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The EU, Environmental Law and Brexit: The Challenges Ahead

Während der bevorstehende Brexit, also der Austritt des Vereinigten Königreiches aus der Europäischen Union, in den meisten anderen Rechtsgebieten eine große Herausforderung darstellt, wurden die Folgen des Brexit für das Umweltrecht zunächst optimistischer beurteilt – auch während der Anhörungen im House of Lords. Einige Umweltschützer haben öffentlich die Auffassung vertreten, dass das Vereinigte Königreich strengere Umweltschutzstandards erlassen könnte, die sich zudem durch eine größere Sachgerechtigkeit auszeichnen könnten, insbesondere in den Bereichen Landwirtschaft und Fischerei. Nachdem die jetzige Regierung nun aber eine „harte“ Version des Brexit angekündigt hat, mit dem Ergebnis, dass das Vereinigte Königreich durch nicht viel mehr als vielleicht einem Freihandelsabkommen mit dem Rest Europas verbunden sein wird, wird der Deregulierungsdruck für die Zeit nach dem Brexit deutlich ansteigen. Das lässt eine Absenkung der britischen Umweltstandards erwarten. Der nachstehende Beitrag versucht, die rechtlichen und politischen Erwägungen zu bewerten, die der Brexit unter Berücksichtigung internationaler Umweltverpflichtungen, insbesondere im Zusammenhang mit dem Klimawandel, notwendig macht. Wir halten es für wahrscheinlich, dass sich der Traum von einem grüneren Großbritannien „post-Brexit“ aufgrund des de-regulatorischen Drucks in Luft auflösen wird. Optimistischer vertreten wir die Ansicht, dass die auswärtige Dimension der EU-Umweltvorschriften, wie etwa die Anwendung Europäischer Produktregeln, in den meisten für den Warenhandel relevanten Bereichen das britische Umweltrecht auf absehbare Zeit bestimmen könnte, wenn das Vereinigte Königreich weiterhin mit der EU Handel zu treiben beabsichtigt.

I. Introduction

Concern over the inevitable lowering of UK environmental standards or even the demise of regulation in some areas following the Brexit vote was immediate, and not without reason.¹ While much remains in flux and will probably depend on the eventual Art. 50 TEU deal between the UK and EU-27, an area most important for environmental progress and collective action, climate change, is most likely not an area where the UK will aim its potential de-regulation efforts. In many ways, climate change as a crosscutting policy driver transcends European Union (EU) membership, having broad impacts on trade, finance, and product flows, will heavily influence the post-Brexit environmental roadmap. This article argues that Brexit will have a largely negative impact on environmental law. Regulatory pressures as per the pursued worldwide trade liberalisation agenda of the current government or backlash

when exporters will have to comply with EU standards, despite lack of UK influence, could make it harder within the UK to agree new laws. More optimistically if a continued trading relationship with EU-27 is wanted, the external dimension of EU environmental law could have a lasting impact in the UK.²

First, general considerations relating to trade and common socio-economic factors are summarized (infra II.). Second, the EU legislative framework is outlined highlighting the scope and basis of environmental governance (III.). Third, the breadth of EU influence on UK domestic environmental law is analyzed and post-Brexit challenges identified (IV.). Finally, the interface of climate change and UK environmental law is explored to illustrate key challenges (V.).

Much like the early pillars underlying the common market were grounded in a recognition of the need to cooperate on issues of mutual interest, the commanding heights of the economy will heavily influence post-Brexit UK envi-

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1 Damian Carrington, "UK's out vote is a 'red alert' for the environment", *The Guardian* (24 June 2016), online: <https://www.theguardian.com/environment/damian-carrington-blog/2016/jun/24/uks-out-vote-is-a-red-alert-for-the-environment>; Fiona Harvey, "Brexit would damage UK environment, say experts" (27 January 2016), online: <https://www.theguardian.com/politics/2016/jan/27/brexit-damage-uk-environment-rspb-national-trust>; Daniel Boffey, "MEPs in bid to force UK to meet environmental regulations after Brexit", *The Guardian* (31 January 2017), online: <https://www.theguardian.com/politics/2017/jan/31/european-parliament-force-uk-meet-environmental-regulations-after-brexit>.

2 E. Morgera ed, *The external environmental policy of the European Union: EU and international law perspectives*, (Cambridge: Cambridge University Press, 2012).

ronmental law invariably requiring policy stability, effective enforcement, and continued influence in environmental reforms relating to shared natural resources.

II. General Considerations

Environmental governance requires cooperation and cohesive legislative and policy action at the national, regional, and international level. Early overtures of cooperation underpinning the creation of the EU were grounded in similar principles of economic integration, but were initially silent on environmental policy.³ The *Treaty of Rome* which established the European Economic Community (EEC) in 1957, while lacking direct reference to environmental governance, provided flexibility through Article 235 EEC (now Article 352 Treaty on the Functioning of the European Union) for the passage of “appropriate measures” to attain one of the objectives of the Community.⁴ Early legislation, Directive 67/548 addressing the packaging and labeling of dangerous substances,⁵ and Directive 70/157 pertaining to the exhaust systems of motorized vehicles,⁶ were principally focused on economic integration, and addressed environmental outcomes as a secondary if not tertiary aspect. Following the 1972 Stockholm Declaration on the Human Environment,⁷ and the growing recognition of the need for cooperative action to sustainably manage ecosystems, further efforts were made under provisions relating to the functions of the com-

mon market to address lead content in gasoline,⁸ detergents,⁹ exhaust systems,¹⁰ aquatic pollution,¹¹ air pollution and hazards relating to industrial facilities,¹² and toxic waste.¹³

