

# **SR Members' Network Event: Brexit & EGM**

22 November 2018

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**BRODIES**<sup>LLP</sup>

# **Brexit & Energy: November Update**

## **22 November 2018**

**Keith Patterson, Partner & Co-Head Renewables**

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## Article 50

“

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its **intention**. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the **arrangements for its withdrawal**, taking account of the **framework** for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the **Council, acting by a qualified majority**, after obtaining the **consent of the European Parliament**.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, **unanimously** decides to extend this period.

4....”

## Brexit Basics

1. Exit Process – Article 50 Notice expires 11pm (GMT) 31 March 2019
2. European Union (Withdrawal) Act 2018 (EUWA) – only partly in force
3. Withdrawal Agreement (WA) – legally binding (585 pages) (“Boondoggle”)
4. Political statement on future UK/EU relationship – non-binding (7 pages)
5. Informal approval of all EU 27 member states – not required legally
6. UK Parliamentary approval under EUWA Section 13 – the “meaningful” vote
7. UK European Union (Withdrawal Agreement) Bill – to bring WA into UK law
8. CRaG procedure – WA to be laid before Parliament for 21 sitting days
9. WA ratification by UK – under prerogative power of the UK Government
10. WA ratification by EU Parliament – simple majority
11. WA ratification by EU Council of Ministers – qualified majority (20/27)

# The key issue



Tweets **9,035**   Following **1,000**   Followers **35.7K**   Likes **12.7K**

Follow

## The Irish Border

@BorderIrish

I am the border between Ireland and Northern Ireland. I'm seamless & frictionless already, thanks. Bit scared of physical infrastructure. Now in [@TheNewEuropean](#)

The border, island of Ireland

Joined February 2018



weeks, under EU sanitary and e required at British and nor  
official, Mr Barrier explains: rails moving across the Irish! ts are checked.

Tweets   Tweets & replies   Media

Pinned Tweet



[The Irish Border](#) @BorderIrish · Feb 8  
There's me at the Brexit negotiations.



