerned specifically about the powers through investors to take dispute settlements, whereby companies could fine and sue Governments when they introduce environmental legislation that may impact on their future profitability? We have heard just recently about the TransCanada company suing the US Government for \$15 billion because they decided not to agree a pipeline for sand oil.

Susan Danger: I cannot comment on that particular case, which I have heard about, but we are not concerned. They are now looking into a new system. ISDS, as we all know, has been very controversial and they are now looking into a new system.

Geraint Davies: They have renamed it.

Susan Danger: We do not have a specific view on that new system because we are still waiting for the details to come out, but we would be pro some sort of ISDS being in the agreement, bearing in mind there are already—do not quote me on this—1,200 bilateral treaties already between European countries and these others. They already exist. We feel it is better to have this in the agreement than not. Also, with regard to third countries, if we

are not prepared as Europe—as the EU—to have an agreement with an economy such as the US, with whom we are so close, how can we possibly say, “We are not prepared to have one with the US, but we must insist on having one with China or any other country”? We would not have a very good bargaining position there, and I am sure we would want one with China, so we feel it is in our best interests.

Also, perhaps this is not a comment on the pipeline case, but you probably know the recent case that has come out in Australia, where Australia won—it is a very controversial one—against Philip Morris. There are very few cases that are brought forward by companies and in most cases—I will have to get the statistics for you—it is always the state that wins. It is very, very rare that the company wins. There are very few cases, which generally come out, because they make the news, and Australia has just won the case against Philip Morris.

Q235 Geraint Davies: But Uruguay just pulled out of an agreement with the US because of concerns about ISDS and what happened.

Susan Danger: That one I am not familiar with. We are not concerned about it. We feel it would be better and the agreement would be stronger with some sort of ISDS in it than without.

Q236 Geraint Davies: Because they have put it to one side. You do not think it could be done just on the basis of public commercial law—the way everything else has been conducted in the past between two democracies?

Susan Danger: No, because so many of these bilaterals already exist. There are hundreds of them.

Q237 Geraint Davies: Yes, I know there are. I am talking about the US and America, not the US and some developing country or anything like that.

Susan Danger: We are not concerned. We are pro having one in.

Geraint Davies: I know. We have the message. I am grateful, thank you.

Q238 Mary Creagh: Do you think that the way that environmental legislation originating in the EU is framed is done in a proportionate way that is sensitive to the size of company?

Susan Danger: We do not represent SMEs. Just for clarification there, we have not done any assessments on that. What I would say, though, is that when we are looking at environmental legislation, where we are putting our input in, all our companies obviously have huge supply chains, and up and down they are dealing with SMEs all the time. So indirectly we are taking that into account, because it is obviously not in the interest of our companies that their clients are disadvantaged. I have no facts and figures to give you on that. You are probably best off asking the Commission about that, but we would take that into account in our input.

Q239 Chair: But you are obviously not getting swamped by concerned members saying that the costs of complying with EU legislation on the environment and the UK's interpretation and implementation of that are disproportionate. They are not saying, "It is making it difficult for us to work within the UK in those supply chains"?

Susan Danger: Because I am in Brussels representing US companies, we do not have any UK companies as members. Even though I am British, I do not have the expertise on that.

Q240 Chair: But you are representing out in Brussels where you would be picking up those concerns if your members were saying—

Susan Danger: We would be hearing the concerns from members of ours who would also have investments in the UK, and obviously a lot of them—they all do. There are costs, like anything, but our companies are very much, as all business is, for compliance. They will comply. It is not in the interest of big business not to comply, so if there are compliance costs, they will take them up. Yes, we will react if we think the costs are disproportionate or too high. We will always assess any new proposals by saying, "What is the burden for business going to be in terms of costs?" But we are most anxious to ensure that we do comply and that it is predictable. We need to know what the costs are and then we plan them in.

Q241 Mary Creagh: You have been with the Chamber since 2000. Can you give us an example of a piece of legislation that has caused the most consternation to your large companies and their small business supply chains since then? In memory, what is the thing that you think, "God, yes, we had a bump in the road there"?

