

What next for the environment?

Exploring UK & EU
relations after Brexit

KEYNOTE ADDRESS

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Keynote Address by
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Two questions ---

I want this afternoon to attempt to answer a question that our present Government would much prefer us not to think about: *what did EU membership do for British environmental policy?* It is just possible that our next Government will be more ready to acknowledge that the UK greatly benefitted from its long membership of the EU. To have had it treated as largely producing ‘red tape’ was an insult to the intelligence of the public.

That question leads on to another: *How well equipped is the UK to go it alone today on environmental policy?*

In trying to answer these questions I will talk about how IEEP helped get EU environmental policy better understood in the UK, and how we managed to influence key Institutions to produce better policy despite our tiny size.

There were never more than four of us in the London office in our first ten years (1980-90) and only a dozen ten years later, so you will have to forgive me when some of the time I am talking about myself. David Baldock joined after a couple of years to work particularly on the environmental effects and development of the Common Agricultural Policy and is still at it today. He succeeded me as Director in London, and more recently has played a key role by chairing the committee at the heart of Greener UK, an NGO coalition that has greatly influenced post Brexit British environmental policy. As many of you know it was Greener UK that created the pressure for parts of the Environment Act 2021 including the creation of the Office for Environmental Protection

(OEP). It also played a key role in the debates on the “Retained EU Law (REUL) bill” REUL bill and its subsequent amendment.

Today we are welcoming Ben Reynolds as the new Director of IEEP UK. He will be facing a totally different situation from the one that faced both David and me.

UK policy in the early 1970s - the ‘British way’

Rather few people now remember the peculiar character of UK environmental policy in the early 1970s and many of you here today will not even have been born. I started full time on my environmental career in 1971 and have a long memory.

Having almost single handedly invented the industrial revolution there was pride in the UK at its early attempts to mitigate its effects (the Public Health Acts 1848 and 1878 and Alkali Act 1963 for example). This was coupled with a rather too complacent a view that the UK could rely on long practical experience and had little to learn from other countries.

The 1960s had seen a great upswell in public interest in environmental matters and one result was the United Nations conference on ‘the human environment’ held in Stockholm in 1972. Sweden chose to host it in order to draw attention to the acidification of its lakes caused by sulphur dioxide blowing from abroad. The UK found itself being framed as an unregenerate polluter.

The Stockholm Declaration set out 26 principles, one of which was that while States may exploit their resources as they wish, they must not endanger others. The EU responded to this newfound concern by embarking on an environmental policy despite no mention of the environment in its founding Treaty. It was an entire coincidence that the UK joined the EU in the very year -1973 - that the EU adopted its first Action Programme on the Environment.

The UK had in fact been the first country to create a Ministry for the Environment in 1970 - the Department of the Environment (DOE) - followed quickly that year by France and then the USA (the Environment Protection Agency (EPA)).

Previously many of the strands that today make up what we call environmental policy were dealt with in the UK by local authorities or by specialised agencies such as the Alkali Inspectorate, Nature Conservancy and a few river authorities, with remarkably little central government involvement.

The new DOE was to bring these strands together and to deal with international issues. That meant dealing with the EU.

In preparation for the Stockholm conference the DOE commissioned reports to gather public opinion on various topics, and the pollution report Nuisance or Nemesis had a section called 'The British way: each case on its merits'. This it contrasted with some other countries where 'a public authority lays down maximum emission limits which are applied rigidly and equally to all discharges'. The seeds of a future conflict with the EU were thus sown.

It remains an open question to what extent the UK will now revert to its old 'British ways' in order to differentiate itself from the EU. Will there be an identifiable 'new British way'?

One idea then prevalent in the UK was 'to dilute and disperse' pollution. This was justified by the economic principle of comparative advantage. Britain, it was said, was 'a windswept island with short fast rivers, washed by turbulent and tidal seas'. What this idea failed to convey is set out in another Stockholm principle: there are limits to the capacity of the environment to clean itself. British officials used this neat phrase: 'the environment could be used but not abused'. For substances that degrade only slowly 'dilution is not a solution to pollution' - another neat phrase.

The British policy of tall stacks for its power stations, for example, greatly reduced ground level concentrations of SO₂ by diluting emissions, but the Scandinavians politely pointed this out that this merely shifted the problem to them.

The UK begins to modernise itself - before EU influence

The DOE soon produced new ideas. Its first major product was the Water Act 1973 that transferred the tasks previously carried out by over 1,600 separate local authorities, water undertakings and river authorities into 10 river basin based water authorities in England and Wales. As well as controlling water quality the 10 new authorities were also to provide drinking water and sewerage services. (The service functions were later privatised with the results we know).