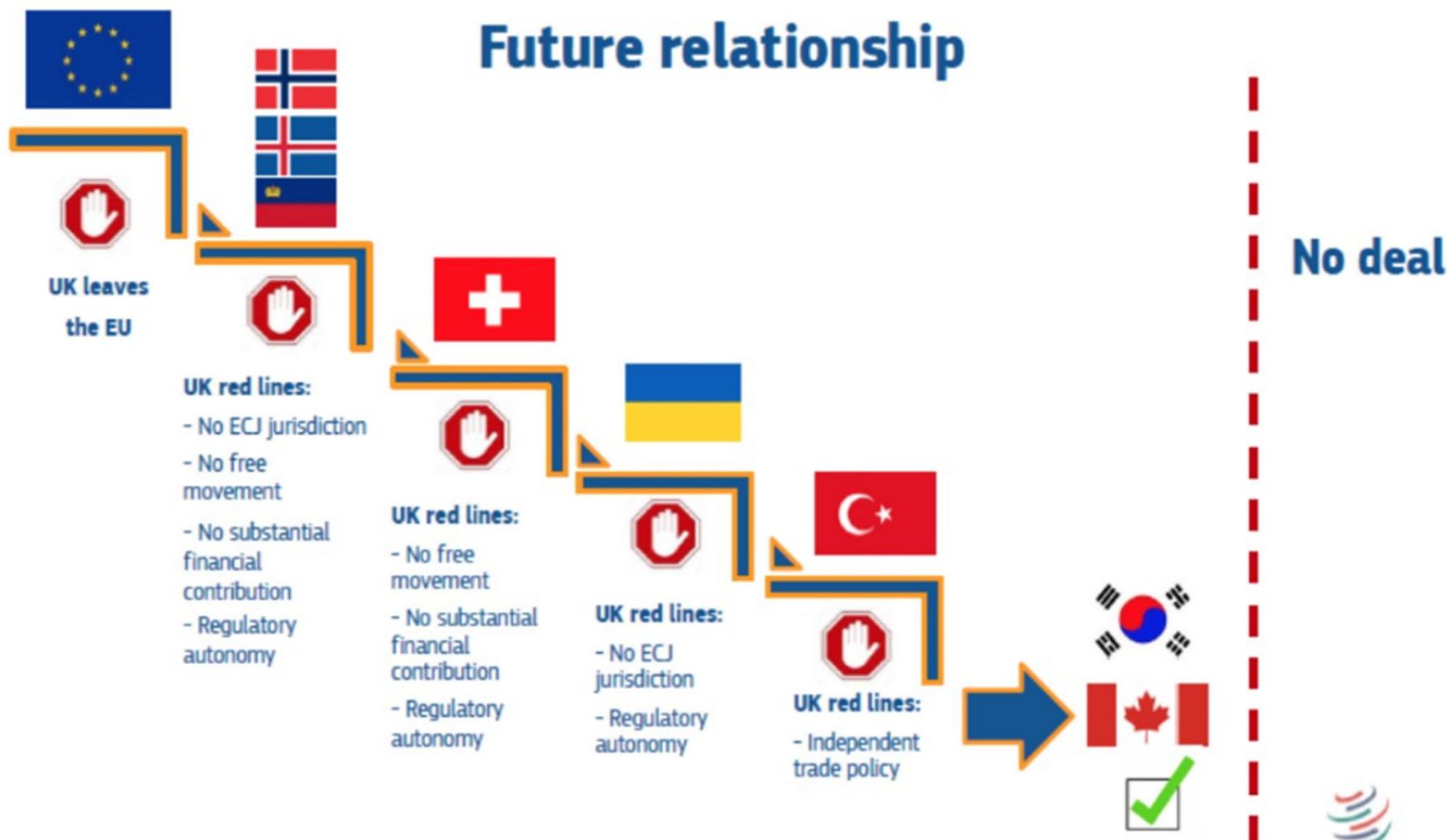
138   6.6K   12K





European  
Commission

## Future relationship



# Brexit Day under Withdrawal Agreement

## Transition 2019 – 2020

- UK out of EU
- Supremacy of EU law ends
- UK remains in EU customs union
- EU trade policy applies
- UK remains in EU single market
- ECJ oversight of UK courts continues
- Private parties can enforce
- UK must give effect to all new EU laws
- UK loses benefit of EU third party trade agreements
- UK access to EU funding same basis as non-EU countries

## Backstop 2020 – infinity...

- UK and EU create new “*single customs territory*”
- No UK/EU customs tariffs and quotas but customs declarations required
- UK to apply EU trade policy (no independent trade policy)
- UK out of EU single market
- ECJ oversight of UK courts ends
- Private parties can enforce
- UK must give effect to new EU laws on goods
- UK to apply EU state aid rules (including future changes)
- UK to maintain *existing* level playing field rules – tax, environment, labour, competition
- UK and EU states apply own immigration rules
- **Does EU Council have legal capacity to agree the backstop?**

# Brexit Day under WA: Energy Sector

## Transition 2019 – 2020

- UK out of EURATOM but to maintain equivalent safeguards regime
- Right to tariff and quota free trade in energy products continues
- UK remains in EU single energy market
- Upcoming market coupling laws and network codes provisions will apply
- EU state rules apply
- EU Commission to approve state aid measures
- UK to operate UK ETS equivalent scheme
- UK membership of ACER ends
- UK right to participate in ENTSOE-E&G ends
- EU will apply third country rules to UK on access to EU energy sector funds

## Backstop 2020 – infinity...

*As for transition period but...*

- UK exits the EU single energy market but NI remains
- UK energy markets will be decoupled
- UK generators will lose guaranteed access to EU grid networks
- UK to set up “independent authority” to approve state aid measures according to EU state aid law (Article 9 of Annex 3 of the NO Protocol)
- “Independent” means free of political influence
- UK to maintain *existing* environmental obligations
- UK to operate “independent body” to enforce UK compliance with UK’s environmental obligations including climate change obligations under the Paris Agreement 2015
- No express requirement to be free of political influence