Adoption of the *Single European Act* in 1986 saw inclusion of an explicit legal basis for governance of environmental matters through a supranational approach.¹⁴ Whereby previously, environmental legislation was passed pursuant to powers relating to essential objectives of the Community and subsequently confirmed by the Court,¹⁵ integration of Article 130 r-t of the SEA (now Article 191-192 under the *Treaty on the Functioning of the European Union*) provided a clear legal basis for environmental governance and most importantly legislated guiding principles for environmental action of the Union. Subsequent developments under the *Treaty of Maastricht* (1992), the *Treaty of Amsterdam* (1997), increased the prominence of environmental factors positioning economic integration in the context of sustainable development and increased environmental protection.¹⁶ The principle of subsidiarity provides for the development of Community-wide policy in cases where action by a single Member State would be insufficient, or better achieved through action by the Community.¹⁷ Prioritization of policy harmonization to address transnational issues – in the environmental context include: transboundary environmental pollution (both air and water), global climate change, and preservation of biodiversity – practically aimed to foster social cohesion, provide for balanced competition, and minimize market distortions on trade.¹⁸ Jointly the

3 M. Lee, *EU Environmental Law, Governance and Decision-Making* 2nd ed. (London: Hart Publishing, 2014) at 2 [Lee]; Jan H. Jans & Hans H. B. Vedder, *European Environmental Law* 3rd ed. (Groningen: Europa Law Publishing, 2008) at 3 [Jans & Vedder].

4 *Treaty Establishing the European Economic Community* (EEC), Rome, 25 March 1957, Article 235, online: http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf, [Treaty of Rome, EEC]; *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, Lisbon, 17 December 2007, OJ C 306/1, Article 308 [Treaty of Lisbon, TEU]; *Consolidated Version of the Treaty on the Functioning of the European Union*, 26 October 2012, OJ C 326/47, Article 352. [TFEU]

5 EC, Directive 67/548 relating to the classification, packaging, and labelling of dangerous substances, OJ 1967 L 196/1, online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31967L0548:EN:HTML>.

6 EC, Directive 70/157 relating to the permissible sound level and the exhaust system of motor vehicles, OJ 1970 L 42/16, online: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31970L0157>.

7 UN, “Stockholm Declaration on the Human Environment” (16 June 1972), online: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503> [Stockholm Declaration].

8 EC, Directive 85/210 concerning the lead content of petrol, OJ 1985 L 96/25, online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31985L0210:EN:HTML>.

9 EC, Directive 73/404 relating to detergents, OJ 1973 L 347/51, online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31973L0404:EN:HTML>.

10 Directive 70/157, *supra* note 6; EC, Directive 78/1015 on the permissible sound level and exhaust system of motorcycles OJ 1978 L 349/21, online: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31978L1015>.

11 EC, Directive 76/464 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, OJ 1976 L 129/23, online: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31976L0464>.

12 EC, Directive 84/360 on the combating of air pollution from industrial plants, OJ 1984 L 188/20, online: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31984L0360>; EC, Directive 82/501 on the major-accident hazards of certain industrial activities, OJ 1982 L 230/1, online: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31982L0501>.

13 EC, Directive 78/319 on toxic and dangerous waste, OJ 1978 L 84/43, online: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31978L0319>.

14 Lee, *supra* note 3, at 1, 3.

15 *Commission v Italy*, Case 92/79 (1980) ECR 1115; *Procureur de la République v Association de Défense des Brûleurs d’huiles Usagées*, C-240/83 (1985) ECR 531, [ADBHU].

16 *Treaty of the European Union, signed at Maastricht on 7 February 1992*, 29 July 1992 OJ C 191/01, Article 2-3, 130 r-t, online: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1992:191:FULL>

&from=EN, [Treaty of Maastricht]; *Treaty of Amsterdam Amending the Treaty of European Union, the Treaties Establishing the European Communities and Certain Related Acts*, 10 November 1997, OJ C 340/1, Article 2-3, online: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.1997.340.01.0001.01.ENG&toc=OJ:C:1997:340:TOC [Treaty of Amsterdam].

17 Treaty of Maastricht, *supra* note 15, Article 3b; Treaty of Lisbon, *supra* note 4, Article 5.

18 Jans & Vedder, *supra* note 3, at 10-13.

principle of integration calling for environmental protection to be incorporated into broader Community policies,¹⁹ and subsidiarity, endeavor to balance policy development recognizing the interconnection of the European environment providing for cohesive frameworks governing among others, agriculture, transport, energy, habitats, and wild birds.²⁰

The EU Environmental Action Programme (EAP), first established in 1972 following the Stockholm Declaration and now on its seventh iteration,²¹ has developed to cooperatively actualize core treaty principles including the precautionary principle, the concept of sustainable development, and environmental prioritization in policy-making. Even during the early stages, cooperation was identified as an essential element given global economic interdependence.²² The resulting patchwork of laws relating to the environment developed over nearly five decades of experience, and enforced by a highly-evolved system of EU institutions, presents a range of complexities for repatriation and administration of environmental policy within the UK post-Brexit.²³ While the recent House of Lords' EU Committee report doubted that the UK would opt to lower its own environmental standards, the Lords in our view rightly highlighted the impending enforcement deficit, if the UK does not rapidly establish significant regulatory and enforcement capacity.²⁴ The role of the ECJ was highlighted by the Lords as a key institution responsible for significant progress in the environmental field.²⁵

Climate change, as an inherently international challenge, similarly amplifies the complications inherent with a suggested disentanglement. The EU has since EAP 3 (1982–1986) and EAP 4 (1987–1992) stressed the need for policy integration and harmonization, particularly in fostering sustainable development, and reductions in CO₂ emissions.²⁶ It is hoped, though it remains to be seen if continued efforts by the UK to address climate change post-Brexit, notwithstanding ongoing international obligations and

continued access to the European market, will be pursued, in order to maintain a high degree of policy stability and continued alignment with policy efforts at the supranational level.

