

A Green Brexit? Post-Brexit EU-UK cooperation in the fight against environmental crime

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In July 2017, the then-Secretary of State for Department for Environment, Food and Rural Affairs, Michael Gove, made the promise of “delivering a Green Brexit”.¹ This declared ambition was mostly a reaction to the growing fear among British society that Brexit would lead to some deregulation detrimental to the environment due to the United Kingdom (“UK”) leaving the European Union (“EU”) and its high environmental standards.² While concerns were mostly expressed regarding the future of environmental issues in relation with agriculture, fisheries, food or industry, they also emerged in respect with the fight against environmental crime.

In its most restrictive and *a minima* definition,³ environmental crime covers any illegal activity that directly and seriously harms the environment such as waste crime (e.g. illegal trade in hazardous waste), wildlife crime (e.g. illegal wildlife trade), illegal resource extraction (e.g. illegal logging, mining, fishing) etc. Growing political attention is being paid to this form of crime at national and international level, including at the EU one.⁴ Diverse EU legislative and operational tools at the crossroads of environmental policies and Justice and Home Affairs (JHA) have thus been developed over time to ensure that member states are effectively protecting the environment through criminal investigations and prosecutions.

Following Brexit some questioned whether the UK would maintain a strong alignment with the existing EU legislation and preserve its operational commitment with its European counterparts in the fight against environmental crime. The “Green Brexit” promise made by UK government could have let one assume that the UK-EU cooperation on that issue would only be marginally impacted by the withdrawal from the EU. This expectation was reinforced by the political messages sent by the government that Brexit would not affect internal security, as exemplified by the successive British ‘opt-ins’ in EU judicial and police cooperation tools after the 2016 referendum and the parallel attempt of British negotiators to preserve the status quo regarding the use and access to EU instruments, agencies and databases.⁵ Such cooperation appears even more valuable for the fight against environmental crime, predominantly framed as a

¹ ‘The Unfrozen Moment – Delivering a Green Brexit’, Michael Gove, Speech at WWF Living Planet Centre Working, 21 July 2017 (available at: <https://www.gov.uk/government/speeches/the-unfrozen-moment-delivering-a-green-brexit>).

² For instance, ‘A Manifesto for a Greener UK’, Greener UK, February 2017 (available at: https://greeneruk.org/sites/default/files/download/2018-07/Greener_UK_Manifesto.pdf).

³ For a more in-depth analysis of the debates about the definition of environmental crime see for example White, R (2013) *Crimes against Nature. Environmental Criminology and Ecological Justice* (Abingdon; New York, Routledge); Vagliasindi, GM (2019) ‘Legal Perspectives on Environmental Crime: The Transnational Dimension of Environmental Crime’ in A Moiseienko, S Hufnagel, V Mitsilegas (eds.), *Research Handbook on Transnational Crime* (Cheltenham; Northampton, Edward Elgar Publishing).

⁴ Cardwell, PJ, French, D, Hall, M (2011) ‘Tackling Environmental Crime in the European Union: The Case of the Missing Victim?’ 23 *Environmental Law and Management*, 113-21.

⁵ Wolff, S, Piquet, A and Carrapico, H (2022) ‘UK’s Withdrawal from Justice and Home Affairs: A Historical Institutional Analysis of Policy Trajectories’ 20 *Comparative European Politics*, 604–625.

transnational offence in its causes and consequences and as only efficiently dealt with through international exchanges of data and joint operations.⁶

However, at the same time, Brexit negotiations have led to some unprecedented politicization of environmental issues: there has been considerable uncertainty regarding the future of the EU acquis in UK legislation,⁷ and the UK is now a third country whose engagement in EU JHA has been reduced, as stipulated in Part 3 of the Trade and Cooperation Agreement (“TCA”).⁸ Therefore, this chapter investigates the extent to which Brexit has impacted UK-EU cooperation in the fight against environmental crime despite the political statements about the continuity of previous coordination mechanisms and policies. This contribution is structured as follows. It starts by introducing the EU legislative and operational framework and the pre-Brexit participation of the UK in it. The second section highlights how, echoing the strong concerns from civil society, UK officials attempted to maintain their presence in the existing EU arrangements and venues to preserve their cooperation with the EU and its member states. Finally, this chapter tackles the limitations and difficulties the UK-EU collaboration could face and pays attention to three main challenges for the future relationship.

Environmental crime, the EU and the UK

While acts that directly and seriously harm the environment are not new, they have only been defined as criminal offences by domestic and international laws a few decades ago. In comparison, while the EU has been very active in the protection of the environment since the 1970s, it appears as a late comer in the field of environmental crime in comparison with other international organisations, such as the United Nations or the Council of Europe.⁹

The latter adopted in 1998 a Convention on the protection of the environment through criminal law. Though innovative, as its objective was to criminalise acts causing or likely to cause environmental damages, the Convention never entered into force due to the insufficient number of national ratifications. Yet, the discussions and intergovernmental negotiations created ‘greater political momentum for the proposal of a supranational criminal law instrument to counter environmental harm’.¹⁰ With the 1999 Erika oil spill, the political context became even more favorable for the European Commission to initiate legislative developments in that field. Reacting to this major environmental disaster with more than 400 kilometers of French coastline being polluted by the wreckage of an oil tanker, the European Commission proposed in 2001 a Directive on the protection of the environment through criminal law.¹¹ Although that text was abandoned due to unprecedented institutional struggles with the Council on the appropriate legal basis¹², a similar Directive was nonetheless adopted in 2008. This 2008 Directive has

⁶ Spapens, T, White, R, Huisman, W (2016) *Environmental Crime in Transnational Context: Global Issues in Green Enforcement and Criminology* (Abingdon; New York, Routledge).

