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Speech at the Annual Conference on European Environmental Law 2019
ERA - Europäische Rechtsakademie / Academy of European Law
Trier
4-5 April 2019



I did not know, until a few days ago, whether I would still be an EU citizen when speaking to you here today. So I am immensely grateful to Donald Tusk, and the European Council, for granting the Brexit extension under Article 50 TEU just long enough - to 12 April - to ensure my EU status here.

The Council may yet grant an even longer extension, in which case I will continue to hope that there may be no Brexit at all.

I am deeply conscious of the trouble and confusion that the UK has caused to the rest of the EU, so I stand before you here in the white sheet of penance, as anyone from the UK should do. I ask you to pity my embarrassment, dressed here in white, and not to regard me as an outcast just yet.

Fortunately I am not talking about the dismal subject of Brexit in general, nor the constitutional turmoil it is creating in Britain, fascinating as that is.

I am here to talk on environmental policy. But to understand the possible consequences of Brexit one really needs to understand something about the circumstances in the UK that led to the referendum in June 2016.

I also want to say some words about the role the environment played in the Brexit debate: - just how important is environmental policy among all the EU's other policies? - did it feature at all in the Brexit debate, and if it has played a role, how significant has that been?

However incoherent the Brexit saga has been, it has subjected EU policies to discussion in Britain that is unknown in normal times. I have even heard one commentator say that the British public now know more about the EU than in any other Member State. If so, it is from a very low base indeed.

Throughout Europe people are shockingly ignorant about how the EU works and what it has achieved. How many politicians and professional people even know the difference between two of its key elements: the single market and the customs union? I found that many British people, who should have known better, were quite ignorant about this¹.

1. The circumstances that led to Brexit

Some of the conditions that resulted in the 'Leave' vote in the 2016 referendum are common to many Member States - just think of the *gilets jaunes* in France. Austerity, de-industrialisation, globalisation, and stagnant or falling incomes have produced disillusionment in a significant proportion of the population who do not see what the EU has done for them. For many, voting 'Leave' was a convenient protest. There are similarities here with the election of Trump.

Inward migration in particular was blamed on the EU's free movement of persons- even if much comes from outside the EU. For some, leaving the EU was the equivalent of Trump's Mexican wall.

But there are some conditions which are special to the UK, and I will mention three:

First, 'Bring back our money' was a powerful element of the 'Leave' campaign. Ever since it joined the EU in 1973, the UK has been the second largest net contributor to the EU budget - after Germany of course. How many of you here know that France was for long a net beneficiary because of the way the Common Agricultural Policy works? France still contributes less than the UK.

Countries that receive money can be expected to have warmer feelings towards the EU than those that pay, and let us be clear: one reason why the EU fears a 'no deal' Brexit is that it will get less UK money. All other Member States will have to pay more into the EU budget, or it will be cut.

Secondly, British exceptionalism - 'standing alone'. This is a state of mind that may be difficult for many to understand and is partly the result of being an island, and the perception of not having been invaded for nearly 1000 years. There is a long history of reluctance to becoming involved in continental European affairs unless directly threatened. The experience of the Second World War in which the UK, alone of the non- neutral Member States, was never invaded of course reinforces this perception. *The Price of Victory* even became the title of a fascinating book that tried to explain why the UK did not sign the Treaty of Rome in 1957. The phrase came from something said by Jean Monnet: '*I never understood why the British did not join this , which was so much in their interest. I came to the conclusion that it must have been because it was the price of victory - the illusion that you could maintain what you had, without change*'.ⁱⁱ.

Standing alone in 1940 for a year before the Americans joined the war is nevertheless rightly a cause for pride. People still quote Churchill's speech about the RAF victory over the Nazi Luftwaffe: '*never in the field of human conflict was so much owed by so many to so few*'.ⁱⁱⁱ

This exceptionalism is felt more strongly by the old, more of whom voted 'Leave', than by the young. The demographic shift since June 2016 (with some of the old inevitably dying, and enthusiastically pro-European young voters joining the electoral register) may be enough to produce a different referendum result now, even if no one changes their minds - and many have. Polls now show 'Remain' in the lead.