III. Legislative Framework

Where early environmental legislation was grounded in achieving the objectives of the common market, the inclusion of explicit powers relating to environmental policy development in the SEA galvanized decision-making priorities. The legal basis for coordination of environmental protection at the EU level maintained a level of stability following the 2007 signing of the Treaty of Lisbon, which entered into force in 2009, establishing the *Treaty on the European Union* (TEU),²⁷ and the *Treaty on the Functioning of the European Union* (TFEU).²⁸ Key environmental provisions found in Article 130 r-t of the SEA remained included in the TFEU reinforcing the prominence of harmonized environmental governance.

Article 191 TFEU establishes the objectives and scope governing the environmental policy of the EU. Environmental policy functions to: preserve and improve environmental quality, protect human health, promote rational use of natural resources, and promote international measures to address environmental problems including climate change.²⁹ Policy decisions are to foster a high level of environmental protection, consider national differences, and be grounded in the precautionary and polluter pays principles.³⁰ In establishing environmental policy key factors include: use of available scientific data, recognition of environmental considerations of other regions in the EU, identification of protentional costs and benefits of both action and procrastination, as well as the balanced economic and social development across the EU.³¹ Additionally, both the EU and individual Member States should cooperate with

19 Treaty of Maastricht, *supra* note 16, Article 130r.

20 Jans & Vedder, *supra* note 3, at 16-17.

21 EC, Declaration of the Council of the European Communities and of the representatives of the Governments of the Member States meeting in the Council of 22 November 1973 on the programme of action of the European Communities on the environment, OJ C112/1 (20.12.1973), online: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1973:112:FULL&from=EN> [1st EAP]; EC, Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' OJ L 354/171 (28.12.2013), online: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D1386&from=EN>, [7th EAP].

22 *Ibid*, 1st EAP, para 8.

23 House of Lords, "Brexit: environment and climate change" HL Paper 109, European Union Committee 12th Report of Session 2016-17 (14 February 2017), at 54, online: <https://www.publications.parliament.uk/pa/ld201617/ldselect/lddecom/109/109.pdf>, [HL Report].

24 *Ibid*.

25 Alec Stone Sweet & Markus Gehring, "Environmental Protection" in A. Stone Sweet, *The Judicial Construction of Europe* (Oxford: Oxford University Press 2004) at 228-232.

26 Christian Hey, "EU Environmental Policies: A short history of the policy strategies" in Stefan Scheuer (ed), *EU Environmental Policy Handbook: A Critical Analysis of EU Environmental Legislation* (Utrecht, Netherlands: European Environmental Bureau and International Books, 2005), at 19-22.

27 *Consolidated Version of the Treaty on European Union*, 26 October 2012, OJ C 326/13, online: http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF, [TEU].

28 Treaty of Lisbon, *supra* note 4; TFEU, *supra* note 4.

29 TFEU, *supra* note 4, Article 191(1).

30 *Ibid*, TFEU, Article 191(2).

31 *Ibid*, TFEU, Article 191(3).

relevant jurisdictions and international organizations, subject to agreement, provided they comply with the EU treaties.³² It must also be noted that the Court of Justice, particularly in the ATAA decision, gave EU legislators the competence to regulate environmental problems outside the application of the Treaties, if these impact on the EU itself.³³

Any hope about an impending environmental paradise post-Brexit in Britain is largely tempered by the fact that thus far the UK had never adopted more stringent environmental measures. Unlike in many other fields, Article 193 authorises Member States to establish more stringent protective measures,³⁴ when implementing environmental policy at the national level.³⁵ This domestic deference allowing for higher levels of ambition is rarely used and arguably the UK did not need Brexit to establish stricter environmental laws.

Several prominent ECJ decisions have influenced and evolved EU environmental law. The passing of Directive 75/439 on waste oils, which required Member States to establish measures for the “safe collection and disposal of waste oils” with a preference for recycling, and Directive 75/442 on waste disposal more broadly,³⁶ created a perceived conflict between environmentally sound waste oil disposal and the “free movement” of an exchangeable good. The Court in *Inter-Huiles* reviewed the French system which in effect inhibited the export of waste oil, finding that Member States cannot organize a disposal system in a trade restrictive way.³⁷ This holding was reaffirmed in multiple subsequent cases.³⁸ In *ADBHU* the Court was asked to consider the balancing of general interests – including free movement of goods, competition, and trade – in relation to environmental protection, holding that general interests were

not absolute and must be seen in the context of the essential objective of environmental protection.³⁹

The balancing of the EU interests with the autonomy of Member States has been a central theme of environment jurisprudence. In *Danish Bottles* the court considered a Danish beverage container preapproval process which provided an exception for imported test products, and a quantitative limitation on unapproved containers of 3,000 hectolitres (hl) per annum.⁴⁰ Following the holding in *ADBHU*, the Court noted that environmental protection was an essential objective which could justify a trade-distorting bottle deposit-and-return system, but held that the preapproval process was discriminatory as it disallow otherwise reusable containers,⁴¹ in effect placing a proportionality test on trade-distorting environmental measures. In *Commission v Belgium* the Court considered a Belgian prohibition on the dumping or storage of foreign or domestic waste in the region of Wallonia, but for waste originating in that region.⁴² Curiously, while the Court noted the measure openly discriminated against imports, the measure was upheld as having a clear objective to protect human health and the environment,⁴³ reinforcing the prominence of domestic environmental protection measures.