⁷ Burns, C, Carter, C (2018) ‘Brexit and UK Environmental Policy and Politics’ 23 *Revue Française de Civilisation Britannique* (Online) ; Burns, C, Gravey, V, Jordan, AJ, Zito, A (2019) ‘De-Europeanising or Disengaging? EU Environmental Policy and Brexit’ 28 *Environmental Politics*, 271–292.

⁸ Wolff, S, Piquet, A and Carrapico, H (2022) ‘UK’s Withdrawal from Justice and Home Affairs’.

⁹ For a historical perspective, see Faure, MG (2016) ‘A Paradigm Shift in Environmental Criminal Law’ in R Sollund, CH Stefes Christoph, AR Germani (eds.), *Fighting Environmental Crime in Europe. The Role of the EU and its Member States* (London, Palgrave Macmillan).

¹⁰ Perilongo, GF, Corn, E (2017) ‘The Ecocrime Directive and Its Translation into Legal Practice: EU Green Offences and Their Impact at National Level According to the Results of a Recent Survey’ 8 *New Journal of European Criminal Law*, 244–245.

¹¹ Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law [2001] OJ C180E/20.

¹² Herlin-Karnell E (2007) ‘Commission v. Council: Some Reflections on Criminal Law in the First Pillar’ 13 *European Public Law*, 47–67.

become the EU main law in the fight against environmental crime.¹³ The text aims to protect the environment by obliging member states to approach specific breaches to EU environmental legislation through criminal law, i.e. to ensure that these unlawful activities are criminal offences and that individuals perpetrating them are sanctioned by ‘effective, proportionate and dissuasive criminal penalties’.¹⁴ Even though the EU was not competent at that time to determine the type and the level of sanctions, the Directive still sought to approximate national criminal laws by setting minimum standards of environmental protection.

The EU acquis in that domain also includes the transposition of many major international texts, such as Regulation 3626/82 implementing the 1973 Convention on international trade in endangered species of wild fauna and flora (CITES);¹⁵ Directive 2005/35 integrating the international standards set by the 1973 Convention on the prevention of pollution from ships (MARPOL);¹⁶ or Regulation 1013/2006 implementing the 1989 Convention on the control of transboundary movements of hazardous wastes and their disposal (Basel Convention)¹⁷.

Besides these legislative instruments, it is also worth paying attention to the diversity of ‘soft law’ tools developed by the European Commission over time to support the fight against environmental crime. One of them is the 2016 EU Action Plan against wildlife trafficking with 32 measures to be jointly implemented by EU institutions and agencies and the member states between 2016 and 2020.¹⁸ These 32 measures covered three main objectives: the prevention of wildlife trafficking, the enforcement of existing legislation and the establishment of a more global approach by further engaging with source, transit and consumer countries. The European Commission has also funded various initiatives to improve the existing knowledge on environmental crime, to assess national and EU policies and activities, to facilitate the encounters between practitioners, to provide recommendations (e.g. the ‘European Union Action to Fight Environmental Crime’ (EFFACE) or the so-called AMBITUS project). The financial support of the European Commission to the creation and maintenance of EU-TWIX is of specific interest to illustrate the range of EU activities. Indeed, this database has been developed by Belgian Federal Police and the NGO TRAFFIC to boost the fight against illegal wildlife trade in Europe by facilitating cooperation and exchange of information.¹⁹

Furthermore, the EU is funding collaborative initiatives such as the Network for the Implementation and Enforcement of Environmental Law (IMPEL) which started its activities in 1992, the Environmental Crime Network (EnviCrimeNet) set up in 2011, the EU Forum of Judges for the Environment (EUFJE), and the European Network of Prosecutors for the Environment (ENPE),

¹³ Directive 2008/99/EC of the European Parliament and of the Council on the protection of the environment through criminal law [2008] OJ L 328/28.

¹⁴ For a detailed analysis of the text, see Faure, MG (2011) ‘The Environmental Crime Directive 2008/99/EC’ 1 *European Journal of Consumer Law*, 193-208.

¹⁵ Regulation (EEC) of the Council 3626/82 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora [1982] OJ L384/1. It was then replaced by Regulation (EEC) 338/97 of the Council on the protection of species of wild fauna and flora by regulating trade [1997] OJ L61/1.

¹⁶ Directive 2005/35/EC of the European Parliament and of the Council on ship-source pollution and on the introduction of penalties for infringements [2005] OJ L255/11.

