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BREXIT: COOPERATION TRACK FOR CLIMATE CHANGE AND ENERGY

ARTICLE 50 FUTURE RELATIONSHIP

SHANE TOMLINSON, JOSEPH DUTTON & LISA FISCHER

Introduction – creating a cooperation track for climate change and energy issues

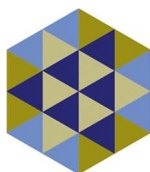
There is a strong incentive for both the EU and UK to continue to cooperate on climate change and energy issues post Brexit to defend the interests of all their citizens.

The connected physical space between the EU and UK, in relation to both the natural environment and physical energy infrastructure, means that choices by one side will necessarily impact the other. As the Brexit negotiations move towards discussions of the future relationship, where the majority of climate and energy issues are contained, establishing a cooperation track would be the best way to maximise synergies between the two sides.

Any future agreement would need to recognise that the four freedoms of the Single Market are indivisible and that there can be no “cherry picking” through participation based on a sector-by-sector approach, as this would undermine the integrity and functioning of the Single Market.

The increasingly severe impacts of climate change on Europe and the rest of the world means that climate and energy should be treated, in policy terms, closer to a security issue than a trade one in a future EU-UK relationship. The trans-boundary nature of climate change means regional initiatives on mitigation and securitisation are necessary. As existing regional and international leaders on climate, it is in the interest of the EU and UK to remain aligned in this area. This extends to the future of low-carbon energy, decarbonisation, and interconnected markets.

The shared commitment to decarbonisation means that the future relationship between the EU and UK must be centred on managing transformation, not a static relationship focused on separation or maintenance of the status quo. Technology and



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business model innovation, from renewable energy to electric vehicles and the circular economy, mean that the energy system and supply chains of the future will look very different to today's.

Globally, the EU and UK also have strong common interests in preserving the global rules based system. This includes the implementation of the Paris Agreement and managing climate and energy issues at the G7, G20 and other international forums.

The EU and UK also face shared challenges on energy security and relationships with key exporting countries such as Russia. Continued diplomatic coordination, along with cooperation on issues such as the gas early warning mechanism to manage the risks of supply shortages from Russia, have significant energy security benefits. The combination of energy import dependency for the EU and UK and the increasing threat of political-related supply disruptions, demonstrates why energy should be treated primarily as a security issue in a future relationship between the two rather than purely trade.

Implementing the Phase I Joint Statement Agreement on the Irish border will also require continued energy cooperation. Keeping an open border across the All Ireland Single Electricity Market (SEM) will be the key test of infrastructure cooperation.

Structuring of the future relationship negotiations

As the Article 50 process moves into its second phase the structure of the negotiations will have an important bearing on the final outcome. There is still uncertainty over the precise nature of the final outcome, and a 'no deal' crash Brexit scenario cannot be ruled out. However, the most likely negotiated solution will contain three elements: a withdrawal agreement; a transition agreement; and a future relationship agreement. The future relationship element is likely to be a non-binding political declaration that will set out the heads of agreement that will be taken forward once the UK exits the EU and becomes a third country.

The length and amount of detail in the future relationship agreement is still to be decided and could range from an extremely high level 3-4 page document, to a more detailed 15-30 page document, or even a fully fleshed out draft agreement (although given current timescales this last will be extremely challenging to achieve). The ideas presented in this paper are centred on a 15-30 page document, but the key concepts could be adapted to suit other formats. To maximise the benefits to citizens of continued cooperation four key considerations should be taken into account when structuring the future relationship negotiations:

1. Position climate and energy as a cooperation area that will cover both trade and non-trade issues

Climate and energy should be positioned in a similar way to defence, organised crime, data sharing and foreign policy as an area where the EU and UK should seek a deep



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level of cooperation that covers both trade and non-trade issues. Thus negotiations should cover non-trade factors such as: potential for continued joint fulfillment of the 2030 climate change targets and Paris Nationally Determined Contribution (NDC) and ongoing diplomatic cooperation on climate change and energy security issues; as well as trade issues such as UK participation in the Internal Energy Market (IEM). If the negotiations are only narrowly focused on trade issues many of the potential synergies and benefits for both sides will be lost.

2. Aim for a climate and energy chapter in the Future Relationship Agreement

It is also important that climate and energy issues remain linked together in the negotiations. Achieving deep decarbonisation is one of the primary motivations for energy system integration, for example to balance high penetrations of renewables and invest in new grid infrastructure such as the proposed North Sea Grid. It is therefore essential that these issues are discussed as a package in the negotiations rather than being separated into different areas. Aiming to achieve a specific climate and energy chapter of the final Article 50 outcome would be the best way to deliver this.

3. Early timing to build trust in the negotiations

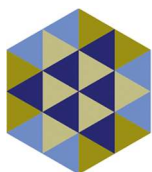
Building trust is a key factor in successful negotiations. Climate and energy have the potential for a very positive outcome between the two sides and potentially offers greater opportunities for progress than other more contentious issues e.g. passporting rights for the City of London. By starting climate and energy negotiations early it may therefore be possible to build positive momentum for the rest of the Phase II process.