With the expansion of EU environmental regulatory powers came an increased need for the Court to interpret statutory purpose, scope, and definitions. A wide range of cases, often bringing about submissions from multiple Member States, focused on clarifying if the definition of “waste” included reusable goods of economic value.⁴⁴ Illustrative of this trend, in *Commission v Germany* the Court reviewed the German legislation which exempted several categories of recyclable waste, finding this approach violated the EU-wide single definition of “waste.”⁴⁵ In *Lappel Bank* the Court had

32 *Ibid*, TFEU, Article 191(4).

33 *M. Gehring*, “Air Transport Association of America v. Energy Secretary: Clarifying Direct Effect and Providing Guidance for Future Instrument Design for a Green Economy in the European Union.” *Review of European Community & International Environmental Law* 21.2 (2012): 149-54.

34 TFEU, *supra* note 4, Article 193.

35 *Ibid*, TFEU, Article 258.

36 EC, Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oil, OJ L 194/23, 25.07.1975 (1975); EC, Council Directive 75/442/EEC of 15 July 1975 on waste, OJ L 194/39, 25.07.1975 (1975).

37 *Syndicat national des fabricants raffineurs d'huile de graissage and others v Groupement d'intérêt économique "Inter-Huiles" and others*, ECJ 172/82 (1983), [*Inter-Huiles*].

38 *Groupement d'Intérêt Economique "Rhône-Alpes Huiles" and others v Syndicat National des Fabricants Raffineurs d'Huile de Graissage and others*, ECJ 295/82 (1984) [*Rhône-Alpes Huiles*]; *Criminal proceedings against José Vanacker and André Lesage and SA Baudoux combustibles*, ECJ C-37/92 (1993) [*Vanacker*]; *Chemische Afvalstoffen Dusseldorp BV and Others v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer*, ECJ C-203/96 (1998) [*Chemische Afvalstoffen*]; *Entrepreneurforeningens Affalds/Miljøsektion (FFAD) v Københavns Kommune*, ECJ C-209/98 (2000), [*FFAD*].

39 *Procureur de la République v Association de défense des brûleurs d'huiles usagées (ADBHU)*, ECJ 240/83 (1985). [*ADBHU*]

40 *Commission of the European Communities v Kingdom of Denmark*, ECJ 302/86 (1988), [*Danish Bottles*].

41 *Ibid*, *Danish Bottles*, at para 20-22.

42 *Commission of the European Communities v Kingdom of Belgium*, ECJ C-2/90 (1992), [*Commission v. Belgium*].

43 *Ibid*, *Commission v. Belgium*, at para 50.

44 *Criminal proceedings against Euro Tombesi and Adino Tombesi (C-304/94)*, *Roberto Santella (C-330/94)*, *Giovanni Muzi and others (C-342/94)* and *Anselmo Savini (C-224/95)* (joined), ECJ C-304/94 (1997) [*Tombesi*]; *Inter-Environnement Wallonie ASBL v Région wallonne*, ECJ C-129/96 (1997) [*Inter-Environnement Wallonie*]; *ARCO Chemie Nederland Ltd v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (C-418/97)* and *Vereniging Dorpsbelang Hees, Stichting Werkgroep Weurt+ and Vereniging Stedelijk Leefmilieu Nijmegen v Directeur van de dienst Milieu en Water van de provincie Gelderland (C-419/97)* (joined), ECJ C418/97 (2000) [*Arco Chemie*]; *The Queen, on the application of Mayer Parry Recycling Ltd, v Environment Agency and Secretary of State for the Environment, Transport and the Regions, and Corus (UK) Ltd and Allied Steel and Wire Ltd (ASW)*, ECJ C-444/00 (2003), [*Mayer Perry*].

45 *Commission of the European Communities v Federal Republic of Germany*, ECJ C-422/92 (1995), [*Commission v Germany*].

to strike a balance between ecological and economic interests in the context of the Birds Directive (79/409) and Habitats Directive (92/43) when considering the permissibility of a dike and reservoir adjacent to a protected area.⁴⁶ Concluding the works were justified on public interests grounds as they improved the ecological situation by effectively managing flooding, the Court following *Leybucht Dykes* cautioned that while economic justification cannot be utilized in the establishment of a protected area, it could be considered in exceptional circumstances when encroaching upon the ecosystem.⁴⁷ Similarly, in *Santoña Marshes* the Court noted that Member States were under an obligation to treat waste in such a way as to ensure economic operations did not adversely impact protected areas,⁴⁸ clearly positioning environmental interests above economic. Overall, the Court has supported EU environmental measures, favoring harmonization and supranational governance with exceptions grounded proportionally, and economic influences positioned ancillary to the essential objective of environmental protection.

IV. Brexit and EU Environmental Legislation

While deference is given to Member States relating to the method of implementation, nearly five decades of EU en-

vironmental legislation has had a profound influence on the substantive and procedural evolution of domestic law in the UK. Crucial legislation developed relating to habitats,⁴⁹ migratory birds,⁵⁰ air quality,⁵¹ water resources and waste management,⁵² commercial trade in chemicals,⁵³ and emissions trading,⁵⁴ along with common sectoral policies (ie. agriculture and fisheries),⁵⁵ are cornerstones of both supranational and domestic environmental action. The full breadth and depth of the EU environmental *acquis* is difficult to fully ascertain, with over 200 purely environmental instruments in place at the EU level, excluding internal market aspects – such as product standards and labelling, governance of agriculture, fisheries, and energy sectors – where Member States have shared competency; when areas of shared competency are included, over 1100 pieces of directly applicable legislation can be identified as falling under the remit of the UK Department for Environment, Food and Rural Affairs (Defra).⁵⁶ Overall EU environmental and climate legislation, policies, and jurisprudence are deeply embedded into the corpus of UK environmental law, with the task of directly transposing the entirety of the framework into domestic law a daunting and complex affair. It is thus not surprising that the UK under the previous coalition government concluded in a balance of competence review, that by and large the EU possessed the right competences in this field and if any-

46 *Regina v Secretary of State for the Environment, ex parte: Royal Society for the Protection of Birds*, ECJ C-44/95 (1996), [*Lappel Bank*].

