

IEMA – Written evidence LPF008

Summary

- IEMA considers that level playing field provisions relating to the environment and climate are of strategic importance in the UK-EU future relationship negotiations.
- Both parties have made commitments to maintaining high environmental standards; IEMA believes these commitments could provide the basis for agreement to be reached between the UK and EU.
- A possible 'landing zone' for the agreement could be based on: a commitment to non-regression of the level of environmental protection afforded by existing laws and practices; confirmation that 'how' the protections and practices are to be achieved, may evolve over time and that different approaches may be adopted by the parties; domestic enforcement of each party's level-playing obligations by an independent body.

About IEMA

- IEMA is the professional body for those working in environment and sustainability roles.
- IEMA's membership of over 15,500 sustainability professionals work at the interface between organisations, the environment and society to create long-term value, ensure compliance and minimise risks.
- IEMA members guide and lead the changes that will be required to transition to a sustainable economy, one that is low carbon, resource efficient and protects and restores biodiversity and natural capital.

What is at stake

1. Why are the negotiations on environment and the level playing field important to you/your members?
 - i. IEMA members work in all sectors of the economy in environment and sustainability roles, managing risks and opportunities, ensuring compliance with environmental laws and regulations and improving environmental performance.
 - ii. Many IEMA members work in organisations that directly trade with the EU and other countries, or have facilities in EU countries, and therefore they have an interest in whether and to what extent approaches to environmental governance will evolve and potentially diverge over time.
 - iii. For IEMA members working within the current environmental governance framework in the UK, there is a strategic interest in how this might develop in the future and the risks and opportunities associated with potential change.
- a. What should the environment and climate parts of the future relationship deliver?

- i. A consistent environment and climate change policy landscape that is predictable over the longer term and against which investments can be made with a reasonable degree of confidence.
 - ii. The maintenance of high environmental standards underpinning free trade in goods and services (including environmental services); avoidance of environmental regulatory barriers for trade in goods.
 - iii. Good environmental outcomes – recognising the benefits that flow from natural capital and the need to protect and enhance natural assets
 - iv. Ongoing development of policies which support the achievement of better environmental outcomes
 - v. A basis for collaboration between the UK and EU to promote high environmental standards in international negotiations and agreements.
2. What are the EU's justifications in pushing for the environment and climate level playing field provisions, and how sound are these?
- i. Environmental laws, regulations, taxes etc are a means to correct market failure. The EU sees environment and climate change as a competitiveness issue.
 - ii. There are legitimate questions about how far these should go, for example:
 - EU environmental laws set out the outcomes to be achieved but are also frequently very prescriptive about how they should be achieved.
 - The list of areas identified by the EU in effect equates to the whole environmental acquis: some of the areas that the EU is pushing in relation to the level playing field are potentially outside the scope of issues that would be relevant in the context of trade competitiveness; for example, strategic environmental assessment of policies, plans and programmes.
3. What is the thinking behind the UK's approach and proposals, and how viable are these?
- i. The UK's approach as outlined by the Prime Minister and Chief Negotiator is that the UK seeks regulatory autonomy and the freedom to choose its own priorities based on its national context.
 - ii. As such, although the UK government has stated its commitment to maintain high environmental standards and not to regress, it is less keen to have this specified and enforceable in the formal agreement.
 - iii. UK's approach is based on taking extracts from existing EU trade agreements (e.g. CETA), although it doesn't seem to recognise:
 - The starting point for EU/UK is alignment and equivalence across all areas
 - The geographic proximity of the EU/UK – relative to other countries with which the EU has comprehensive FTAs (e.g. Japan, Canada, South Korea)
 - That EU environment and climate aspects of trade deals have evolved and toughened over time – with greater attention being given to enforcement of sustainability requirements (e.g. EU/Mercosur deal)
 - Environment is a devolved matter.

