



Summary of EPRG Workshop

6 September 2016

“Implications of Brexit for UK and EU Energy and Climate Policy”

Opening Keynote: Legal Issues and Brexit

The keynote by Professor Kenneth Armstrong, Professor of European Law at Cambridge, introduced some of the wider legal issues and implications of the Brexit vote that provided a framework for the seminar to branch off into a discussion of energy and climate change policies. Prof Armstrong highlighted the absence of any automaticity between the outcome of referendum and leaving the European Union and various legal challenges, as well as the compatibility of Brexit with other key commitments such as the Belfast agreement. He outlined the intersection between the EFTA and WTO regulations, and the various hard and soft options for Brexit. Questions of invoking Article 50 to trigger UK withdrawal from the European Union and the role of Parliament were discussed, though Prof Armstrong urged that there needs to be some assumption that Brexit will take place so that planning for Brexit can be carried out with some level of organisation. During his introduction, the “light leave” options were discussed using commonly-cited examples of the EEA model (Norway, Iceland, and Liechtenstein), the Swiss bilateralism model, and the Canada Free Trade Agreement. By contrast, the hard options of Brexit involve walking out of the EU without any prior agreement. Questions were raised as to the political elite versus the general public in favour of Brexit and how this contestation will shape decisions. Many of the ‘light leave’ options may be harder to sell to Leave voters due to the obligations to transfer funds to Brussels associated with the continued economic cooperation through the EEA, as well as free labour mobility.

The important part of this discussion touched on the legal normative convergence whereby the existing regulatory frameworks of the WTO, EFTA, among others, will influence the outcomes of Brexit. The closing point was made to underline that “leave” could not entirely mean “leave”, since the UK will still be involved in bilateral and multilateral relationships with the EU and its member states and the real question is how the UK and EU can begin to rethink these relationships. Having access to the single market and being part of the single market are not the same thing. Having access without membership meant accepting all its rules without any say in them as in the case of EEA states such as Norway. Being part of the single

market involved accepting and participating in regulatory oversight and enforcement arrangements. Leaving the single market means losing access to enforcement rights.

Session 1: Implications for the integrated electricity and gas markets

This panel discussed the future of the integrated electricity and gas markets in a post-Brexit world. Themes and questions running through this panel included the future of the EU internal energy market and governance in a multilateral versus a bilateral system, the future of any discussions regarding a fourth EU Energy Package, and the role that the UK could play in pan-European fora such as ENTSO-E/G and in ACER/CEER. Under current rules, non-member states could be full members of CEER and ENTSO-E and G, but only associate members of ACER. Given that ACER has had a limited but expanding role, this difference may become more important in the future. This discussion opened up with the governance issues that have arisen as the markets have become more integrated and the implications for further complication after Brexit. Participation in EFTA may not be “leave light” since it raises important questions regarding enforcement. Governance considerations were further reinforced by underlining that leaving the European single electricity market means that the UK loses its ability to influence wider energy policy. Lastly, the panel discussed the details of the current process and status of the governance of the European network codes. The UK’s levels of harmonisation and control over the procedures, codes and frameworks will need to be taken into consideration with Brexit, and how this relates to broader energy security in terms of regional cooperation, cross border trade and the overall attractiveness of Great Britain’s electricity markets. Many current code harmonisation processes would be completed by 2019 (when Brexit would have to be completed if Article 50 were to be triggered in early 2017), but some would still not have been fully implemented. Questions were raised on what is at stake in a ‘hard leave’ Brexit and the future of continental gas and electricity trading. The answers will depend on the default legal agreements at the border once they are formed. The panel concluded by raising the issue of British views versus European views and how the UK will need to be at the table and engaged if they want to have an impact on the outcome of continental energy policy.

Session 2: The implications for UK and EU Renewables & Emissions Policies

This panel addressed the future of the UK’s relationship with the EU ETS, the UK’s climate commitments, and Brexit’s impact on trade in renewables. Looking first at

the EU ETS, the panellists were overall optimistic that the UK would stay in the EU ETS although the possibility of linkages to other systems were also discussed. Overall, the economic argument is in favour of remaining in the EU ETS since the UK is already a net-buyer, so staying in the EU ETS would reduce its costs and UK participation thereby helps prop up current prices (indeed the price of EUAs has dropped since Brexit). Politically, there would be reputational risks for the UK to reduce its emissions targets at this point and the UK's own domestic commitments and legally binding obligations through the Climate Change Act were repeatedly highlighted. The future of burden sharing would already have been challenging and the political implications for the EU are not favourable if the UK leaves since there would be high transaction costs of needing to readjust EU-wide cap and EUA quantities.

Turning to renewables, Brexit's impact on renewables is tied to broader questions of free trade. As examples, panellists cited the recent EU-Singapore and EU-Vietnam free trade agreements with their chapters on renewables. It is likely that a similar chapter or section would need to be written into a post-Brexit trade deal between the EU and UK that provided sufficient detail on the provisions for trade in renewables. While strictly the UK would no longer need to comply with EU law, the UK is already a member of the Energy Charter Treaty. Any significant shifts in its support for low-carbon technologies following Brexit could lead to investor-state arbitration, as seen in the case of the nuclear phase-out in Germany (or Spanish renewable subsidies).

Questions raised in this panel included discussions of the strength of the EU ETS in the absence of UK participation and the regarding political interests of both the UK and the rest of the EU going forward. The EU clearly loses an actor that has been a leading voice in favour of the existing regulatory framework and London has been the main centre for all European carbon trading activities. The panel closed with a discussion of whether the UK had an incentive to remain a member of the EU ETS if it does not get any say in governance of the scheme. Participants observed that it would be technically possible for the UK to run its own emissions trading system and link it to an account (as any trader can at the moment) with the EU ETS (rather like a Central Bank trading in foreign currency). This would allow the UK to have different internal rules to the EU (e.g. more extensive coverage) while maintaining some connection with the EUETS. It was noted that Switzerland has its own parallel national ETS, whilst EEA countries participate directly in the EU scheme.

Session 3: Priorities in the forthcoming negotiations

This panel outlined priorities moving forward in negotiations and drew important parallels to the Swiss model, as raised by Prof Thomas Cottier, the former Executive Director of the World Trade Institute and others on the panel and in the audience. A significant theme raised across the panellists was the need for a multilateral agreement and continued implementation of the Single Electricity Market. Dirk Buschle raised the possibility of using the Energy Community, which had been conceived of as a way of engaging countries on the periphery in EU energy markets, as one possible mechanism for engaging with the UK. Bilateral or *ad hoc* agreements were unlikely to benefit the UK since other EU member states (or participants in the EEA) are bound by EU regulations. The case of Switzerland was used to illustrate the danger of being outside of the EU electricity market in terms of protectionism and discrimination. The EU had put a stop to further harmonisation of electricity trading rules with Switzerland as a result of the unwillingness of the Swiss to fully comply with free movement, as well as a reluctance to accept EU market surveillance and enforcement. While Switzerland is different from the UK since the UK is already a part of the EU and the Single Electricity Market and Switzerland is not, there are still risks of discrimination as arrangements shift going forward. The general tenor of many Swiss-EU talks have seen very little flexibility on the part of the EU and were essentially viewed as the EU employing a ‘take-it-or-leave-it’ strategy. On the other hand, the UK has already accepted the various energy packages and regulations, which the Swiss were reluctant to transpose, so that the UK’s initial bargaining position is very different from that of Switzerland. The rules of the WTO do not hold the same weight in bilateral relations and the Swiss have chosen not to go the WTO even though they might have a case. Overall the panel urged a post-Brexit multilateral agreement and a continued integrated electricity market to ensure the economic and trade benefits remain available to the UK.

Discussions highlighted the need for a thorough cost benefit analysis to be carried out to understand the implications for policy as illustrated in Prof Newbery’s presentation of the benefits realised from interconnectors. He noted that as GB is only interconnected through controllable DC links, bilateral arrangements as prevailed in the past would be quite satisfactory. Nor should the gains from market integration be exaggerated – they might amount to less than £200 million/year. Questions were raised as to the priority given to energy in the wider set of negotiations post-Brexit since it was not seen as a salient issue in the run up to the referendum vote – Paul Hallas and others raised concerns that the energy sector would be left as an afterthought (as had been the case in financial regulations) whereas others discussed the potential for energy to be one of the ‘easy wins’ that could be arrived at a relatively early stage in the negotiations to foster trust, but

implementation is still likely to be held up until the more difficult issues are settled. The panel concluded with a juxtaposition of the EU's interest in maintaining their own regulatory framework with the UK's interests, suggesting that ad hoc solutions will not offer the necessary long-term certainty. In closing, the need for doing more to better understand the position and interests not just of the UK, but of the EU and of key member states in future negotiations was also raised.

Closing Keynote

The seminar closed with a keynote over dinner by Vicky Ford, MEP, who is Chair of the Single Market Committee of the European Parliament, on the way forward for the UK post-Brexit. She emphasised that energy security is a top priority for many current EU member states, particularly in central and eastern Europe. She underlined the necessity for the UK to engage in EU institutions post-Brexit; otherwise the UK risks losing its ability to influence energy policy. While this does not need to be a "seat at the table", per se, the UK should seek to maintain some level of review authority over key regulations. Vicky Ford argued that one should not assume that the EEA model was the 'maximum' attainable since in many ways this was a distinctly unpalatable since it left the UK as purely a policy-taker with no influence over outcomes. Rather, she argued for different mechanisms for UK involvement although that would require some agreement over restrictions on freedom of movement, more akin to how some member states already limit such freedom, such as via requiring employment. She also highlighted the importance of current and future EU R&D spending, not only to Cambridge and other leading UK universities, but to the energy sector overall.

Conclusions

The seminar illustrated the various legal, political and economic complications of the Brexit vote and provided an analysis of what implications there are for energy and climate change policy moving forward. Important questions were raised for regulatory compliance, trade policy, and governance of the European electricity and gas market and how this will shape the post-Brexit agreement. In closing, questions raised in this seminar will likely be salient in the forthcoming debate surrounding the future of UK and EU energy policy as the post-Brexit world is formed.

As Prof Armstrong highlighted at the start, we are all finding now that we are hugely ignorant and that Brexit is making us pool our knowledge to better understand interconnections. Have spent time thinking about issues in their silos, we now need to broaden our focus across many different issues (and disciplines). As the UK shifts



away from its current arrangements, the recurring question that arose was how and in what form the UK can retain a voice in future arrangements. As the issues evolve in the coming months and years, we hope that at EPRG we can continue to bring together leading thinkers in law, politics and economics and key stakeholders from industry, government, regulators and civil society together to explore ways forward.