Susan Danger: I am not sure about a bump in the road, but certainly one piece that we have been involved in since that time is REACH. It has gone up and down. We have been involved from the very beginning. I was just talking about it earlier, in that before it even came into being, we would be an organisation that gets involved. You have to get involved proactively before legislation comes up so that you can try to influence it to the benefit of business and the consumer. We obviously had great concerns at the time and we had input through the entire process. I am not an expert on REACH, but it created costs and created jobs.

Q242 Mary Creagh: Where have the jobs been created?

Susan Danger: Probably testing and registration, but I could not tell you that. That is too much detail for me to tell you at this point, but that would be a position. Has it created a bump in the road? No, but it has created something that companies have to comply with. We are reviewing it now, as we are going through the review. It has been there all the while as something that has been a burden. However, there are advantages also. Assuming that it is consistent, assuming that it is throughout Europe, assuming that it is through all 28 states and assuming that it is implemented well and consistently, it is an advantage for business, because then business knows where it stands and they are in a predictable, certain environment.

Q243 Chair: You keep coming back to this issue of consistency. You do not mind what the rules are as long as they are applied consistently?

Susan Danger: I would not like to be quoted as saying that I do not mind what the rules are. No, I would say we would always support good regulation that has been well thought out, so to a certain extent, if it takes time to think about a piece of legislation, we would prefer that that time is spent so that when it is introduced, it is introduced well.

Q244 Chair: Interesting. So, from the perspective of the America Chamber of Commerce—please contradict me—it is simpler for you to know that there is a set of good rules across an entity such as the European Union rather than doing it state by state by state by state?

Susan Danger: For sure, yes. It would be simpler for us in terms of we would prefer those rules, when they come in, to be good rules that have been well thought out. Therefore we can come to that impact assessment, do a good impact assessment that takes into account of all the different views—environmental, socioeconomic, business—and have a good impact assessment where all stakeholders have had their chance to input into it so that when it comes in, the next stage is implemented consistently and well—that can be a challenge—in each member state. Then business knows where it stands and it is simpler for business to comply without having to comply with one level here and another level there. It is easier, because basically it comes back to being a single market. A single market is much easier for business. In theory, costs will come down through that, so costs should be lower.

Q245 Geraint Davies: May I ask—you may not know the detailed answer to this, but it follows on from that position—on the issue of fracking, if you think it would therefore be better if there was a pause before hurtling ahead so that everybody knew the environmental outcomes in terms of what we are going to do with waste water and if there a lot of methane emissions that are worse than carbon emissions from coal, as they are saying now in terms of latest research. Is it better that we know where we are going, rather than hurtling ahead so that you end up in a position where investors invest and then the Government then do a U-turn, as the environmental outcomes are not what we predicted or we are not going to fulfil our climate change objectives, and the investors say, “Okay, we want compensation”? Do you see where I am going here?

Susan Danger: Yes.

Geraint Davies: Because you quite rightly made the point, “Let us have the right rules consistently applied.” There is a danger in certain instances that the pressure to get investment in means that we do not have the right regulations, and then we catch up but there are all sorts of compensatory challenges.

Susan Danger: Yes. I do not think it is in the interests of business—if you think of all the countries in Europe—to rush to invest. I do not think our companies would do that in a certain country where the rules are not certain because of the risks involved. We do a risk assessment, so our view would be good rules and good regulation. We are very much pro the better regulation agenda. It is not less regulation and deregulation, but ensuring that the regulation there is good and sure. I do not know if that is answering your question. I cannot answer for each individual business and their strategies of investing, but in general they want a certain environment before they invest, in the same way, coming back to

ISDS, in which they want to know that it is safe and secure before they make that investment and create jobs, because we are talking about jobs as well.

Q246 Margaret Greenwood: Are there any areas in which the EU's competence is either too broad or too narrow, and has it had a negative impact on your members as a result?

Susan Danger: In the environmental area?

Margaret Greenwood: Yes, in the environmental areas, possibly.