Costs and benefits

4. In which policy areas does the UK stand to lose flexibility by signing up to the EU's proposals, and what benefits could be brought by maintaining flexibility?
 - i. Given the UK government's repeated commitment to maintaining high environmental standards, in practice there is little that the UK stands to lose – provided that the level playing field provisions are focused on no diminution of the outcomes set out in existing legislative and regulatory requirements (rather than the precise means by which they must be achieved, where the UK should seek to ensure flexibility)
 - a. What effect would level playing field commitments in a UK-EU agreement have on the UK's ability to do other trade deals, or the shape of those?
 - i. In the most part, environmental protection provisions in a UK/EU agreement will not constrain the ability to agree other trade deals, although if the UK were to accept lower environmental standards in the way traded products are manufactured in other countries then this could harm the competitiveness of UK firms.
5. Are there policy areas where the UK should be demanding level playing field provisions, to ensure that the EU maintains its environmental standards?
 - i. Yes, in the area of GHG emissions reductions. The EU has set ambitious climate goals which are being finalised through the European Climate Law. Given that EU member states are at different stages of developing robust climate action (and in some countries emissions are rising), and given that climate policy has potential competitiveness issues (hence EU proposals for a carbon border adjustment tariff), this is a specific area in which the UK should demand level playing field provisions.
6. What could be secured or lost in the free trade agreement as a result of what is agreed on the environment level playing field?
 - i. Securing the level playing field provisions in the FTA would effectively establish a baseline set of environment and climate protections from which the UK and EU wouldn't regress. This would not prevent either of the parties seeking to enhance their protections, should they choose to do so (note: the EU has committed to environmental policy progression).
 - ii. From a UK perspective – in the absence of level playing field provisions, the UK and EU would have the flexibility to reduce environmental protection measures (subject to complying with other international agreements relating to the environment/climate to which they are signatories)
 - a. What would be the impact of no agreement in this area?
 - i. Level playing field provisions in the area of environment/climate potentially reduce the need for border checks to be introduced to demonstrate regulatory alignment/equivalence on traded goods, thereby reducing costs/time for exporters/importers.
 - ii. Given the importance to which the EU has attached to level playing field provisions in negotiations with the UK, failure to find agreement in this area potentially puts at risk the entire agreement.

Civil society participation

7. Do the UK and EU proposals provide appropriate routes for civil society and the private sector to raise concerns about the implementation of the agreement?
 - i. Yes

Non-regression

8. Both the EU and UK have included clauses on upholding levels of environmental protection, what are the implications of the different approaches?
 - i. In terms of non-regression, the UK 'Comprehensive Free Trade Agreement' includes provision that "The Parties recognise the right of each Party to set its environmental priorities, to establish its levels of environmental protection, and to adopt or modify its laws and policies accordingly....Each Party shall seek to ensure that those laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve such laws and policies and their underlying levels of protection" (A28.3) and that "The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protections afforded in their environmental law" (A28.5.1). The EU's draft "Agreement on the New Partnership with the United Kingdom" is more explicit and direct: "A Party shall not adopt or maintain any measure that weakens or reduces the level of environmental protection provided by the Party's law and practices and by the enforcement thereof, below the level provided by the common standards applicable and targets agreed within the Union and the United Kingdom at the end of the transition period, and by their enforcement."
 - ii. The EU text provides clarity on ruling out non-regression of environmental protection measures and specifies areas of policy and law to which the provisions apply – in effect it would lock-in both parties to the existing levels of protection as a minimum. The UK text is more general and less specific, offering the potential for existing levels of environmental protection to be reduced by either party.
 - iii. The EU text also goes further, proposing a mechanism for dynamic alignment in agreed environmental policy areas.
 - a. How would the EU and UK's different approaches to non-regression affect UK policy-making?
 - i. The EU text would limit the ability of both parties to be able to reduce the existing level of environmental protection – s19.4 of the Environment Bill on "Statements about Bills containing new environmental law" would not be needed as Ministers would not be able to put forward laws that had the effect of reducing the level of environmental protection provided for by any existing environmental law.
 - ii. The UK text potentially opens a route where existing environmental protections could be reduced if the amended laws or approaches provided or encouraged a high-level of environmental protection. There is also the

potential for “regression by default” – e.g. review and revision clauses in existing laws not being actioned.