Thirdly, and this is important for the environment. The Conservative Party's neo-liberal wing, which is also Europhobic (and not just Eurosceptic), is probably unique in the EU, though there are counterparts in the USA. They want a low tax, low regulatory UK and see the EU as a main source of unnecessary rules, including on worker protection and the environment. They are a small, and powerful contingent, supported by newspapers owned by rich men. Many are climate change deniers. Among them are those that Donald Tusk thinks should have a special place reserved for them in hell. (I am a Tusk admirer as you can see.) They have considerable

support among the Conservative party members in the country (only around 125,000, mostly elderly) who select candidates for parliamentary elections and who make the final choice of party leader and thus come to choose Conservative Prime Ministers. It was to contain this Europhobic wing, on the question of EU membership, that David Cameron made the fatal mistake of promising a referendum, which he was sure he would win. It was a monumental gamble that misfired.

It is also to appease that wing of her party that Theresa May set her 'red lines' and has negotiated her withdrawal agreement - with the UK outside of the customs union and single market. But these people are never satisfied. They may yet split the Conservative party. If they do not, they could continue to dominate the negotiations on the future UK/EU relations thus influencing environmental policy.

2. The role of environmental policy during the Brexit saga

During the referendum campaign the environmental NGOs and professionals were fairly solidly in favour of 'Remain'. There was an 'Environmentalists for Europe' campaign that sang the praises of the EU in raising environmental standards in the UK but found it difficult to rebut the charge that the UK was being told what to do by 'unelected foreigners'. The brilliant slogan 'take back control', invented by the 'Leave' campaign, was very difficult to counter. The emphasis could have been on what the EU has enabled Member States to achieve that no MS can achieve on its own.

After the shock of the vote, the Government began to work out its position on how to deliver the 'will of the people'. The Brexiteers had not expected to win and had no plan. Nor had the Government. No thought had been given to how to keep the Irish border open as required by an international treaty.

The main focus of the Government's negotiations with the EU has been on sovereignty and trade: to secure 'control of our money, our borders, and our laws' and to be free to make trade agreements with third countries, while also wanting as much frictionless access to the single market as possible so as not to damage the economy too much. These may be incompatible objectives as the intractable issue of the Irish border has shown. Environmental policy was not initially very prominent, except to the extent that most environmental rules are an essential aspect of the single market. We had to learn about the links between environmental rules and the single market, and the role of the customs union. Would the UK have to follow all EU product standards and tariffs because of the Irish border?

After the vote environmental groups quickly responded when 14 of them formed a coalition called 'Greener UK' to work for the best environmental outcome from Brexit. The UK environmental movement is long embedded in British culture and is probably larger and better organised than in any other Member State. They cooperate, as well as compete, with each other, and some have a membership that political parties can only dream about. The Royal Society for the Protection of Birds (RSPB) has over a million members and is the largest nature conservation body in Europe. It helps fund bird protection groups in other Member States. The National Trust - also a member of 'Greener UK' - is the largest membership organisation in the UK with over 5 million members^{iv}. Because of the 'first past the post'

electoral system the Green Party (membership about 40,000) does not play the role that Green parties play in some other Member states, although its single MP, Caroline Lucas - formerly an MEP - is a very visible advocate for continuing EU membership and a second referendum.

Greener UK, working largely behind the scenes, has been very successful in influencing both UK policy and the EU/UK negotiations. Its greatest achievement has been to get an amendment into the Withdrawal Act that requires a statement of environmental principles repeating those set out in the EU Treaties, and a governance system to replicate the role currently played by the Commission and the CJEU. Having initially resisted these ideas, the Government is now consulting on a new Environment (Principles and Governance) Bill to include these matters.

The 'precautionary principle' should accordingly be enshrined generally in UK law, which could be of the greatest importance in any future trade agreements with the USA. An 'Office for Environmental Protection' should also be established to scrutinize environmental policy and law, investigate complaints, and take action where necessary to make sure environmental law is properly implemented. Incorporation of these EU procedures could be the EU's greatest environmental legacy for the UK.