## Impact on Energy Sector

- UK out of single energy market (except NI)
- UK market decoupled from EU markets and rights of grid access lost
- National Grid estimates cost to be around £500m p.a.
- This could result in higher wholesale and consumer prices in the UK
- Much of this analysis depends on interconnector flows
- EU electricity tariffs & quotas zero i.e. interconnector trade can continue
- But new grid access and market trading agreements will be required
- New DSO design and TSO/DNO relationship could be affected
- The guarantee of grid access to renewable energy generators is EU derived and at risk of change
- The cap of €2.50 per MWh on ‘annual average transmission charges’ which can be charged to generators is EU derived and at risk of change



# No Deal Brexit Day

## WTO Brexit

- UK out of EU
- Supremacy of EU law ends
- UK out of EU customs union
- UK (including NI) out of EU single market (including single energy market)
- **But new physical infrastructure at NI border requires new Act of Parliament (EUWA Section 10)**
- **WTO customs tariffs & quotas apply – EU tariff for electricity is zero**
- **VAT payable on import of goods** but UKG proposes postponed accounting
- UK & EU operate separate regulatory and legal orders
- **Upcoming EU rules on market coupling and network codes will not apply**
- **Interconnector trading dependent upon rules in export/import states**
- Private parties cannot enforce WTO trading rules
- **EU state aid rules do not apply – CfD/CM auctions not subject to EU oversight**
- WTO anti-dumping rules apply
- UK and EU states apply own immigration rules

## UK preparations for ‘no deal’

- European Union (Withdrawal) Act 2018
- Substantive provisions not yet brought in force
- Further Acts of Parliament need to be passed:
  - Some passed e.g. Nuclear Safeguards Act 2018, Haulage Permits and Trailer Registration Act 2018
  - More yet to be passed e.g. Taxation (Cross-border Trade) Bill, Trade Bill, Citizens’ Rights Bill
- Hundreds of further statutory instruments to be issued
- 105 technical notices

# The Intended Timeline

Parliament approves deal

Agreement ratified

**WA: Article 132**

- Joint decision
- One time right
- End date TBA

Transition period starts

Possible Extension

**NI Protocol: Article 20**

- Continues until ended
- Joint decision

Backstop starts

29 March 2019

1 January 2021

Start new trading arrangements

Date uncertain

# Impact on Implementing Projects

No Deal

Certainty on tariffs/import VAT up to 29 March 2019

Deal Ratified

Certainty on tariffs/import VAT up to 31 December 2020

Backstop is indefinite but...

UK and EU  
could jointly  
decide to  
end  
application  
of backstop  
to all UK

UK or EU  
could  
decide to  
break  
agreement  
and end  
backstop

UK and EU  
could agree  
new FTA  
which  
includes  
tariffs or  
quotas

Extension to transition

Certainty on tariffs from date of  
adoption of extension to new end  
date

## Meaningful Vote: s13

Parliamentary approval of Withdrawal Agreement and Political Declaration required before UKG can ratify Withdrawal Agreement

Parliament can amend the motion seeking approval

An amended motion proposing amendments to the WA or PD not binding

If not approved, UKG must put statement to House within 21 days

Statement must be considered by House

The Act does not prevent a second motion being presented to the House

This process does not give the House power to direct UK negotiations

Parliament can impose its will only by passing new legislation

If no new legislation passed UKG has the power to bring EUWA Section 2 into effect, bringing about the UK's exit from the EU at 11pm on 29 March 2019