4. Link to Phase I Agreement and implementation of an open Irish border

It is essential that the Phase I and II agreements link together to form an overall outcome package from the Article 50 negotiations. Some of the key elements of the agreement that will have implications for climate and energy issues are:¹

- Para 43: “The United Kingdom also recalls its commitment to the avoidance of a hard border, including any physical infrastructure or related checks and controls”
- Para 48: “The United Kingdom remains committed to protecting and supporting continued North-South and East-West cooperation across the full range of political, economic, security, societal and agricultural contexts and frameworks of cooperation, including the continued operation of the North-South implementation bodies”

¹ https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf



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- Para 49: “In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in future, support North-South cooperation, the all island economy and the protection of the 1998 Agreement”
 - Para 50: “...the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland.”

The continuation of the All Ireland Single Electricity Market (SEM) is the critical test of delivering on these commitments. In May 2018 the new Integrated Single Electricity Market (ISEM) is set to begin operation, with full alignment with EU market coupling and integration arrangements (known as the Target Model). The Brexit process should focus on ensuring that this can be achieved in practice.

Northern Ireland should also remain in the EU ETS to ensure the future of ISEM, as Northern Irish electricity generators being outside of the EU ETS would distort the single Irish market place. To this end, Northern Ireland is currently exempt from the UK Carbon Floor Price to avoid distortion in the SEM and ensure a level playing field with Irish electricity generators.

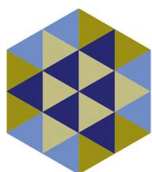
Suggested outcome from Future Relationship Agreement for climate and energy

In order to maximise benefits and manage potential risks for citizens in both the EU 27 and the UK the following elements should be considered for inclusion in a climate and energy chapter of the Future Relationship Agreement:

Partnership agreement for climate cooperation

The EU and UK should continue to work together to implement the joint Nationally Determined Contribution (NDC) they submitted to the Paris Agreement and deliver the “at least 40%” emissions reduction target that is at the heart of the 2030 climate and energy package. Key elements to include in the final agreement:

- *The EU and UK agree to establish a joint Ministerial Council on Climate Change:* A joint ministerial council would allow for continued coordination on climate diplomacy. Ministers with responsibility for climate change would meet on a regular basis throughout the year supported by official level working groups. This could be aligned with existing coordination processes to minimise the additional bureaucratic burden.
- *The EU and UK agree to continued joint fulfillment of their Nationally Determined Contribution (NDC) within the Paris Climate Change Agreement:* The flexibility within Paris Agreement enables continued joint fulfillment of



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the current NDC. This would ensure that there is no rollback in European ambition post Brexit. The EU and UK, under the joint ministerial council on climate change, could consider whether to maintain this arrangement as part of new NDCs that may be submitted in the future as part of the Paris Agreement ambition cycles.

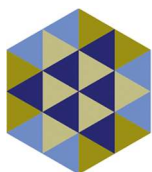
- *The UK agrees to continue to report its annual emission reductions to the EU with regard to the “at least 40% emissions reduction target” [DN: insert relevant articles] in the 2030 Climate and Energy Package:* This would ensure that the current burden sharing arrangement between Member States under the 2030 Package could be maintained at the existing levels. The UK would only commit to participating in the overall 40% reduction target and would no longer be bound by the other targets in the package such as for Renewable Energy and Energy Efficiency.
- *The UK commits to remain a Member of the European Union Emissions Trading Scheme (EU ETS) [insert relevant articles] through its [third (2013-2020)/fourth (2021-2030)] phase:* To avoid a cliff edge for business and investors it will be important to maintain continuity of the ETS. This could either be only through the third phase, after which the UK would exit, or continue through the fourth phase as well. If the UK exits after the third phase there would be benefit for the UK to establish its own emissions trading scheme and link it to the EU market.

Together these elements would ensure confidence that current emission reduction trajectories will be maintained and establish an ongoing governance structure to facilitate diplomatic cooperation in the future.

Cooperation on energy trade and governance to ensure the efficient flow of energy, enhance interconnection and maximise energy security

The EU and UK should work to establish arrangements that allow for continued efficient flows of energy. Implementation of the Paris Agreement will require the radical transformation of energy systems in the coming decades, in particular investment in new grid infrastructure and interconnection to manage high penetrations of renewables. The integration of energy markets and climate policies across Europe has enhanced climate and energy security and reduced energy bills for businesses and consumers on both sides of the Channel. The Brexit negotiations should aim to ensure that these benefits continue in the future.

The EU and UK should also continue to work together to maximise energy security. This should include continued diplomatic coordination around energy exporter countries, especially Russia, and mechanisms to manage emergency shortages in energy availability.