¹⁷ Regulation (EC) 1013/2006 of the European Parliament and of the Council on shipments of waste [2006] OJ L190/1, then amended by Regulation (EC) 660/2014 of the European Parliament and of the Council amending Regulation (EC) 1013/2006 on shipments of waste [2014] OJ L189/135.

¹⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘EU Action Plan Against Wildlife Trafficking’ COM(2016) 87 final, 26 February 2016.

¹⁹ Sacré, V (2016) ‘EU-TWIX: Ten years of Information Exchange and Cooperation between Wildlife Law Enforcement Officials in Europe’ in LM Elliott, WH Schaedla (eds.) *Handbook of Transnational Environmental Crime* (Cheltenham, Edward Elgar Publishing).

both created in 2012. By respectively gathering regulators, law enforcement officers, judges or prosecutors, these networks aim to boost the exchange of information, experience and best practices in order to offer a common and better understanding of environmental crime and of how to effectively fight it, including at EU level.²⁰

Interestingly, relevant EU agencies have also been participating in these initiatives.²¹ Both Europol and Eurojust are competent to deal with environmental crime, as made explicit by their respective Regulations.²² Over the last decade, the two agencies have increased their internal capacity and expanded their operations in this field, especially after environmental offences became a priority of the 2018-2021 and 2022-2025 EU multiannual cycles to tackle organised crime.

Within Europol, contrary to what exists for counterfeit crime, drug trafficking or migrant smuggling for instance, there is no specific unit dedicated to the fight against serious damages to the environment for the moment. Yet, some officials are specialized in that topic, particularly within the Europol Analysis Project EnviCrime set up in 2017, and already in 2013 environmental offences had been identified by the agency as one the ‘emerging threats, which require intensified monitoring’.²³ Consequently, for more than 10 years now, Europol has produced analytical reports and sent early warning notifications to national authorities on this subject. It also set up specific communities on that very topic within the Europol Platform for Experts to disseminate knowledge on environmental crime and inform about how to fight it effectively. This EU agency also provides support to transnational and international investigations on wildlife crime, waste trafficking, marine pollution etc. through the coordination of the national seizures and exchanges, operational and strategic analysis, technical expertise, the deployment of experts on-the-spot.²⁴ Furthermore, Europol facilitates the work undertaken by national authorities by liaising with a diversity of partners, including international organisations (e.g. Interpol) and non-profit ones (e.g. TRAFFIC, Wildlife Justice Commission). It is also collaborating with the EU networks mentioned above. For instance, Europol hosts the Secretariat of EnviCrimeNet, and together Europol and EnviCrimeNet have launched the Intelligence Project on Environmental Crime (IPEC) in 2014 to improve the knowledge on both green crime and green policing.

Similarly to Europol, Eurojust has acquired over time a degree of specialisation in environmental crime, and the contact point set up on that issue in 2014 has become a subgroup within Eurojust’s College. This institutional change reflects the growing prioritisation of serious damages to the environment within the agency since 2013, in reaction to the report produced that same year by Europol, and then in accordance with the EU multiannual cycles. That

²⁰ Smith, L, Klaas, K (2015) ‘Networks and NGOs Relevant to Fighting Environmental Crime’, Study in the framework of the Efface research project, Berlin: Ecologic Institute (available at: https://efface.eu/sites/default/files/2.EFFACE_Networks%20and%20NGOs%20Relevant%20to%20Fighting%20Environmental%20Crime/index.pdf).

²¹ Mitsilegas, V, Giuffrida, F (2017) ‘The Role of EU Agencies in Fighting Transnational Environmental Crime. New Challenges for Eurojust and Europol’ 1 *Brill Research Perspectives in Transnational Crime*, 1-150.

²² Regulation (EU) 2016/794 of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA [2016] OJ L 135/53 and Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA [2018] OJ L 295/138.

²³ Europol (2013) ‘Threat Assessment 2013. Environmental Crime in the EU’ (available at: https://www.europol.europa.eu/cms/sites/default/files/documents/4aenvironmental_crime_threatassessment_2013_-_public_version.pdf).

²⁴ For further information see: <https://www.europol.europa.eu/crime-areas-and-statistics/crime-areas/environmental-crime>.

specialisation has not gone unnoticed by national authorities which have intensively used Eurojust to facilitate coordination meetings and to support joint investigation teams. Over the past years, Eurojust staff has therefore provided legal advice, solved conflicts of jurisdiction, ensured the exchange of information and evidence, and helped national judicial authorities to coordinate their activities in many cases.²⁵ In February 2023 the EU agency has for instance helped Italian and Germany authorities in setting up and funding a joint investigation team and coordinated a joint action leading to the arrest of 14 suspects of illicit waste trafficking and 40 searches²⁶. Eurojust is also liaising with many different actors, including other EU agencies (Europol is often involved in Eurojust's cases) and EU networks, such as ENPE and IMPEL with whom it has, for instance, organised joint conferences.