Greener UK also pressed both the British government and the EU for environmental standards to be maintained after Brexit and influenced the introduction of 'non-regression' into the - yet to be ratified - UK/EU Withdrawal Agreement and associated political declaration on future UK/EU relations.

The Labour Party has been insisting that worker protection rights should not be lowered, and this has been more prominent in their speeches than maintaining environmental standards. But Labour politicians, including the leader, Jeremy Corbyn, sometimes link environmental standards with those on worker protection.

So the environment has indeed played a significant role in the Brexit saga even if it is often behind the scenes.

Finally, to confirm how important environmental issues are to the EU it is significant that President Macron included climate, pesticides, and chemicals in his Brexit related open letter to 'citizens of Europe'.

3. The effect of Brexit on environmental policy

When EU environmental policy began some 40 years ago it was still largely concerned with local and acute problems. Over the next 40 years the focus will increasingly be on long term and long range problems, and the contribution the EU can make is one of the themes of my recent book *EU Environmental Policy - its journey to centre stage* (Routledge 2016) .

3.1 The EU's external environmental policy

Over the next forty years climate change will not go away. Demand for food, water and natural resources will increase. Reversing biodiversity loss will only get more difficult as a growing world population aspires to the standards of consumption that the middle classes in the developed world take for granted: just look at China over the last decades. Pollution of the seas will rise on the agenda - think of plastics. Persistent chemicals can reach the far corners of the world wherever they are made. And air pollution kills millions worldwide. Environmental policy can only grow more important internationally.

The EU has been a major player on the international stage environmentally. This began with the protection of the ozone layer with the Montreal Protocol in 1987, and has continued with climate change. The EU's legislation on chemicals - REACH - is the most advanced in the world and many countries are now modelling their legislation on it. Indeed EU environment legislation generally is the most developed and coherent in the world and is a point of reference for all.

Brexit is bound to weaken the EU's ability to act internationally. Not only is the UK one of the most populous and economically most powerful Member States but it also has a greater world influence than any other. Only France has a comparable diplomatic service: both France and the UK, acting in concert with EU officials, played a major role in getting so many countries to agree to the Paris Agreement on climate change. France and the UK are also the only Member States who are permanent members of the UN Security Council. And both have nuclear weapons which is of increasing significance as the American nuclear shield becomes less certain and Russia becomes more aggressive.

As I am speaking in Germany let me acknowledge Germany's great importance due to its economic power. But the UK has a form of soft power which other Member States do not share to the same extent. The UK has an influence on developing countries (the so-called 'Group of 77' in the United Nations) through the Commonwealth of 53 former colonies, of which the Queen is head. Many are members of the 'Group of 77'. The Heads of State of the Commonwealth meet together with the Queen every two years and there are many other links. This worked with the Paris climate Agreement. They all share the English Common Law tradition - and many play cricket. One Commonwealth member - India - has a huge population and is a world player in its own right. The Queen herself remains Head of State of 16 countries including Canada, Australia and New Zealand. The role of English as a world language increases the UK's soft power. The BBC is listened to.

Despite such influence, the UK, once outside the EU, will become a much smaller player on the world stage over the next 40 years, dominated as it will by the future big players: China, India, Russia, Brazil, and the EU too. The USA, which was once an environmental leader has long lost that role and has now become a brake, let us hope only temporarily. Of these big players, only the EU has such an environmentally engaged public, and only the EU has an institutional culture in which environmental policy is so central. Much will therefore rest on the shoulders of the EU.

3.2 The EU's internal environmental policy

The UK has also been an important actor in shaping the EU's existing environmental *acquis*. There are many examples: river basin management in the Water Framework Directive, the integrated pollution control Directive, the Environmental Impact Assessment Directive, and the REACH Regulation on chemicals all owe much to British ideas and negotiating skills. Climate change is a subject on which the UK is clearly recognised as a leader.

Indirectly the UK also influenced environmental policy by pressing for subsidiarity to be introduced into the Maastricht Treaty to discourage the EU doing what is best left to Member States. It was also the prime mover in the completion of the internal market that led to the Single European Act of 1987. 'Qualified majority voting' (QMV) which was needed to pass all the legislation necessary to complete the Single Market made it possible to adopt important items of environmental legislation such as requiring catalytic converters on small cars.