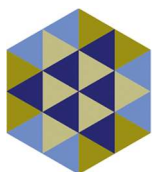
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Key elements to include in the final package:

- *The UK shall continue to participate in the EU Internal Energy Market (IEM) as defined by [List appropriate directives and regulations]:* Continued participation in the IEM is the best way to ensure efficient flows of energy, reduce costs for consumers on both sides of the channel, enhance future interconnection to support decarbonisation and maintain an open energy border between the Republic of Ireland and Northern Ireland and the continued implementation of the ISEM.
- *The EU and UK agree to establish a joint Ministerial Council on energy policy:* The joint Ministerial Council would enable for consultation between the EU and UK on the future direction of energy policy. Note the UK would not have any voting rights over future EU energy policy post Brexit. The Council could also include representation of other countries such as Norway and Switzerland as part of an enlarged Energy Union process.
- *State Aid rules shall continue to apply to the UK with regard to the Internal Energy Market (IEM) as defined by [List appropriate directives and regulations]:* To ensure a level playing field state aid rules will continue to be applied to the UK with respect to its participation in the Internal Energy Market. Enforcement of these rules will be dependent on the overall shape of the future relationship and dispute resolution mechanisms, but options such as the UK docking with the EFTA court and/or the EFTA Surveillance Authority may provide an appropriate avenue.
- *The UK will continue to fully participate in appropriate technical bodies with regard to the internal energy market including ACER, ENTSO-E, ENTSOG. The EU and UK commit to amending the appropriate Articles of Association to create a new category of “Founding Member” with full rights and obligations:* Participation in appropriate technical bodies will be important to ensure continued alignment of standards and regulations. To achieve this a new category of “Founding Member” status could be created to give the UK the same status as accession countries to the EU.
- *The EU and UK commit to agreeing a joint energy security treaty:* The agreement would cover continued joint diplomatic engagement with major energy exporting countries, including Russia, and emergency response measures to manage supply interruptions.

Continued investment in shared energy infrastructure

Investment in shared energy infrastructure, especially interconnection, will support deep decarbonisation trajectories and provide benefits to citizens in both the EU-27 and UK. Mechanisms to help finance major infrastructure Projects of Common Interest, for example the proposed North Seas Grid Initiative, should therefore be established. Creating a subsidiary of the European Investment Bank (EIB) in the UK would be one way to achieve continuity and avoid an investment hiatus. It would also



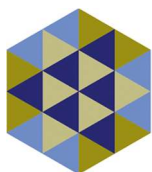
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ensure that the skills and capacity of EIB staff remained open to UK companies to access going forward. Key elements to include in the final package:

- *The EU and UK commit to establishing a subsidiary of the European Investment Bank (EIB) in the UK:* The Phase I outcome of the Article 50 process provided a cooperative solution for the UK to manage its existing commitments to the EIB. Establishing a subsidiary post Brexit would provide continuity on joint infrastructure projects, especially interconnection.

Conclusion

Taken together the package of measures presented in this briefing could form the basis of a dynamic cooperation between the EU and UK which would maximise benefits for both sides and minimise risks to the decarbonisation agenda. This would obviously represent the start, rather than the end, of a process and detailed negotiations would need to continue through the transition phase to operationalise these ideas. However, by signalling intent during the Article 50 process this will lay the foundations for an enduring relationship going forward. The key aspects for inclusion in the Future Relationship Agreement are consolidated in Annex 1 below.



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Annex 1: Consolidated suggested text for Future Relationship Agreement

Chapter [X]: Climate Change and energy

The EU and UK agree to take forward the following elements in establishing a future relationship on climate change and energy issues:

- *The EU and UK agree to establish a joint Ministerial Council on Climate Change*
- *The EU and UK agree to continued joint fulfillment of their Nationally Determined Contribution (NDC) within the Paris Climate Change Agreement*
- *The UK agrees to continue to report its annual emission reductions to the EU with regard to the “at least 40% emissions reduction target” [insert relevant articles] in the 2030 Climate and Energy Package*
- *The UK commits to remain a Member of the European Union Emissions Trading Scheme (EU ETS) [insert relevant articles] through its [third (2013-2020)/fourth (2021-2030)] phase*
- *The UK shall continue to participate in the EU Internal Energy Market (IEM) as defined by [List appropriate directives and regulations]*
- *The EU and UK agree to establish a joint Ministerial Council on energy policy*
- *State Aid rules shall continue to apply to the UK with regard to the Internal Energy Market (IEM) as defined by [List appropriate directives and regulations]*
- *The UK will continue to fully participate in appropriate technical bodies with regard to the internal energy market including ACER, ENTSO-E, ENTSOG. The EU and UK commit to amending the appropriate Articles of association to create a new category of “Founding Member”*
- *The EU and UK commit to agreeing a joint energy security treaty*
- *The EU and UK commit to establishing a subsidiary of the European Investment Bank (EIB) in the UK*



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E3G is an independent climate change think tank operating to accelerate the global transition to a low carbon economy. E3G builds cross-sectoral coalitions to achieve carefully defined outcomes, chosen for their capacity to leverage change. E3G works closely with like-minded partners in government, politics, business, civil society, science, the media, public interest foundations and elsewhere. In 2018, E3G was ranked the 3rd best environmental think tank in Europe and 5th best in the world.

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