As a member of the EU, the UK had to comply with EU environmental requirements regarding environmental protection, and its domestic legislation has hence been intensively influenced by it. Directive 2008/99/EC is an interesting case study in that respect. As most of the environmental offences that member states were required to criminalise were already legislated for in the UK before the Directive was adopted at EU level, no new national law resulted from this text, leading some scholars to analyse this process as an 'informal transposition'²⁷ through 'very scattered pieces of legislation'.²⁸

In addition, even though broadly speaking environmental crime was not among the top priorities of the UK government nor of its law enforcement agencies²⁹, the country still acted as a driving force on some specific issues, particularly wildlife trafficking. For instance, it organised in 2014 a high-level international conference in illegal wildlife trade that led to the London Declaration with the proclaimed goal to end wildlife trafficking. It also funded various initiatives in that respect, including the EU-TWIX database, and attempted to strengthen EU action in that domain, suggesting for instance that the 2016 EU Action Plan on wildlife trafficking include provisions on the full and effective implementation of the CITES.³⁰ British officials also engaged in cooperation with their European counterparts. They participated in different EU instruments, such as IMPEL, ENPE, or EUFJE, which the UK was a founding member of.³¹ They also took an active part in a few Europol operations related to environmental offences,

²⁵ Eurojust (2021) 'Report on Eurojust's Casework on Environmental Crime' (available at: https://www.eurojust.europa.eu/sites/default/files/assets/report_environmental_crime.pdf).

²⁶ 'Crackdown on a criminal network dealing with waste trafficking and money laundering', Eurojust, 16 February 2023 (available at: <https://www.eurojust.europa.eu/news/crackdown-criminal-network-dealing-waste-trafficking-and-money-laundering>).

²⁷ Lennan, M (2021) 'Evaluating the Effectiveness of the EU Environmental Liability and Environmental Crime Directives as Implemented by Scotland and the Rest of the United Kingdom' 24 *Journal of International Wildlife Law & Policy*, 32. See also Pereira, R (2020) 'The Development of Environmental Criminal Law Enforcement in the European Union: From Institutional Fragmentation to European Environmental Criminal Justice Governance' in R Pereira, A Engel, S Miettinen (eds.) *The Governance of Criminal Justice in the European Union* (Cheltenham, Edward Elgar Publishing), 205.

²⁸ Fasoli, E (2017) 'Environmental Criminal Law in the United Kingdom' in A Farmer, M Faure, GM Vagliasindi, (eds.) *Environmental Crime in Europe* (Oxford, Portland: Hart Publishing), 243-264.

²⁹ Mitsilegas, V, Fitzmaurice, M, Fasoli, E (2015) 'Fighting Environmental Crime in the UK: A Country Report', Study in the framework of the EFFACE research project, London: Queen Mary University of London (available at: https://efface.eu/sites/default/files/EFFACE_Fighting%20Environmental%20Crime%20in%20the%20UK/index.pdf).

³⁰ Ilhes, A (2016) 'Wildlife Crime in the United Kingdom', In-depth Analysis for the ENVI Committee of the European Parliament, Report PE 578.963 (available at: [https://www.europarl.europa.eu/Reg-DATA/etudes/IDAN/2016/578963/IPOL_IDA\(2016\)578963_EN.pdf](https://www.europarl.europa.eu/Reg-DATA/etudes/IDAN/2016/578963/IPOL_IDA(2016)578963_EN.pdf)).

³¹ However, while the UK was not participating to EnviCrimeNet, it still contributed to some of its activities, for instance its joint project with Europol, IPEC (https://www.europol.europa.eu/cms/sites/default/files/documents/ipec_report_on_environmental_crime_in_europe_0.pdf).

particularly once again on wildlife trafficking³² and animal abuse³³, and referred at least one environmental crime case to Eurojust.³⁴ Taking into account these past developments during the UK's membership, the withdrawal from the EU appeared as a potential turning point for the future of the UK's environmental protection and its cooperation with EU member states and agencies.

Brexit, green opportunity or green threat?

The environment, just like JHA, was not particularly debated nor had any determining issues in the 2016 referendum, especially in comparison with the economy or migration. Nonetheless, both became more prominent during the Brexit process.

UK environmental policies have been deeply shaped by the period that witnessed the UK's transition from the 'Dirty Man of Europe', in the 1970s, to a leading country on some green dossiers.³⁵ Consequently, voices emerged, especially from civil society and NGOs, about the risk of weaker environmental standards now that the UK was able to diverge from EU norms, especially in reaction to the strong politicisation of EU 'red tape' and the attacks against EU environmental norms based on Eurosceptic and anti-environment narratives. In that respect, for example, 13 environmental organisations (including WWF, Greenpeace, ClientEarth) launched in 2017 a manifesto for a 'Greener UK', asking inter alia the government to maintain the benefits of existing EU environmental legislation.³⁶

These concerns were extended to the topic of environmental crime where they were coupled with and amplified by the voices of practitioners worried about losing access to EU tools, agencies and databases and their detrimental effect on law enforcement and criminal justice.³⁷ On that specific topic, a number of individual and collective actors publicly anticipated potential post-Brexit deregulation, and based on previous attempts to decriminalise low-level environmental offences³⁸, pushed the UK government to preserve its alignment with the EU and to keep cooperating with it.³⁹

The government aimed to appease these concerns with the promise of a 'Green Brexit'. Indeed, Brexiteers were keen to introduce Brexit as an unprecedented opportunity, a 'once-in-a-

³² See for instance '3.4 tonnes of seized glass eels reintroduced into their natural habitat', Europol, 22 June 2018 (available at: <https://www.europol.europa.eu/media-press/newsroom/news/34-tonnes-of-seized-glass-eels-reintroduced-their-natural-habitat>) or 'EU law enforcement step up efforts to protect the environment – 48 arrested for trafficking endangered species', Europol, 23 June 2017 (available at: <https://www.europol.europa.eu/media-press/newsroom/news/eu-law-enforcement-step-efforts-to-protect-environment—48-arrested-for-trafficking-endangered-species>).