DOE's next major product was the Control of Pollution Act 1974 - original in introducing a completely new regime for handling waste. It covered many other topics including: public access to information about discharges; powers to restrict sale of harmful chemicals; and licencing of discharges to estuaries and the sea.

Waste management was then relatively primitive in all European countries, so the British idea of requiring waste regulatory authorities (County Councils in England) to licence waste sites and prepare waste disposal plans was seized on by the European Commission and became the main feature of the EU's first waste Directive of 1975. This was the earliest obvious UK influence on the EU. Unwittingly the UK affected practices in all the other Member States.

Note two points: EU policy is not just 'made in Brussels'; and any one Member State can export its policy to all the others via the EU. The EU thus benefits from economies of scale. Its policies can be based on the best ideas and each Member State does not have to re-invent the wheel.

River basin management was an idea much admired in Europe¹, and France had adopted it slightly before, but it took the Water Framework Directive of 2000 for it to be a key feature of EU policy.

While Britain was an early influence on the EU, there were to be plenty of examples the other way round as the volume of EU legislation grew.

¹ It had been advocated in the Council of Europe's Water Charter of 1960.

The first big clash - the ‘Dirty Man of Europe’²

In 1974 a conflict erupted when the European Commission proposed a Directive to control discharges of dangerous substances to water. This doctrinal dispute reinforced the reputation the UK had earned of being the ‘Dirty Man of Europe’. This was largely because it exported sulphur dioxide via the air, discharged radioactive waste to sea, and continued dumping sewage sludge at sea after others had stopped.

This conflict was not just a minor technical disagreement that occurs over most Directives but was seen as a threat to the long held ‘British way’ that was strongly defended by a coalition of industry, government, parliament, and press. Though the subject is difficult, I must explain it briefly as IEEP was to propose a solution.

Standards for discharges can be set in one of two ways: either to the quality of the water body after receiving discharges, or to the discharge itself. The Commission had proposed that water quality standards should be used for a List 2 of less dangerous substances, but for the more dangerous List 1 only emission limits would be set. The UK was happy with quality standards for List 2 but refused to accept that strict technology-based controls should be applied to the more dangerous List 1. Since EU legislation could then only be agreed unanimously a compromise had to be agreed that allowed a choice of the two approaches. The Commission and 8 Member States supported the ‘preferred’ approach and only the UK favoured the ‘alternative’. It was 8 against 1.

The UK defended its position as based on pollution and economic theory³ but others could see that it was driven by economic self-interest. (The UK could continue to apply weaker standards to discharges to estuaries and the sea - not all of which had to be

² Chris Rose *The Dirty Man of Europe* Simon and Schuster 1990

³ The Minister, Dennis Howell, made a 3,500 word speech at the Council meeting.

authorised before the 1974 Act). Unlike many other Member States most heavy industry discharge to estuaries or the sea rather than inland waters.

I will tell you in a minute about IEEP's proposal to require both approaches to be used simultaneously. The most UK then changed its position at the North Sea conference of 1987, and the next year a Ministerial seminar convened by Germany adopted the IEEP line. IEEP's Chairman⁴ was invited to the seminar. The UK had learnt from the EU that quality standards alone do not adequately control discharges of persistent chemicals.

The other Member States were later to accept that quality standards were also desirable for List 1 substances. If you take the Directives on industrial emissions and water quality together you will find that the simultaneous use of both approaches is now embedded in EU policy.

While the conflict was painful, eventually everybody learned from each other- the ideal outcome.

EU influences

In its earlier years EU policy developed by bringing the weaker Member States up to the standards of the stronger, but it also introduced some new ideas.

- Environmental Assessment of Development Projects (EIA) was imported from the USA in a much-modified form and strengthened the British planning system.
- The Bathing Water Directive is well known by the British public and pressured the operators of sewage works to improve discharges.
- The Drinking Water Directive made mandatory the guidance standards of the World Health Organisation and so applied pressure

⁴ Gathorne, Earl of Cranbrook, who was also a member of the Royal Commission on Environmental Pollution. IEEP's proposal had been translated into German by the German Ministry.

for the removal of lead and nitrates. This then influenced agricultural practices.

- The first Air Quality Directive set mandatory standards for the first time in the UK, and a later version was the driver for the introduction of the recent Ultra Low Emission Zone in London.
- The Landfill Directive shook up UK waste practices by requiring hazardous and domestic waste to be separated and biodegradable waste to be steadily reduced.
- The Birds Directive was strongly advocated by the European Parliament, with support in the UK, and while UK legislation was not greatly modified, the influence of the Directive has become clearer over time, not least in southern Europe where the annual slaughter of migratory birds is reducing.
- The requirement that all new chemicals should be tested before marketing was highly original and was new in all Member States.