47 *Ibid*, *Lappel Bank*, at para 41-42.

48 *Commission of the European Communities v Kingdom of Spain*, ECJ C-355/90 (1993), at para 53-56, [*Santoña Marshes*].

49 EC, Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206/7 (22.7.1992), online: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN>, [*Habitats Directive*].

50 EC, Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103/1 (25.4.1979); EC, Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20/7 (26.01.2010), online: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0147&from=EN>, [*Birds Directive*].

51 EC, Directive 1008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ L 152/1 (11.6.2008), [*Air Quality Directive*].

52 EC, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327/1 (22.12.2000), online: http://eur-lex.europa.eu/resource.html?uri=cellar:5c835afb-2ec6-4577-bdf8-756d3d694eeb.0004.02/DOC_1&format=PDF, [*Water Policy Directive*]; EC, Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312/3 (22.11.2008), online: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0098&from=EN>, [*Waste Directive*].

53 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation,

Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396/1 (30.12.2006) [REACH].

54 EC, Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275/32 (25.11.2003), online: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0087&from=EN>, [EU ETS Directive].

55 EC, Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015 amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009, and Regulations (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, as regards the landing obligation, and repealing Council Regulation (EC) No 1434/98, OJ L 133/1 (29.5.2015), online: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.133.01.0001.01.ENG [Common Fisheries Policy (CFP)]; EC, Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, OJ L 347/487 (20.12.2013), online: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1305&from=en>. See also: EC, Regulation (EU) No 1306/2013, OJ L 347/549 (20.12.2013); EC, Regulation (EU) No 1307/2013, OJ L 347/608 (20.12.2013); EC, Regulation (EU) No 1308/2013, OJ L 347/671 (20.12.2013).

56 HL Report, *supra* note 23, at 9-10.

thing was perhaps lacking further competences in the field of climate change.⁵⁷

A crucial aspect of the common and harmonized environmental framework is to maintain a level playing field for intra-Union trade while balancing the costs and benefits of administration. The EU market, accounting for 23.8% of the €58.7 trillion global gross domestic product (GDP) in 2014,⁵⁸ has benefited from the stability, continuity, and climate-focused long-term perspective of regulations driving innovation and creating sufficient critical mass to allow for broad development and deployment of low carbon technologies.⁵⁹

Rather than a higher level of environmental protection, Brexit is seen by some (many Brexiteers are also incidental climate change deniers)⁶⁰ as an easy way to lower the administrative burden of compliance – particularly organizational protocols, permitting, reporting, and data sharing— with EU environmental and climate legislation.

Following the Brexit vote, Prime Minister Theresa May announced plans to introduce a “Great Repeal Bill” which would repeal the *European Communities Act 1972*,⁶¹ and transpose EU law into the domestic law of the UK in accordance with bilateral and multilateral agreements.⁶² Suggestion of such a “continuance” while desirable to foster continued market stability, also raises several challenges. First, decisions and regulations as direct-effect legislation are

more direct to transpose than directives which require enabling legislation. For instance, the REACH framework would be directly applicable, while conservation measures under the Habitat Directive would need legislative implementation leaving potential room to maneuver. Second, wide use of “legislation by reference,” or legislation which utilizes a definition or mechanism from another piece of legislation through direct integration, provides a range of unique complexities. For example, Section 75 of the *Environmental Protection Act 1990* integrates definitions of “waste” and “hazardous waste” from the Waste Framework Directive, and the Hazardous Waste Directive respectively.⁶³ Third, core obligations and definitions have evolved through interpretation and application of the ECJ. Admittedly uncertainty remains to the specific way past ECJ jurisprudence will be incorporated into the common law on Brexit day with the UK Supreme Court in *Miller* concluding judgments would be no more than “persuasive.”⁶⁴ One commentator noted the potential for an interpretive approach which would allow UK courts to interpret and develop domestic law in accordance with the law of the EU.⁶⁵ Moving forward as the corpus of EU law would no longer be supreme yet would continue to evolve divergence poses a risk to compliance terms for continued market access.⁶⁶ Fourth, where previously the ECJ and EU institutions played integral roles in maintaining compliance of Member States and domestic actors, Brexit leaves a gap in access to forums for accountability for national measures; a void which UK courts will struggle to fill adequately. Fifth, the departure from the EU will include restrictions on access to funding programs supporting legislative implementation, research, and innovation. Sixth, any potential trade agreement with the EU will include compliance with many environmental and market standards, such as REACH utilized by partners in Asia and North America. The UK may practically be required to comply with the EU environmental framework to maintain trade-flows without the ability to influence legal development going forward. Finally, the government has made the comment that ministers will be allowed to unilaterally change or rescind EU laws under this “Great Repeal Bill”. While it is constitutionally very doubtful if such far reaching authorisations could be given, it is clear that while some continuity is intended, many parts of EU environmental law not currently transposed into UK law, could face governmental repeal.

It should be noted that vast differences in environmental standards would not be acceptable to UK trading partners in the future. While the WTO allows for certain variants in this regard, its aim remains a level playing field for international trade. Under the SPS and the TBT agreement,⁶⁷ many international standards become *de facto* binding and if there is scientific proof for higher EU standards, those could also be justified, further increasing the regulatory pressure on the post-Brexit UK to comply with EU environmental law.

57 Government of the UK, “Review of the Balance of Competences between the United Kingdom and the European Union: Environment and Climate Change (February 2014), (National Archives, Government of UK), at para 2.13-2.18, online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284500/environment-climate-change-documents-final-report.pdf, [Balance of Competences, 2014].