Chair: In relation to the EU you want good regulation and so on, but are there areas where your members have said, "Why should they even be doing that? Why are they involved in that in areas where their competence is too broad"?

Susan Danger: I cannot think of anything at the moment. I will ask my colleague here. I cannot think of anything at the moment where we have had that, no. I think one thing that is very good, and what we try to do as business, is to be proactive. You can initiate as well. Member states can initiate if they think the EU is not doing enough, or not doing enough to take the right of initiation. They can come forward and say, "Hey, this is not ambitious enough," or, "We could be more ambitious here or less here." Let us not forget that member states have a role there. Business also can, to a certain extent, as a stakeholder. Like on nanotech, we would come in and say, "Let us come in early to try to shape it for the advantage of everybody." That is the good thing about the EU: coming in early to say, "Right, we want to be in this dialogue. Let us shape it early so we do not have 28 shaping it. Let us shape it all together to the advantage of everyone."

Q247 Chair: I guess that leads to the corollary of Margaret's question, which is are there areas where you think it is too narrow and you have been trying to shape the agenda—where the Chamber of Commerce has been trying to push the EU to do a little bit more?

Susan Danger: It is also a challenge for everyone else. You cannot blame the EU for everything. We try to be quite proactive and nanotech is one that comes out. Several years ago we said, "Right, let us take the initiative here," and it was well received. To be honest, I think it is very well received. This is not environmental, but just as an example, in the digital space, where we do a lot of work on cloud, we did a couple of seminars: "All right, let us get into cloud. Cloud is going to be the big issue." We did dialogues, involved the EU and they came along. We were very happy to have that, because to a certain extent they need the expertise being put in from the business community. I would say that, if you want to, there is the opportunity to get in there and throw in ideas. Maybe on that, including on the environmental area, if I may say, we were invited to be on several working groups where they were actively looking for the input of business and other stakeholders and to hear what our ideas are. That happens quite a lot. They cannot always have the power to do what you say, but there is very much an open environment for listening.

Q248 Geraint Davies: I was just going to ask how successful you think the EU environmental policy has been on implementing a single market across the EU. Do you feel at the moment the policy is properly and consistently developed and applied?

Susan Danger: Without commenting on environmental policy as a whole, which is obviously a huge area, maybe on REACH I could comment, because that is one particular area where we have been very engaged over the years, as I have said. Yes and no. Let me just get this right: where we could sometimes have concerns is when there is overlapping legislation, where something is covered by REACH, but then RoHS comes along and starts looking at certain areas that are already covered by REACH. There we would have concerns, in terms of this confusion in consistency.

Q249 Geraint Davies: But in the case of REACH, is it being consistently applied across the member states, for example?

Susan Danger: We have not analysed; we have in the past. There are differences. There are differences by member states and that is sort of cultural and governmental. There are always going to be some inconsistencies. I could not tell you now. I know the UK is particularly—

Q250 Geraint Davies: But obviously, from what you are saying, it is not at the top of your pile of concerns in your organisation. When you have exporters from the US into the EU, they are not saying, “No, hold on, we can go into this state, but not that one,” on chemicals, for example. The single market is working from a trading point of view and from an environmental point of view, from your perspective.

Susan Danger: It is working. We do always make the point that implementation needs to be consistent. That could be improved. I cannot name particular countries at this moment in time.

Q251 Geraint Davies: In other words, if there is a convergence, would your concern be that if Britain exited the EU, there would over time be divergence and then it would be more costly and difficult for your members?

Susan Danger: It would be. If Britain exits the EU, there is likely to be a divergence, and then potentially that creates problems, because then you have—

Geraint Davies: Double-costing.

Susan Danger: Yes, more costs. It is easier if it is the same everywhere. It is easier if the UK is there, because the UK is a powerful voice there as well. The UK is one of the big four. I do not know whether the UK understands it is a big voice; it has a huge voice in the EU. If the UK leaves, the voice is lost.

Q252 Geraint Davies: In other words, you are saying that if we left, the shaping of EU policy to be business-friendly, particularly on the environment, would probably be less effective because we were not there in the EU to help to shape that?