One feature of early EU legislation is that it introduced into the UK numerical targets and procedures to be met by deadlines. This was in sharp contrast with the style of British legislation which placed powers and duties on an authority and gave it plenty of discretion to deal with each case on its merits. Numbers were rare in British legislation. They have now become a major feature of the Environment Act 2021 which foresees measurable targets by deadlines.

EU policy was always explicit since it had to be set in legislation. In the UK, policy was much harder to pin down.

EU environmental policy moves to centre stage

In the second half of the 1980s EU policy moved from being a marginal interest to centre stage. It now had to be taken seriously by all parts of the Commission and all national Ministries. A book⁵ of mine develops that theme and here I give only two reasons.

⁵ EU Environmental Policy - its journey to centre stage. Routledge 2016

First, the UK and the EU quickly accepted the world view-changing concept of sustainable development given currency by the Brundtland report in 1987, and the EU's 5th Action Programme was accordingly called 'Towards Sustainability'. IEEP had long argued that the wording of the Treaty should be amended by modifying the call for 'continuous expansion' without any reference to the environment. The Treaty was eventually amended by the inclusion of sustainable development. Indeed the wording in the Article stating that environmental requirements should be integrated into all EU's policies 'with a view to promoting sustainable development' was derived from a report written by IEEP for the DOE⁶ and taken up by Sweden.

The other major reason was the emergence of three serious international issues: acid rain, the ozone layer and climate change. Suddenly the EU found itself a significant actor on the world stage and able to achieve results which no Member State could achieve on its own. This I believe is the EU's greatest achievement to environmental policy. It is not just the size of its single market that makes the EU a major player on the international stage, but the efficiency of its rule making machinery.

The long negotiations on the acid rain Directive taught the EU that it had to tailor the sulphur reduction targets to the circumstances of each Member State - thus setting a precedent for dealing with climate change.

The ozone layer Decision of 1980 had placed a production capacity cap on the manufacture of CFCs, an approach that was embodied in the Montreal Protocol of 1987. It is not well enough known that the EU won the argument with the USA which had proposed that the Protocol should first ban CFCs in aerosol cans when what mattered was the total amount of CFCs emitted.

⁶ *The 1996 Inter-Governmental Conference: Integrating the Environment into other EU policies* IEEP 1995

I need say little about that most threatening issue, climate change, because it is well known that the Climate Convention of 1992 would not have had the form it did without the role played by the EU despite the hesitancy of the USA. It was in 1990 that Germany first proposed the EU target of capping emissions of greenhouse gases by 2000 at 1990 levels. The UK soon agreed to support the German target and from then on, the UK was a strong proponent of cuts to emissions and was the first to enshrine them in national law.

The cuts to total national emissions found in these three items of EU policy (acid rain, ozone, climate) was then a wholly new concept in environmental policy. I have called this ‘volume control’, a concept later embodied in the UK Climate Change Act 2008. Lawyers can now discuss whether the UK targets under the new Environment Act are a form of the ‘volume control’ needed to achieve sustainable development.

The role of IEEP ---

I turn now to IEEP.

When establishing IEEP in Bonn in 1976 its first Director, Konrad von Moltke, soon took three decisions. It was necessary to define its task; to identify a Europe wide target audience; and to establish a presence in at least some other countries if the institute was not to be seen as just a German institute.

The chosen task was ‘to inform and guide policy makers’.

An office was opened in Paris in 1978 and in 1980 Konrad asked me to open one in London.

The problem for any European organisation in finding an audience outside the ‘Brussels bubble’ was that at that time there was no European public and no European news media. The policy networks in each Member State are unique to them. Konrad accordingly selected parliamentarians as IEEP’s priority audience as they then had no sources

of information about what was happening in other countries. Accordingly, he developed links with the European Parliament and identified all the relevant parliamentary committees in the 9 Member States and got them to send him their agendas. This provided material for IEEP's bi-monthly Bulletin 'The Environment in Europe' which was distributed throughout Europe for some years. It is important to remember just how ill-informed many policymakers then were about environmental policy and how weak parliamentarians often felt. The Bulletin gave them courage by showing that other countries were taking the subject seriously.

The European Parliament was to provide constant pressure for a strong environmental policy⁷.

When opening an office in London, Konrad invited me to write an extended essay on the impact of the EU's environmental policy on the UK. This involved reading all the EU Directives, the original proposals, the debates in the European Parliament and all the UK Parliament's debates, the implementing UK legislation and circulars, and then interviewing the Commission, several Government departments, all the water authorities, relevant industrialists and NGOs.