- b. What happens if a party lowers their standards or level of protection under each approach?
 - i. If a party were to lower its standards or level of protection under the UK approach, this potentially could be challenged by the other party and if not resolved through consultation a Panel of Experts would be convened to report on the matter. However, there is no mechanism to enforce the Panel’s decisions and so the regressed standards would be able to apply indefinitely and without penalty.
 - ii. Under the EU draft text - each party shall establish a system for the effective monitoring of the domestic enforcement of their law and practices through an independent body, which must have an appropriate set of powers and functions and the right to bring a legal action before a competent court or tribunal in an appropriate judicial procedure, with a view to seeking an adequate remedy. In effect, this would prevent regression of environmental protection measures.
 - iii. The approaches are therefore significantly different in terms of the consequences of a party lowering standards or levels of environmental protection.

- 9. Must the agreement refer to the common standards that apply in the EU and UK at the end of the transition period to be acceptable to the EU, or could it refer to other standards in some areas, for instance those in international environmental and climate agreements?

Not answered.

- c. Would a reference to common standards in the EU and UK at the end of the transition period bring in the Court of Justice of the European Union (CJEU)?
Not answered.

Environmental principles

- 10. If the environmental principles are included in a UK-EU agreement, what difference would that make to policy-making and the decisions of courts in the UK?
 - i. The drafting of the environmental principles provision in the draft EU agreement text “the Parties shall respect the following principles in their respective environmental law and practices” differs from that in the EU Treaties “Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on...[the environmental principles]” and is arguably less direct in how it would apply.
 - ii. The preamble in EU environmental law often makes specific reference to one or more of the principles, which is important as it frames how the courts interpret EU directives and regulations.

- iii. The Environment Bill establishes a requirement for Ministers of the Crown to have 'due regard' to a policy statement on environmental principles and while this would apply to environmental policy making, it would also extend to other areas of policy making (e.g. education, business, transport) and therefore have a broader scope. The Office for Environmental Protection would have the power to report to Parliament on the application of the policy statement on environmental principles and to take action to ensure compliance.

Enforcement and dispute resolution

11. What shape should the relevant enforcement and dispute resolution mechanisms take to be both negotiable and to help ensure that the agreement can be maintained in the long-term?

- i. The approach set out by the EU for the domestic enforcement by an independent body of level playing field provisions would seem to be appropriate. The need for such an independent body (or bodies) to monitor the implementation of environmental law by public authorities and to have enforcement powers has largely been accepted, given the proposals for the OEP and Environmental Standards Scotland. [note – the Welsh Government has consulted on proposed post-Brexit environmental governance arrangements but has yet to set out its proposed way forward).
- a. Does the Office for Environmental Protection (OEP) meet the criteria of the 'independent body' required under the EU's proposal?
 - i. The OEP would meet the criteria of being an 'independent body' under the EU's proposal. However, it should be noted that the OEP currently applies only to England, with provision in the Environment Bill for a similar body to be established in Northern Ireland. In Scotland, the UK Withdrawal from the European Union (Continuity) (Scotland) Bill proposes the establishment of Environmental Standards Scotland, which would have similar powers to the OEP. The Welsh Government has consulted on environmental principles and governance post-EU exit but has yet to publish its response.

Trade deals with the rest of the world

12. What effect would level playing field commitments in a UK-EU agreement have on the UK's ability to do other trade deals, or the shape of those?

Not answered.

Reaching an agreement

13. Are there helpful precedents or creative proposals that the negotiators should be considering in the main areas of contention?

Not answered.

14. Where do you see the landing zone between the UK and EU's positions?

- i. IEMA believes it is possible for agreement to be reached between the UK and EU, with respect to level playing field provisions, based on the following:
- Commitment to non-regression of the level of environmental protection afforded by existing laws and practices. This might be expressed using different terminology (e.g. rather than use “non-regression”, perhaps refer to an agreement not to weaken baseline environmental protection provisions in effect at the end of the transition period
 - Confirmation that ‘how’ the protections and practices are to be achieved, may evolve over time and that different approaches may be adopted by the parties – i.e. a recognition that divergence in approach might be possible
 - Domestic enforcement of each party’s level-playing obligations by an independent body