# Brodiess Brexit Hub & Contacts

Visit our Brexit Hub at <https://brodies.com/brexit-group>



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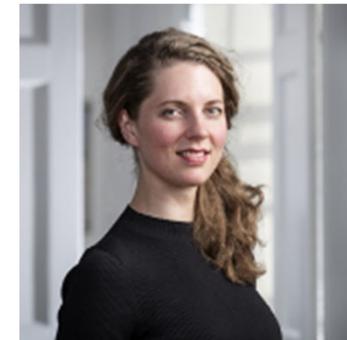


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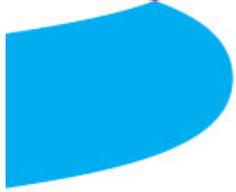




# **Nicola McEwen**

Professor of Territorial Politics, University of Edinburgh  
&

Co-Director of Centre on Constitutional Change



  
The word "BREXIT" is rendered in large, bold, block letters. The letters are filled with a collage of the Union Jack (UK flag) and the European Union flag (blue with yellow stars).

# BREXIT

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SCOTTISH RENEWABLES  
MEMBERS' NETWORK EVENT  
22 NOVEMBER 2018

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**Prof Nicola McEwen**  
Professor of Territorial Politics  
Co-Director of Centre on Constitutional Change



THE UNIVERSITY  
*of* EDINBURGH

## So, What does Brexit Mean?

*"Brexit means  
Brexit and  
we're going to  
make a  
success of it."*  
Theresa May, 2016



## Article 50 – Lisbon Treaty

“A Member State which decides to withdraw shall notify the European Council of its intention... **the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.**”



“The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification... **unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.**”

# Continuity & Change under draft Withdrawal Agreement

## ❑ **Key elements:**

- Protection of citizens' rights
- Financial settlement
- New bilateral governance structure to manage withdrawal

## ❑ **Transition:**

- Scheduled as March 30<sup>th</sup> 2019 - 31<sup>st</sup> December 2020, with possible extension (once only)
- Commitment to honour budget payments up to 2020. Extended transition implies further payments
- Continuity - UK will still adhere to all EU legislation as now
- Change – no representation in EU institutions

## ❑ **European Investment Bank:**

- UK will no longer be a member
- Approved projects will continue to be financed, but no funding for new projects

# The “Backstop”



- ❑ Legally binding commitment if no negotiated alternative
- ❑ UK-EU single customs territory
- ❑ NI also remains (effectively) within the EU single market
  - requires compliance checks to be completed on all rUK goods entering NI.
  - UKG provides that all goods produced in NI can be sold in the UK market;
- ❑ Backstop continues “*unless and until*” suitable alternative which can avoid hard border
- ❑ Regulatory equivalence/level playing field in environmental regulation, state aid regime (with enforcement)
- ❑ Continuation of the Irish Single Electricity Market

# What happens now?

## ❑ Fate of draft Withdrawal Agreement

- Sign-off by EU27?
- Majority Vote in the European Parliament?
- UK Cabinet Agreement?
- “Meaningful vote” in the House of Commons – with possibility of amendments to motion
  - requires parliamentary approval of *both* the (binding) Withdrawal Agreement and the (non-binding) declaration on the Future Framework
- EU (Withdrawal Agreement) Bill