The resulting book⁸ was the first attempt to analyse the impact of EU policy in any Member State. It established IEEP's reputation for having a deep understanding of both EU and UK policy⁹. In Britain it began to change the official view that EU policy was having little effect in the UK. In the European Commission it showed that they needed to know how the Member States were implementing EU policy in practice as well as just checking the national legislation. As a result, they gave us contracts to produce comparative reports which often showed how Member States were behaving quite differently from each other. We were informing policy makers and guiding them too.

⁷ An indication that the EP valued IEEP was that in 2000 they appointed me as one of their two nominees to the Board of the European Environment Agency.

⁸ EEC Environmental Policy - an essay and a handbook ENDS 1984

⁹ Eric Ashby, first Chairman of the Royal Commission on Environmental Pollution, and a member of the House of Lords EU scrutiny committee, wrote a glowing review in *Nature*. Vol 308 26.4.84

We continued the tracking of EU and UK legislation for thirty years to produce a loose-leaf Manual before putting it online. It reached many unexpected places. The Foreign Office even bought copies for its environmental attaches in its Embassies to the EU Member states.

We relied on the data for all our projects and reports. When the Treaty formally added the environmental dimension to other policies (agriculture, fisheries, transport, energy and funding sources) we covered those topics too.

Konrad had always been nervous of opening an office in Brussels as it risked being captured by the Commission, but IEEP did so in 2001 as it expanded its focus across a wide range of EU policy. It remains the only environmental 'think tank of any note specialising on EU environmental policy.

Examples of IEEP's influence _____

When studying the impact of the EU on the UK I found myself delving deeply into the history of British pollution policy and realised that the so called 'British way' had been quite simply mis-stated. The Royal Commission on Sewage Disposal 1896 - 1915 had lucidly set out the two approaches to water pollution and had supported uniformity of standards both for sewage works and for industries. The Alkali Inspectorate had also used uniform emission standards for discharges to air based on best technology. This inspired me to propose the combined approach for the EU. It was parliamentarians (the House of Lords) who picked up this idea and pressed it on DOE. This eventually led to a change of Government policy, and in turn of EU policy. What astonished me was how little officials working on one subject (water) knew about what colleagues did working on another (air) and so were able to delude themselves that only quality objectives had been used in Britain.

I now give examples of other achievements:

- In 1980 IEEP organised a conference at the invitation of the Austrian Government on the 'Environment and Human Rights'. This

produced the ‘Salzburg Declaration’ that elaborated on the right to information, to public participation, and to access to justice. This eventually led to the Aarhus Convention of 1998.

- The work on different approaches to pollution control for air and water (mentioned above) led to a project on integrated pollution control in Europe and North America described in the resulting book¹⁰. That in turn resulted in an OECD Council Act and in an EU Directive on ‘Integrated Pollution Prevention and Control’.
- IEEP was invited by the Royal Commission (RCEP) to describe how the *vorsorgeprinzip* (precautionary principle) was applied in Germany. This resulted in an IEEP report in 1987, published by RCEP in their 12th report on Best practicable environmental option. This allayed RCEP’s fears and enabled them to conclude it was not in conflict with their own ideas. This made it easier for those in Government to override the objectors within DOE and to announce in 1988 that they accepted the principle.
- IEEP was closely involved in the early development of climate policy in the EU, including the design of the ETS and work of the initial climate change programme.
- The institute played a significant role in the process of helping the sizeable group of Central and Eastern European countries joining the EU from 2004 in adopting EU environmental law and ran a dedicated office inside the Hungarian ministry of the environment for two years.
- IEEP’s study showing how the voluntary approach to curbing emissions from car fleets in the EU was not working was key evidence in the decision to adopt mandatory standards. IEEP went on to play a significant role in the design of the subsequent legislation.

¹⁰ *Integrated Pollution Control in Europe and North America* Eds. N.Haigh and F. Irwin The Conservation Foundation (Washington) 1990.

- IEEP set out in detail for the first time how the principle of public money for public goods should be applied in agricultural policy, specifically the CAP in 2010, with much the same approach later adopted in the Agriculture Act in England after Brexit.
- Following Brexit, the UK began negotiating its own trade agreements. This raised important questions about how to prevent imports, particularly of food, that had been produced to lower environmental standards than applicable in the UK. Work by IEEP explored in detail for the first time how such ‘core standards’ could be developed and applied.

The challenge of Brexit for IEEP

An early decision of the IEEP Board following the Brexit referendum was to turn its office in Brussels into its head office. The office in London had to redefine its role.