58 Eurostat, *The EU in the World: 2016 Edition* (Luxembourg: Publications Office of the European Union, 2016), at 79, online: <http://ec.europa.eu/eurostat/documents/3217494/7589036/KS-EX-16-001-EN-N.pdf/bcac30c-0be9-4c2e-a06d-4b1dae4d493e>.

59 Balance of Competences, 2014, *supra* note 57, at para 2.13-2.18.

60 James Crisp, “Brexit campaign leadership dominated by climate-sceptics” *EurActiv* 24 May 2016, online: <https://www.euractiv.com/section/uk-europe/news/brexit-campaign-leadership-dominated-by-climate-sceptics/>.

61 UK, *European Communities Act 1972*, c-68.

62 Jack Simson Caird, “Legislating for Brexit: the Great Repeal Bill,” Briefing Paper 7793 (23 February 2017) (House of Commons Library), at 8-9, online: <http://researchbriefings.files.parliament.uk/documents/CBP-7793/CBP-7793.pdf>, [Caird, 2017].

63 *Ibid*, Caird, 2017, at 33; Waste Directive, *supra* 52; UK, *Environmental Protection Act 1990*, c.43, Section 75; EC, Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, OJ L 377/20 (31.12.1991).

64 *R (on the application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5, para 80.

65 T. Horsley, “UK Courts and the Great Repeal Bill – Awaiting Fresh Instruction” U.K. Const. L. Blog (28th Feb 2017), online: <https://ukconstitutionalaw.org/2017/02/28/thomas-horsley-uk-courts-and-the-great-repeal-bill-awaiting-fresh-instruction/>.

66 Caird, 2017, *supra* note 62, at 62-63.

67 M.-C. Cordonier Segger & M. W. Gehring, *Sustainable Development in World Trade Law*, vol. 9, (The Hague 2005).

V. Climate Change and Brexit

Where overtures around the “Great Repeal Bill” raise concerns around the complexity of such an undertaking, and the potential ramifications on the domestic UK market, existing climate change obligations both internationally and domestically perhaps show a slight silver lining of Brexit. Commitments established by the UK and not just the EU under the Paris Agreement (2015), the continued practical role of the EU ETS in providing a market-measure for climate change mitigation and adaptation, and domestic measures including a carbon budget and long-term reduction targets provide cornerstones for post-Brexit environmental priorities. Provided Brexiteering climate deniers do not assume more power in the UK government, it is most likely that the UK will remain in the EU ETS.

Grounded in international obligations under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol,⁶⁸ the UK has progressively reduced their domestic basket of greenhouse gas (GHG) emissions, in 2015 totaling 495.7 million tonnes carbon dioxide equivalent (MtCO₂e) and representing a 38% reduction below the 1990 baseline.⁶⁹ The 2015 Paris Agreement, which entered into force in under a year following the 21st Meeting of the Conference of the Parties of the UNFCCC (COP 21) and includes intended national determined contributions (INDCs) submitted from 162 jurisdictions covering 190 Parties,⁷⁰ establishes a global goal to reduce global temperature rise to “well below 2 °C.”⁷¹ EU Member States collectively submitted an INDC committing to a minimum reduction of GHG emissions to 40% below 1990 levels by 2030.⁷² Climate adaptation and mitigation measures in the EU are guided by the EU Strategy which aims to promote Member State action, better informed decision-making, and adaptation in vulnerable sectors.⁷³ Eight core actions underpin the EU Strategy including: (i) encouraging the development of domestic adaptation strategies, (ii) providing funding for adaptation action, (iii) localizing climate actions through the Covenant of Mayors framework, (iv) overcoming knowledge gaps, (v) further development of web resources (“Climate-ADAPT”), (vi) adapting common policies relating to agriculture and fisheries to climate pressures, (vii) prioritizing climate resilient infrastructure, and (viii) promoting insurance and financial products which foster climate resilient investment and business decisions.⁷⁴ The House of Lords Committee rightly expressed the concern that with growing global competition, the level of ambition concerning climate change might be lowered or worse, some of the most integrated climate policies with the EU repealed. The UK would probably have to submit her own NDC post-Brexit under the Paris Agreement, and orientate action in accordance with the Marrakech Action Proclamation agreed at COP 22.⁷⁵ The ratification of the Paris Agreement by the UK provides prospects for hope. Such submission could be the first litmus test as to the international environmental credibility of post-Brexit Britain.

A pillar of the EU climate change framework, Directive 2003/87/EC, establishes a scheme for greenhouse gas emission allowance trading providing a market-based mechanism to positively incentivize decarbonization efforts.⁷⁶ The EU ETS covers CO₂, nitrous oxide (N₂O), and perfluorocarbons (PFCs), and includes: power generation, energy intensive sectors – such as oil refineries, production of various metals, cement, glass, pulp and paper, cardboard, acids and bulk organic chemicals – and commercial aviation originating and arriving within the European Economic Area (EEA).⁷⁷ Carbon allowances are provided by auction annually under a single EU-wide target, with a total of 2,084 MtCO₂e available for fixed installations over Phase III (2013–2020) and caps decreasing 1.74% annually.⁷⁸ An additional 210 MtCO₂e are provided for the aviation sector.⁷⁹ Article 6 of the Paris Agreement recognizes the importance of carbon markets, with the EU ETS exploring steps to link with other carbon markets within the EEA (Switzerland) and internationally (Korea, Canada, California, China). The globalization of emissions trading increases the total percentage

68 United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, 31 ILM 849 (entered into force 21 March 1994) [UNFCCC]; *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 11 December 1997, 2303 UNTS 148, 37 ILM 22 (1998) (entered into force 16 February 2005), [Kyoto Protocol].