Susan Danger: Probably. You are not there to shape it and to influence it in a business-friendly way. I think the UK is seen to be very much, if I may say, a positive—

Geraint Davies: Business-friendly, yes.

Susan Danger: The EU has all these different countries, but the UK is seen to be a very positive element.

Q253 Mary Creagh: I am tweeting your reference. Let me know if I have misrepresented you in any way; you can always say, “No, I really did not say that.”

Susan Danger: Yes. But just so we are clear, because I am being quoted, the overall position of AmCham EU—not on environmental, because I cannot quote on that—it is that we are very much pro the UK remaining a strong voice and remaining a strong player, because it is in the EU.

Q254 Mary Creagh: Can I just move us on to the REFIT process? Are you involved in that and what would you like it to achieve? Do you think it is going to be sufficient to meet the concerns about regulatory burdens that the UK Government has been expressing?

Susan Danger: This is one of the issues where we have REACH—

Mary Creagh: Birds and habitats.

Susan Danger: We do not do birds and habitats.

Q255 Chair: You have been consistent in talking about consistency.

Susan Danger: Good.

Chair: REFIT is very much looking at this issue of streamlining and reducing the burden of bureaucracy, and also the cost of compliance. It seems to me from what you are saying that the cost of compliance has not been a major issue. The REFIT process is overhauling this, and looking at whether tweaks, adjustments or major overhauls are needed. Have you been engaged with that?

Susan Danger: Yes, we would always support that, but not unnecessary reviews going on, and not too often. When the guidelines that the Commission issued on REACH were challenged in terms of how they were interpreted, the country that raised the challenge won the point, which meant that the Commission guidelines were then proved to be wrong, and that left us in a position of saying, “What do we follow now?” which is really difficult for business. Now it is being reviewed, so we would support that review. However, we are now a little bit in limbo, so again, yes, be consistent. Business needs predictability and certainty, otherwise it is very costly, and that has the impact on jobs, growth and everything, which is bad for everybody. On REFIT, yes, we would support a review, as long as it is done in co-ordination with any other reviews going on elsewhere. We are supportive of the fact that the REACH review is also being done. Part of that is being done under the REFIT process, so we are fine with that.

Q256 Mary Creagh: Do you think it will be sufficient to allay the concerns about regulatory burdens that the UK Government has expressed?

Susan Danger: To be honest, I cannot—

Mary Creagh: Or should I go and ask the Minister over the road in the Chamber that question instead of you?

Susan Danger: Maybe you should, yes. I am not involved in REFIT and the actual environmental review of what they are doing.

Maybe just going back, we are supportive of Vice-President Timmermans' better regulation agenda. We will make an effort to input into that very actively. Indeed, we talked about occupational safety—the OSH—where we have actively formed a cross-industry group. We got a letter together with 50 industry associations to sign up for a cross-industry initiative of ensuring that REACH and occupational health and safety legislation is looked at together to ensure that they are reviewed together, not separately. I do not know if that answers your question, but that is maybe an example of something that we have done and in which we have actively been involved to make sure that it is co-ordinated. We are very much into co-ordination, along with other stakeholders, I should say, because this does not just work on its own.

Q257 Chair: We are going to have to wrap the session up there, but can I thank you for the evidence that you have given, both in writing and here today? If there is anything more on the specific technical issues that we have raised today that within your organisation you want to pick up and drop us a line about quite rapidly on the technical specifics that we have alluded to, such as the REFIT programme and so on, and your engagement with that, or other aspects, because I assume within your membership you also have oil and gas players—

Susan Danger: We do. We have, yes.

Chair: So in terms of a response on fracking, TTIP and so on, if you have anything like that, please write.

Susan Danger: Yes, on TTIP, and we have an energy committee. We are for the energy mix. To your question on fracking, we do not have a particular position on fracking. We are pro energy mix, because we have oil and gas, and we have renewables. Yes, we can follow up.

Chair: Indeed. I will leave you to consider that. May I thank you very much for coming in front of us today and for sharing with us your evidence?