It is one of the ironies of Brexit that the UK now wants to leave the Single Market which it so strongly advocated.

British scientific expertise has also been a contributor to EU policy making, with the UK insisting that on a sound scientific base for action.

I would like one day to see a full assessment of the contribution that the UK has made to EU environmental policy - carried out preferably by someone from another Member State. Already British academics are asking the question to what extent the UK will revert to what was called the 'British Way' of environmental protection, that is of dealing with 'each case on its merits', rather than having general principles and centrally fixed numerical targets^v. A book by Professor Ben Pontin of Cardiff University is about to be published called *The Environmental Case for Brexit - a Socio-legal Perspective* that explores just that. Certainly the UK had a very different style of policy making than other Member States when it joined the EU. It had to adapt itself and to some extent the EU adapted too. I believe the interaction was productive^{vi}.

This difference of style has often made the UK appear to other Member States as excessively cautious to the extent of being a drag on high standards. Some think the EU will therefore be more ambitious without the UK. There may be some truth in that, but the other side of that coin is that the pragmatic British (if Brexit has not destroyed that reputation) have always insisted that EU legislation should be workable - that is to say, capable of being properly implemented at reasonable cost. One manifestation of British insistence on workability is the 'fitness tests' on legislation, which is now standard practice, so that it can be modified if necessary.

Other Member States have often shielded behind UK objections intended to improve the Commission's proposal. If future EU policy is to remain well grounded, other states may have to take on that role. So one possibility is a more aspirational, but less practical, EU.

Another possibility is that a post-Brexit deregulatory British government - and I have already described the forces behind that - will be eager to strike trade deals with third countries and will be ready to weaken its environmental standards to achieve that result. This could have a

chilling effect on the EU which will not want to be undercut by an economically important offshore neighbour. That pressure could lead the EU to trim back its environmental ambitions.

4. So let me conclude

Brexit is an episode in British history of which no one can be proud. It will damage the EU as well as the UK. Environmentally its greatest effect could be to weaken the EU's influence on the world stage which is where the most important developments will be taking place over the next half century. One lesson for the EU is that all involved in the EU, and primarily the national Governments, must make much greater efforts to identify, and proclaim, the benefits that the EU has produced in a way the public can understand. For environmental lawyers this means identifying examples how the EU has adopted solutions to environmental problems that individual Member States could not have achieved on their own.

Environmental lawyers could also do well to keep in mind certain British preoccupations such as workability, scientific evidence and subsidiarity which may get less emphasis if the UK departs.

Can I end with a challenge to ERA - the Academy of European Law? Could it promote the study of national contributions including that of the UK?

ⁱ My own contribution to this was a paper on the IEEP website: *'The Single Market and the Environment - what kind of access after Brexit?' (January 2018)*- <https://ieep.eu/news/brexit-single-market-customs-union-and-the-environment>

ⁱⁱ *The Price of Victory* Michael Charlton BBC Publications 1983. This book was based on a series of interviews broadcast by the BBC.

ⁱⁱⁱ The UK was not entirely alone. Without the help of Polish and Commonwealth pilots the Battle of Britain might not have been won.

^{iv} The 'National Trust for places of Historic Interest or Natural Beauty' - founded in 1895 - is rather exceptional as its prime role is to protect the land and buildings it has acquired over the years: some 500 historic buildings; 259,000 ha. of land; and 780 miles of coastline. But it also advances environmental values. Many members who join do so to enjoy visiting its properties and may not regard themselves as environmentalists.

^v The phrase 'The British Way: each case on its merits' first appeared in a report by Eric Ashby, first chairman of the Royal Commission on Environmental Pollution, in a report prepared at the time of the UN Conference on the Human Environment held at Stockholm in 1972, before the EU had started its environmental policy.

^{vi} I studied this interaction in the early 1980s and described it in a book *EEC Environmental policy and Britain: An Essay and a Handbook* ENDS 1984