69 Department for Business, Energy and Industrial Strategy, 2015 UK Greenhouse Gas Emission, Final Figures: Statistical Release: National Statistics (7 February 2017), (National Archives, Government of UK), at 8, online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589825/2015_Final_Emissions_statistics.pdf [UK Statistics 2017]; The Kyoto Protocol provides for a basket of GHGs: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and nitrogen trifluoride.

70 *Paris Agreement to the United Nations Framework Convention on Climate Change*, 12 December 2015, Decision CP.21, FCCC/CP/2015/L.9, UNTS No. 54113 (entered into force 4 November 2016), [Paris Agreement].

71 *Ibid*, Paris Agreement, Article 2(1).

72 EU, “Intended Nationally Determined Contribution of the EU and its Member States” (6 March 2015), online: <http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Latvia/1/LV-03-06-EU%20INDC.pdf>.

73 EU, An EU Strategy on adaptation to climate change, COM(2013) 216 final (16.4.2013), at 5-9, online: <http://ec.europa.eu/transparency/regdoc/rep/1/2013/EN/1-2013-216-EN-F1-1.Pdf>, [EU Climate Change Strategy].

74 *Ibid*.

75 UNFCCC, “Marrakech Action Proclamation for Our Climate and Sustainable Development” COP 22, online: http://unfccc.int/files/meetings/marrakech_nov_2016/application/pdf/marrakech_action_proclamation.pdf.

76 EU ETS Directive, *supra* note 54, *Preamble*.

77 *Ibid*, EU ETS Directive, Annex I-III.

78 *Ibid*, EU ETS Directive, Article 10; EU, “Factsheet: The EU Emissions Trading System (EU ETS),” (September 2016), online: https://ec.europa.eu/clima/sites/clima/files/factsheet_ets_en.pdf; EU, “Emissions cap and allowances,” online: https://ec.europa.eu/clima/policies/ets/cap_en; UK, *The Carbon Budgets Order 2009* No 1259, Article 2, online: http://www.legislation.gov.uk/ukSI/2009/1259/pdfs/ukSI_20091259_en.pdf.

79 *Ibid*, Emissions cap and allowances.

of global GDP generated under ETS compliant jurisdictions. For example, the EU Parliament in recent weeks endorsed the expansion of the ETS to shipping and the UK government has been very critical of this move, potentially calling into question its continued participation in the system.

In 2008 the UK passed the *Climate Change Act* with the ambitious goal of reducing domestic GHG emissions 80% below the 1990 baseline levels.⁸⁰ The scheme, which covers all six Kyoto GHGs,⁸¹ establishes a carbon budget for each phase 2008–2012, 2013–2017, and 2018–22 which began at 26% below 1990 levels.⁸² Calculation of the carbon budget comes from emission allowances under the EU ETS, emissions not covered by the EU ETS (non-traded GHGs), and emissions credits from other jurisdictions, with the current carbon budget sitting at 2,782 MtCO₂e and moving to 1,725 MtCO₂e for the fifth phase (2028–2032).⁸³ Over half of the emissions in the UK come from two sectors, energy supply (29%) and transportation (24%).⁸⁴ Sustainability focused legislative frameworks from the EU in land use, waste management, and incorporation of renewable energy sources have supported continued GHG emission reductions in those sectors in the UK.⁸⁵ During this time the UK economy has shown continued resilience despite global economic slow-downs in parallel with expanding climate legislation. Over the period of 2008–2016, UK GDP has steadily grown annually an average of 0.18%, and demonstrating the second largest per capita income in comparison to population size within the EU.⁸⁶

VI. Brexit and the Road Ahead

Global efforts to combat anthropogenic climate change achieved a crucial milestone at COP 21 not simply with the

2°C goal and rapid entry into force of the Paris Agreement, but through the establishment of the “Breakthrough Energy Coalition” a project spearheaded by Bill Gates to mobilize investment in clean energy technologies.⁸⁷ Apart from a promising trend in green business, it marks a watershed moment where leaders of commanding heights enterprises recognized the strategic imperative of climate change adaptation on a global stage. The 2017 report “Better Business Better World” published by the Business and Sustainable Development Commission identifies the UN Sustainable Development Goals (SDGs) as providing a transformative framework for business to foster sustainable development imperatives in our current and evolving economic system.⁸⁸ It is hoped that continued climate-conscious leadership, internationally and nationally, could be an imperative for the UK to foster economic growth and innovation through their first-mover advantage in GHG reductions. Brexit makes this kind of leadership more, not less difficult.

International capital markets have also begun to respond to climate-related risk exposure. In December 2016 the Task Force on Climate-related Financial Disclosures – a 32-member Task Force established by G20 Finance Ministers and Central Bank Governors under the Financial Stability Board and chaired by Michael Bloomberg – put forward guidelines, binding on large assets owners (banks, insurance companies and asset managers/owner), recommending publication of climate-related financial disclosure in public filings.⁸⁹ Coincidentally, in February 2017 Deutsche Bank announced it would halt all financing to coal-fired power plant construction as part of their commitments under the Paris Agreement, and building on a 2014 step to pull financing from a proposed coal port which had impacts on the Great Barrier Reef.⁹⁰ This move mirrors an increasing trend in investment funds to divest fossil fuel intensive assets, with Arabella Ad-

80 UK, *Climate Change Act 2008*, c.27, Section 1, online: http://www.legislation.gov.uk/ukpga/2008/27/pdfs/ukpga_20080027_en.pdf, [Climate Change Act].

81 *Ibid*, *Climate Change Act*, Section 24.

82 *Ibid*, *Climate Change Act*, Section 4-5.

83 UK Statistics 2017, *supra* note 68, at 9-10.

84 *Ibid*, UK Statistics 2017, at 19-24.

85 *Ibid*, UK Statistics 2017, at 5, 19, 30, 36.