Paradoxically Brexit has ensured that EU environmental policy is now more talked about in Britain than when it was a member. Whenever the EU proposes or adopts an item of EU legislation it becomes a point of reference for the UK. Is the UK to follow it? Is it to ignore it? Or is it to achieve the same objective in another way? These questions stimulate discussions that were never needed before. The fact that much of the EU’s legislation has to apply in Northern Ireland, under the Windsor Agreement, is another factor.

Another consequence of Brexit is the potential for divergence between the four nations of the UK, each of which has its own legislative powers. While in the EU, the whole of the UK was bound by EU rules. Since Brexit, Scotland, Wales and England can go different ways - except for traded products which move between them.

IEEP’s ‘divergence project’ that began two years ago is the cornerstone of its new strategy. Not only are we tracking divergence between the

EU and the UK but also where we can, between the four nations. We have long experience of doing this.

So, I have no doubt that never before has there been as much need for IEEP in the UK as there is now.

Answers to the questions on UK/EU relations

Some answers to ‘What did membership of the EU do for British environmental policy?’ have been given throughout this talk, but they can be summed up under three headings:

- The UK was able to export some of its policies to other Member States and so have a wider influence. Key examples are waste plans, river basin management, and bird protection.
- The EU jolted the UK out of its complacent view that it could muddle along by relying on its long practical experience. Of course, the UK would have modernised itself if the EU had never existed, but I have no doubt that it was the EU that provided the sharp stimulus needed to make UK policy more coherent by setting targets - both numerical and procedural - to be met by deadlines.
- British policy before EU membership largely dealt with acute and local problems and the same is true of the EU’s in its early years. In the 1980s major international and global issues needed attention, and the EU found itself able to deal with these far more efficiently than the Member States acting on their own¹¹. In the coming years international and global issues (and AI could well have environmental consequences) are likely to be the most important. The big players - China, USA and EU - will be dominating the

¹¹ One example relates to the protection of the ozone layer. The EU Regulation on CFCs bans production and enabled all 12 MSs quickly to ratify the Montreal Protocol. The UK legislation at that time had powers to restrict uses but not to ban production and the same was true of most Member States.

debates. The UK, when in the EU, helped to shape its stance. Being outside the EU has greatly weakened the UK's influence.

My second question was how well equipped is the UK to go it alone now? The short answer is: not well, because there is so much to do and capacity is limited.

The new policies foreseen by the Environment Act 2021 and the 25 Year Environment Plan present a considerable work programme for England in particular, which is already slipping, as the OEP has noted¹².

The debate over REUL has brought home just how large is the number of retained EU laws. These have to be reviewed and perhaps amended with little parliamentary scrutiny.

Then there is the new EU legislation adopted since Brexit, and the considerable volume foreseen. All this has to be considered, not least because much of it binds Northern Ireland, but also because of the requirement for a level playing field in the UK/EU Trade and Cooperation Agreement.

Finally, there are all the International Conventions where both the UK and EU have to adopt positions without the UK being part of EU discussions. Separate arrangements have to be made for such discussions. The burden is therefore considerable, and Brexit has added to it. What can be done?

Thoughts for the future ---

I end by throwing out some initial thoughts for the future.

One little noticed change in the type of EU legislation over the last few years is the growth in environmental standards set for traded products - including chemicals. The 'circular economy' will increase this. Most UK industrialists will follow EU standards anyway in order to export to the EU because of the sheer size and economic opportunity afforded.

¹² <https://www.theoep.org.uk/report/progress-improving-natural-environment-england-20212022>

The UK could reduce its legislative workload by agreeing in principle to follow all EU environmental product standards, while retaining the right to diverge only if there are justifiable reasons. The UK would thus benefit from the economies of scale that the EU provides. The EU has greater policy capacity than the UK. 'Red tape is reduced if EU and UK standards are the same since exporters follow only one set of rules instead of two.

Non-product environmental standards that can distort competition such as river quality standards should not be allowed to fall below EU standards and should rise if they rise in the EU.

Finally, in its own self-interest, and as a way of demonstrating its commitment to being engaged in the environmental policies of the continent of which it is geographically and environmentally a part, it should seek to join, or associate itself with, three organisations: the European Environment Agency (Copenhagen) and its associated information network in more than 30 countries called EIONET; the European Chemical Agency (Helsinki) ; and the European IPPC Bureau (Seville) that proposes standards for industrial plant.

IEEP UK will continue to play its role of catalysing debate and providing reliable information and analysis on policy as UK/EU environmental relations evolve in the years ahead.

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