³³ 'Police dismantle crime group trading horsemeat unfit for human consumption', Europol, 16 July 2017 (available at: <https://www.europol.europa.eu/media-press/newsroom/news/police-dismantle-crime-group-trading-horsemeat-unfit-for-human-consumption>).

³⁴ Eurojust (2021) 'Report on Eurojust's Casework on Environmental Crime' (available at: https://www.eurojust.europa.eu/sites/default/files/assets/report_environmental_crime.pdf).

³⁵ Burns, C, Carter, C (2018) 'Brexit and UK Environmental Policy and Politics'.

³⁶ 'A Manifesto for a Greener UK', Greener UK, February 2017 (available on: https://greeneruk.org/sites/default/files/download/2018-07/Greener_UK_Manifesto.pdf).

³⁷ Wolff, S, Piquet, A and Carrapico, H (2022) 'UK's Withdrawal from Justice and Home Affairs'.

³⁸ Pereira, R (2020) 'The Development of Environmental Criminal Law Enforcement in the European Union'.

³⁹ For example, 'Brexit: Getting the Best Deal for Animals', Wildlife and Countryside Link and the UK Centre for Animal Law, January 2018 (https://www.wcl.org.uk/docs/Link_A-Law_Brexit_Animal_Welfare_160118.compressed.pdf).

lifetime-change'⁴⁰, to achieve higher environmental standards that could not be reached within the EU. While retaining direct EU environmental legislation and EU-derived one in domestic law, the government published in 2018 a 25-year Environment Plan⁴¹ which included specific provisions on the political engagement to further prevent wildlife trade and waste crime.

At the same time, the government also tried to address public unease regarding internal security through the vision of a 'Secure Brexit' together with the 'Take back control' slogan that would enable the UK to control who and what enters and exits its national territory. To achieve this goal, the successive governments intended to maximise the UK's access to EU cooperation mechanisms and instruments. That option was discarded by EU negotiators as the UK refused to accept the jurisdiction of the Court of Justice of the European Union, and as it was no longer a member state of the EU.⁴² Nevertheless, the successive British opt-ins to EU instruments before the start of the transition period, then the Title V of the Withdrawal Agreement, and finally Part 3 of the TCA still enabled some cooperation and exchange of information between the UK and the EU, including through Europol and Eurojust. Though not the exact continuity of the previous situation, this arrangement still reflects the shared interests of the UK and the EU to fight crime together, including serious damages to the environment.

Indeed, since the departure from the EU, British officials have taken part in several operations coordinated and supported by Europol to fight environmental crime. They contributed to the successive annual LAKE Operations targeting glass eel trafficking between 2019 and 2023⁴³, and participated in coordinated seizures of illegal pesticides with 28 other European countries.⁴⁴ No specific data on Eurojust environmental crime cases involving the UK are publicly available. Nonetheless, the growing number of cases involving the EU agency and the high number of new cases, coordination meetings and joint investigation teams the UK has been participating in over the past years⁴⁵ allow us to assume that British authorities have been a party to several of them.

This seems even more plausible taking into account the continuation of British membership to several relevant EU instruments on that topic. While no longer a member of the EU, the UK is still participating in networks such as ENPE, EUFJE and IMPEL and contributing and funding the EU-TWIX database. Put together, this demonstrates a strong commitment from British authorities to keep exchanging and engaging with their European counterparts on a form of crime that is mainly framed as cross-border.

It should also be recalled that in addition to EU venues, British officials can also exchange data and cooperate with European authorities at the international level. This includes Interpol, the international police organisation, whose purpose is to connect police officers and to enable them to work together. Following the loss of its direct access to Europol's Information System or to the Schengen Information System (SIS II), the UK has identified Interpol's 24/7 databases as a

⁴⁰ 'A Green Future: Our 25 Year Plan to Improve the Environment', HM Government, 11 January 2018 (available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf).

⁴¹ Ibid.

⁴² Wolff, S, Piquet, A and Carrapico, H (2022) 'UK's Withdrawal from Justice and Home Affairs'.

⁴³ 'Law enforcement casts net over 256 eel smugglers', Europol, 29 June 2023 (available at: <https://www.europol.europa.eu/media-press/newsroom/news/law-enforcement-casts-net-over-256-eel-smugglers>).

⁴⁴ 'Operation Silver Axe strikes for the fourth time seizing over 550 tonnes of illegal pesticides', Europol, 18 June 2019 (available at: <https://www.europol.europa.eu/media-press/newsroom/news/operation-silver-axe-strikes-for-fourth-time-seizing-over-550-tonnes-of-illegal-pesticides>).