86 Office for National Statistics, “Gross Domestic Product: chained volume measures: Seasonally adjusted £m (1955–2016)” (Dataset: Second Estimate of GDP time series dataset, 2017), online: <https://www.ons.gov.uk/economy/grossdomesticproductgdp/timeseries/abmi/pn2>; Office for National Statistics, “UK Perspectives 2016: The UK in a European context” (26 May 2016), online: <http://visual.ons.gov.uk/uk-perspectives-2016-the-uk-in-an-european-context/>. Office for National Statistics, “Second estimate of GDP: Quarter 4 (Oct to Dec) 2016” Statistical Bulletin, (22 February 2017), online: <https://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/secondestimateofgdp/quarter4octodec2016>.

87 Breakthrough Energy, “Coalition, Who we are,” online: <http://www.b-t.energy/coalition/>; David Goldman, “The 30 rich and powerful people

Bill Gates signed on to save the Earth” CNN (30 November 2015), online: <http://money.cnn.com/2015/11/30/technology/bill-gates-climate-change/>.

88 Business and Sustainable Development Commission, “Better Business Better World” (London: Business and Sustainable Development Commission, 2017), online: <http://report.businesscommission.org/uploads/BetterBiz-BetterWorld.pdf> [BSDC Report 2017]; UN, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/70/L.1, 18 September 2015, online: UN http://www.un.org/ga/search/view_doc.asp?symbol=A/70/L.1&Lang=E, [2030 Agenda, SDGs].

89 Task Force on Climate-related Financial Disclosures, “Recommendations of the Task Force on Climate-related Financial Disclosures” (14 December 2016), online: https://www.fsb-tcfd.org/wp-content/uploads/2016/12/16_1221_TCFD_Report_Letter.pdf, [Climate-related Financial Disclosures 2016, Carney- Bloomberg].

90 Agence France-Presse, “Deutsche Bank pulls out of coal projects to meet Paris climate pledge” *The Guardian* (1 February 2017), online: <https://www.theguardian.com/business/2017/feb/01/deutsche-bank-pulls-out-of-coal-projects-to-meet-paris-climate-pledge>; Australian Associated Press, “Germany’s biggest bank pulls funding for Abbot Point coal terminal” *The Guardian* (23 May 2014), online: <https://www.theguardian.com/environment/2014/may/23/germanys-biggest-bank-pulls-funding-for-abbot-point-coal-terminal>.

visors noting a committed divestment asset value of \$5.2tn in December of 2016.⁹¹ Prior to Brexit it was the Bank of England that issued the first comprehensive climate report, requesting that companies should disclose their climate exposure.⁹² It is doubtful if the Bank of England would still trail blaze with the same vigor post-Brexit.

While Brexit uncertainty remains, climate change policy imperatives transcend EU membership and should inform plausible legal reforms to maintain economic growth. International responses to climate change are reaching an inflection point of mutual supportiveness, with over 850 climate laws and policies identified at the national level.⁹³ This strong global commitment supports continued prioritization of lower-carbon policies, buttressed by appropriate legal and governance institutions to support innovation. Observers hope that climate change will remain a policy driver if not because it is an environmental imperative, but because to deviate from the global economic shift would leave open UK-based organizations to unfavorable exposure to otherwise avoidable climate-related risk. If the UK carbon bud-

get continues to inform and prioritize policy decisions post-Brexit, the UK can maintain international influence and drive a domestic environmental agenda prioritizing innovation in the green economy.

In many areas, the UK, either thorough the “Great Repeal Bill” or because of export pressure, will continue to be a participant (perhaps spectator) in EU environmental law. While domestic pressure will aim to de-regulate, exporters, traders, service providers and even the financial industry will try to keep environmental standards as close to the EU level as possible. While changes in the areas of agriculture and fisheries were sold to the electorate as the great prospect of Brexit, in February 2017 the UK government announced that it will continue to comply with EU fisheries policies and quotas for the foreseeable future,⁹⁴ prioritizing ensuring trade within the European market as a Brexit imperative.⁹⁵ As such it is fair to conclude that Brexit does not solve a single significant environmental problem but rather makes their solution more complicated.

91 Arabella Advisors, “The Global Fossil Fuel Divestment and Clean Energy Investment Movement” (December 2016), online: https://www.arabellaadvisors.com/wp-content/uploads/2016/12/Global_Divestment_Report_2016.pdf; Damian Carrington, “Fossil fuel divestment funds double to \$5tn in a year” *The Guardian* (12 December 2016), online: <https://www.theguardian.com/environment/2016/dec/12/fossil-fuel-divestment-funds-double-5tn-in-a-year>.

92 Bank of England, *The impact of climate change on the UK insurance sector – A Climate Change Adaptation Report by the Prudential Regulation Authority*, September 2015, online: <http://www.bankofengland.co.uk/prad/Documents/supervision/activities/pradefra0915.pdf>.

93 Michal Nachmany et al., “The 2015 Global Climate Legislation Study: A Review of Climate Change Legislation in 99 Countries” (Grantham Research Institute on Climate Change and the Environment, 2015), on-

line: https://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2015/05/Global_climate_legislation_study_20151.pdf; Global Climate Legislation Study, “The Global Climate Legislation Database,” online: <https://www.lse.ac.uk/GranthamInstitute/legislation/the-global-climate-legislation-database/>.

94 Daniel Boffey, “UK fishermen may not win waters back after Brexit, EU memo reveals”, *The Guardian* (15 February 2017), online: <https://www.theguardian.com/environment/2017/feb/15/uk-fishermen-may-not-win-waters-back-after-brexit-eu-memo-reveals>.

95 Government of the UK, “The United Kingdom’s exit from and new partnership with the European Union (February 2017), at para 35-40, online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf.