

## How will Brexit impact the energy policy?

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**Environment analysis: Alex Msimang, partner, Jessica Biddle, senior associate, and Margaret Peloso, counsel, at Vinson & Elkins, say the UK can be seen to have taken the lead in shaping EU energy policy in many respects and so the ramifications of the UK's exit from the EU on the energy sector are expected to be widely felt--such as in relation to the EU Emissions Trading Scheme (EU ETS).**

### Original news

Report highlights progress on EU Energy Union, LNB News 01/02/2017 104

*The EU has continued to make good progress on delivering its energy objectives, the European Commission's second report on the state of the Energy Union has found. Particular progress has been made on the 2020 energy and climate targets. The report has assessed developments since November 2015 and looked at ongoing challenges. Related thematic reports covering carbon capture and storage (CCS), the carbon market, and road fuels have also been published.*

### What is the background leading to the commission of the 'Leaving the EU: negotiation priorities for energy and climate change policy' report?

The UK is expected formally to exit the EU by 29 March 2019 following a series of negotiations between the UK government and EU institutions. In preparation for formal negotiations, the Business, Energy and Industrial Strategy Committee of the House of Commons conducted an inquiry and subsequently published a report on 2 May 2017 entitled 'Leaving the EU: Negotiation Priorities for Energy and Climate Change Policy'. The report is intended to inform the public and influence the government's negotiations in respect of energy and climate change policy.

### There is a lot of focus in the report on the European Atomic Energy Community (Euratom) membership -- what are the key findings and recommendations in this area?

Euratom provides the legal framework for nuclear power generation and waste management across the EU--including rules relating to nuclear safeguards, safety and the movement of nuclear materials.

The UK government has stated that the UK will leave Euratom as part of its exit from the EU and that the UK's relationship with Euratom and its means for nuclear cooperation with the EU will be a matter for negotiation.

The report found that there are no benefits in leaving Euratom and that the UK is required to leave Euratom simply as a consequence of triggering Article 50 TEU. The Committee shares the concern of the nuclear industry that new arrangements for regulating nuclear activity will take longer than two years to set up which could severely impede nuclear trade and research. It therefore recommends that the UK's exit from Euratom is delayed until it is certain that new arrangements can be in place. It is not yet clear if this will be legally (or politically) possible.

### What are the key findings and recommendations relating to ongoing access to the internal energy market (IEM)?

The IEM is an EU project to enable energy to flow freely across EU Member States without technical or regulatory barriers to increase competition, lower costs and allow for the utilisation of renewable energy sources.

The EU is currently working towards a fully-integrated market by using interconnectors to facilitate trade. Security of energy supply is a key concern as the UK is increasingly a net energy importer. The government has stated that it will aim to maintain efficient cross border trading of energy and avoid any market distortions from differences in the UK and EU rules.

However, the report goes further and recommends that the government should maintain ongoing access to the IEM. It is not yet clear if this will be possible and, in any event, it may be difficult for the UK to retain any real influence over the rules of the market as it will be limited to informal participation in working groups and technical bodies.

If the UK were to leave the IEM, there would be two key issues:

- individual arrangements would need to be made with France, the Netherlands, Northern Ireland and the Republic of Ireland in respect of each existing interconnector (which is likely to take in excess of two years), and
- if tariffs were imposed or other changes to current trading rules were made, energy costs would increase and potentially affect the UK's security of supply. It could also restrict the uptake of renewable energy, if alternative sources of energy were not available via interconnector to balance their intermittency.

## What concerns are highlighted with regard to the UK becoming a 'rule taker'?

The report expresses a concern that the UK could become a 'rule-taker' outside the EU, meaning that it will be required to comply with (but not influence) EU rules and standards. This is of particular concern given that a number of major energy and climate change policies are currently under development including the Clean Energy Package and Phase IV of EU ETS.

The report suggests to try to avoid this, the government tries to maximise both the extent of its influence in European regulatory bodies and other opportunities such as membership of European standards bodies, regulators' associations and industry associations.

## Is there anything else in the report of interest to energy lawyers?

The UK can be seen to have taken the lead in shaping EU energy policy in many respects and so the ramifications of the UK's exit from the EU on the energy sector are expected to be widely felt, such as in relation to the EU ETS.

The EU ETS works by setting an EU-wide cap on total greenhouse gas emissions from energy intensive sectors. Companies within those sectors receive or buy allowances which they can then trade and are fined if they do not surrender sufficient allowances to cover their emissions.

If the UK departs from the EU ETS and therefore fails to help the other EU Member States implement important reforms, there is a risk that the scheme might fail, which could both discourage other international trading schemes and jeopardise the UK's reputation and influence in the area.

There would also be consequences for the distribution of the EU's effort sharing arrangements under the Kyoto Protocol which could result in greater reductions being required from remaining Member States such as France and Germany.

The report recommends that the government should seek to retain membership of the EU ETS until at least 2020, with the possibility of longer-term membership being conditional on the progress of current reforms.

The other key focus of the report is maintaining investor confidence and certainty. The report requests that the UK government provides a clear and long-term vision for the UK energy sector and its overall objectives in the field of energy and climate change policy to support investor confidence.

It also makes clear that Brexit should not distract the government from the delivery of its domestic emissions reductions targets or policies including the Clean Growth Plan.

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*Interviewed by Kate Beaumont.*

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