⁴⁵ <https://www.eurojust.europa.eu/united-kingdom>.

relevant alternative venue to mitigate the post-Brexit situation.⁴⁶ The Interpol channel is of particular interest with regard to environmental crime as the organisation has acquired overtime a strong expertise on it and has developed new capacities, setting up working groups and dedicated committees already in the 1990s.⁴⁷ Interpol has also coordinated international investigations on that topic, the most important probably being the Thunder operations coordinated every year by Interpol and the World Customs Organisation as the global crackdowns to enforce the CITES. The annual Thunder investigations have involved EU member states and Europol, and the UK is still participating in these joint operations and even funding them, independently from its relations with the EU⁴⁸.

Consequently, Brexit could be interpreted as having a limited impact on UK-EU cooperation in the fight against environmental crime in accordance with the promises made by British decision-makers. Yet, a more nuanced picture is needed in order to fully capture the implications of the withdrawal from the EU on this specific topic.

Assessing the EU-UK post-Brexit cooperation

Beyond the apparent continuity, some potential changes in UK-EU cooperation can be anticipated due to three main factors.

The first one relates to the legal framework. The TCA and the retained environmental EU law limit for the time being the divergence between the UK and EU member states, including on the definition and approach to environmental crime. Yet, this situation could evolve in the coming years due to parallel legislative developments happening in the EU and in the UK.

On EU side, trilogues have started in 2023 between the European Parliament, the Council and the European Commission on a proposal for a Directive on the protection of the environment through criminal law replacing the 2008 Directive,⁴⁹ as part of the EU Green Deal Agenda. If adopted, the new directive could bring changes to what is covered by ‘environmental’ crime with new categories of offences added to the 9 preexisting ones by the European Commission (e.g. illegal timber trade, illegal ship recycling, or serious breaches of EU chemicals legislation). To that list, the European Parliament also suggested including ‘ecocide’ to cover the ‘severe and either widespread or long-term damage’ caused to the environment,⁵⁰ a crime that does not exist in UK legislation and is still currently debated at international level. Furthermore, in its proposal the European Commission attempted to add clarity in what constitutes an environmental offence and to that end offers to set up some qualitative and quantitative thresholds that did not exist in the 2008 Directive, which was copy-pasted in UK law. Finally, using the new prerogatives granted by the Lisbon treaty, the European Commission included new provisions on minimum prison time and fine levels to effectively dissuade these conducts and to ensure

⁴⁶ Beyond Brexit: Policing, Law Enforcement and Security’, House of Lords, European Union Committee, 26 March 2021, HL Paper 250 (available at: <https://publications.parliament.uk/pa/ld5801/ldselect/ldenucom/250/250.pdf>).

⁴⁷ Higgins, D, White, R (2016) ‘Collaboration at the Front Line: INTERPOL and NGOs in the Same NEST’ in G Pink, R White (eds.) *Environmental Crime and Collaborative State Intervention* (London, Palgrave Macmillan).

⁴⁸ Global crackdown on illegal wildlife and timber trade: INTERPOL and World Customs Organization join forces, 6 December 2022 (available at: <https://www.interpol.int/en/News-and-Events/News/2022/Global-crackdown-on-illegal-wildlife-and-timber-trade-INTERPOL-and-World-Customs-Organization-join-forces>).

⁴⁹ Proposal of the European Commission for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC, COM(2021) 851 final, 15 December 2021.

⁵⁰ Report of the European Parliament on the Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC, 28 March 2023.

approximation between national legislation, elements that do not appear in the ‘zombified’⁵¹ version of EU legislation retained in UK legislation.

An additional challenge is that the divergence with EU definitions, standards and norms could further increase in the future also due to a possible UK legislative evolution. While the initial decision to retain more than 1,000 EU environmental laws in domestic legislation was met with strong support from environmental groups and activists, recent discussions about the future of these rules and regulations reactivated fears about post-Brexit environmental deterioration. During the debates about the Retained EU Law (Revocation and Reform Bill), the commitment from the government to retain those direct EU norms and EU-derived rules necessary to fulfill parallel international obligations could be interpreted as meaning that the environmental acquis would remain untouched.⁵² This argument is strengthened by the final decision of the government in May 2023 to not remove any important component of the environmental legislation introduced by the EU.⁵³ Nevertheless, some environmental groups and activists, such as Wildlife and Countryside Link⁵⁴, ClientEarth⁵⁵ or GreenerUK⁵⁶, have expressed their concerns over possible future environmental deregulation based on past decisions of the government to cut the budget of environmental agencies and units (including the Department for Environment Food and Rural Affairs, National Parks and the National Wildlife Crime Unit of Metropolitan Police), as well as Governmental failures to comply with the 2021 Environmental Act and the limited ambitions set by this Bill⁵⁷. These signals have been interpreted as demonstrating political willingness to diverge from the EU acquis, probably on a longer term, which could hinder cooperation between UK and EU officials on issues such as the fight against environmental crime.

Indeed, while differences in terms of definitions and sanctions do not fully prevent international cooperation, they tend, however, to complicate any exchange of information, coordinative action or setting-up of joint investigations. As highlighted by Colantoni et al., ‘the absence of shared consensus on what constitutes an environmental crime, at least in the EU, is likely the greatest obstacle to the fight against such offenses [...] it prevents the alignment of enforcement strategies along common lines, the gathering of data and the establishment of standards – it is indeed rather complicated to consolidate information, if there is no mutual clarity among the sectors and players involved’.⁵⁸ The absence of a common definition also impacts operational cooperation, with for instance the use of advanced investigating techniques (e.g. wiretapping)

⁵¹ Gravey, V, Jordan, AJ (2023) ‘UK Environmental Policy and Brexit: Simultaneously de-Europeanising, Disengaging and (re)-Engaging?’, 30 *Journal of European Public Policy*, 2364.

⁵² ‘The Retained EU Law (Revocation and Reform Bill)’, Commentary ‘UK in a changing Europe’, Joelle Grogan, Catherine Barnard, 5 January 2023 (available at: <https://ukandeu.ac.uk/the-retained-eu-law-revocation-and-reform-bill/>).

⁵³ Caine, CA (2023) ‘Brexit and Environmental Law in England: Where Are We Now?’, *Journal of Energy & Natural Resources Law* (Online).

⁵⁴ ‘Maintain UK nature laws or risk losing our iconic wildlife: warning as key nature talks at COP15 approach second week’, Wildlife and Countryside Link, December 2022 (available at: <https://www.wcl.org.uk/maintain-uk-nature-laws-or-risk-losing-our-iconic-wildlife.asp>).

⁵⁵ ‘REUL Act creates uncertainty for UK environmental protections’, ClientEarth, 6 July 2023 (available at: <https://www.clientearth.org/latest/latest-updates/news/reul-act-creates-uncertainty-for-uk-environmental-protections/>).

⁵⁶ ‘Retained EU Law (Revocation and Reform) Bill Consideration of Commons amendments’, Greener UK, 20 June 2023 (available at: https://greeneruk.org/sites/default/files/download/2023-06/REUL_Bill_briefing_Lords_amendments_15_and_42.pdf).

⁵⁷ Gravey, V, Jordan, AJ (2023) ‘UK Environmental Policy and Brexit’.

⁵⁸ Colantoni, L, Sarno, GS, Bianchi, M (2022) ‘Fighting environmental crime in Europe. An assessment of trends, players and actions’, Istitute Affari Internazionali, Rome – AMBITUS (available at: https://www.iai.it/sites/default/files/ambitus_report.pdf), 19.

to fight environmental crime allowed in some countries and not in others, complicating joint operations and, at a later stage, national prosecutions.⁵⁹

Secondly, UK-EU cooperation in the fight against environmental crime could suffer as a result of the current post-Brexit arrangements in the field of police and judicial cooperation, especially regarding Europol and Eurojust. While the UK has concluded a working arrangement with Europol and has posted a liaison prosecutor at Eurojust (without having concluded a working arrangement with it yet), by becoming a third country it lost some of the privileges reserved to EU member states. As showed in section 2 of this chapter, the current provisions have not made cooperation between UK and EU officials impossible, and the United States are a very relevant example of how a third country can contribute and benefit from the activities of EU agencies. Nevertheless, while it will be harder for British officials to preserve their influence and their operational engagement and to maintain a similar access to the data collected by their EU counterparts, now that they have left the EU, this loss will not be fully mitigated by their participation in other venues.

On the one hand, the different European practitioner networks dedicated to environmental crime (IMPEL, EUFJE, ENPE) favour the sharing of information and experiences and facilitate the establishment of contacts and of trust that are key to most operational cooperation dimensions. These exchanges, however, remain strongly dependent upon individuals' willingness due to these venues' limited internal capacity. As a result, the exchange of operational data and the launch of joint investigations emerge as bi-products of these venues rather than as part of their primary goal.

On the other hand, the access of British officials to Interpol has not been impacted by Brexit and appeared as a relevant alternative venue for the Home Office to engage in multilateral cooperation with EU member states. This is why in addition to UK officials being now strongly pushed to enter their data in Interpol databases, the Home Office is also encouraging the authorities of EU member states to do the same in order for the UK to keep access to EU data in the name of shared interests. Yet, this requires police officers of EU member states to enter their data twice, once in EU databases and then in Interpol ones. Consequently, doubts have emerged as to the willingness and capacity of European law enforcement to duplicate efforts, as entering data has proven to be quite time-consuming for them and demands some familiarity with an additional information system, something already difficult to achieve with the Europol one.⁶⁰ Such uncertainty could hence affect to some extent the multilateral engagement of the UK with EU member states.

Thirdly, international cooperation to fight environmental crime is facilitated when a specialist unit or service exists and has staff who have acquired the required expertise and have access to enough financial and technical resources to deal mainly or exclusively with serious damages to the environment. Such specialization reflects the importance and priority granted to environmental crime at the political and organisational level, and is key to implementing international, regional and national legislation. This is because dealing with green crimes requires an extensive practical knowledge on the diversity of environmental offences and on their detection, given that they are often at the crossroads of licit and illicit economies, difficult to identify and to prove and require liaising with a multiplicity of interlocutors (environmental agencies, veterinary services etc.) Consequently, the existence of a service or unit devoted to this form of

⁵⁹ Colantoni, L, Bianchi, M (2020) 'Fighting environmental crime in Europe. Preliminary report', Istitute Affari Internazionali, Rome – AMBITUS (available at: https://www.iai.it/sites/default/files/ambitus_pr.pdf).

⁶⁰ Mitsilegas, V, Guild, E, (2023) Police and Criminal Justice Co-operation after Brexit, 30 *Journal of European Public Policy*, 2519-2539 ; Beyond Brexit: Policing, Law Enforcement and Security', House of Lords, European Union Committee.

crime puts together the resources required to tackle environmental crime and acts as the principal or unique action and contact point for external partners, including international ones.⁶¹

While no courts or tribunals are specialized on environmental offences in the UK and some wildlife liaison officers or crime officers exist in certain police forces in the UK (Scotland Police, West Yorkshire Police, Police Service of Northern Ireland etc.), the National Wildlife Crime Intelligence Unit was created in 2002 within the Metropolitan Police (which then became the National Wildlife Crime Unit) to coordinate enforcement activity, collect intelligence and produce analytical reports. Although this unique unit has limited human (less than 15 staff) and financial resources (less than £500,000 per year), its existence and funding were repeatedly put into question by the government in the recent years, and the lack of public funding had to be partly compensated by a NGO, the World Animal Protection.⁶² In addition to the role played by civil society, the survival of this specialized unit also relates to the pressure from the EU to maintain it.⁶³

Consequently, Brexit leaves open the question on the future of this specialized unit, a political situation that is rendered more complicated given the difficult economic context faced by the UK. This uncertainty also relates to the limited influence of EU soft power through recommendations, funding, and training, now that the UK has withdrawn from the EU. The closing down of this unit could be detrimental to any future environmental law enforcement specialisation and hamper cooperation with EU national authorities, whose officers are rather encouraged to enhance their skills and knowledge in this area. Indeed, such specialisation already exists in several EU member states (e.g. in Spain, Italy, France) and is strongly supported by EU institutions. For example, it was highlighted as good practice in the final report on the mutual evaluations on environmental crime led by the Council between 2016 and 2019.⁶⁴ Moreover, the European Commission included in its 2021 proposal for a revised Directive on environmental crime two articles (Articles 16 and 17) about ensuring that the relevant national competent authorities are trained, specialised and are granted the necessary human, financial, technical and technological resources to perform their activities by EU member states. In addition, Europol, Eurojust and the European Union Agency for Law Enforcement Training (CEPOL) also offer some training to national officials to support their specialisation and provide them with the expertise required to empower them, and to make them visible interlocutors for their European counterparts, two dimensions that could disappear with the winding down of environmental specialisation in the UK.

In conclusion, environmental crime was not one of the most salient issues during the referendum campaign, the negotiations of the Withdrawal Agreement, or the negotiations of TCA. Nonetheless, it is at the crossroads of two major concerns of citizens: the protection of the environment and that of internal security, with fears being expressed by civil society and practitioners about the future UK-EU arrangements and cooperation on that topic. The outcome of the negotiations gives, at first sight, some feeling of continuity, both from a legislative and

⁶¹ Farmer, A, Faure, M, Vagliasindi, GM (2017) *Environmental Crime in Europe* (Oxford, Portland: Hart Publishing); Colantoni, L, Sarno, GS, Bianchi, M (2022) 'Fighting environmental crime in Europe'.

⁶² Sollund RA, Maher J (2015) 'Illegal wildlife trade: A case study report on the illegal wildlife trade in the United Kingdom, Norway, Colombia and Brazil', Study in the framework of the Efface research project, Berlin: Ecologic Institute (available at: <http://efface.eu/illegal-wildlife-trade-case-study-report-illegal-wildlife-trade-united-kingdom-norway-colombia-and#overlay-context=case-studies>).

⁶³ 'Could Brexit be the best thing for Europe's wildlife?', Jules Howard, Opinion, The Guardian, 9 May 2016 (available at: <https://www.theguardian.com/commentisfree/2016/may/09/brexit-europe-wildlife-eu>).

⁶⁴ Final report of the Eighth round of mutual evaluations on environmental crime, Council of the EU, Document 14065/19, 15 November 2019.

operational perspective. This is because in addition to preserving the EU environmental acquis in domestic legislation, UK officials have been willing to maintain their past operational commitment within multilateral venues, notably within relevant EU agencies and professional networks, playing a key role in the fight against environmental crime. Nonetheless, current arrangements do not replicate exactly pre-Brexit instruments regarding data exchange and joint operations, and challenges could appear in the long run. This scenario will strongly depend on the priority granted to the preservation of the environment in the UK, to the political willingness to keep upgrading domestic legislation and dedicated structures, and to the capacity of the UK and the EU to avoid diverging from each other and hampering future cooperation.