## ❑ Fate of the Government?

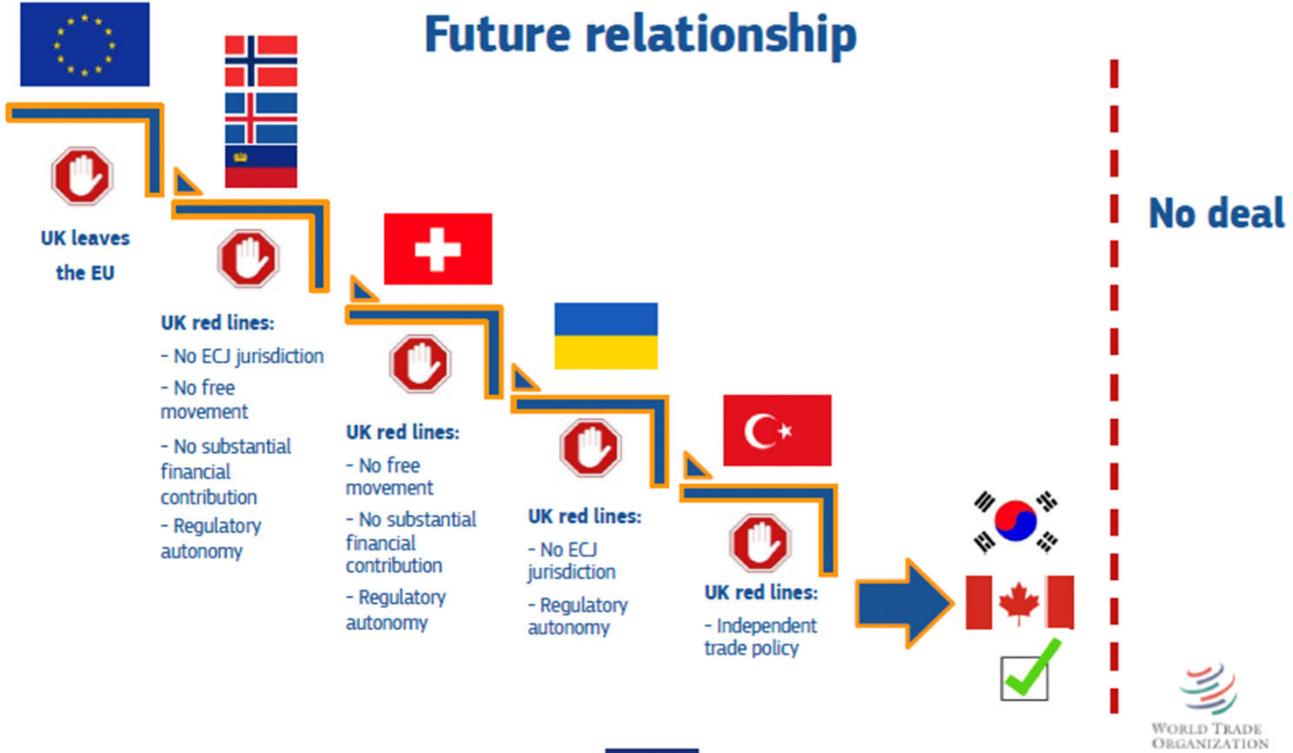
# Political Declaration on Future Relationship

- ❑ Negotiations over next two years – and beyond?
- ❑ Deep and meaningful future partnership?
  - EU v UK as a third country
  - Backstop as a starting point?
  - Will require ratification by EU Institutions, all member states & some regional governments

- *“deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for open and fair competition”*
- *“While preserving regulatory autonomy... promote regulatory approaches that are transparent, efficient, compatible to the extent possible (with) “avoidance of unnecessary regulatory requirements”*
- *“Framework to facilitate technical cooperation between electricity and gas networks operators and organisations... and mechanisms to ensure security of supply and efficient trade over interconnectors”*
- *“Consideration of cooperation on carbon pricing” – UK GHG emissions trading system with the EU ETS.*



# Future relationship



# What if there is no deal?

## Scenario 1 Withdrawal Agreement rejected by UK Parliament

- Renegotiate terms of exit?  
(unlikely)
- New commitments on future  
relationship?
- Revised motion returns to  
parliament
- Extension to Article 50 process  
(maybe – for election or  
referendum)

## Scenario 2: Exit without Withdrawal Agreement

- Government guarantee on  
existing grants up to 2020(e.g.  
PCIs, ERDF, etc)
- EU (Withdrawal) Act and  
'retained EU law'
- Wider economic  
consequences!!!!
- Wider political consequences!!!!

# Further info



Centre on Constitutional Change

<http://www.centreonconstitutionalchange.ac.uk/>

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**Claire Mack**

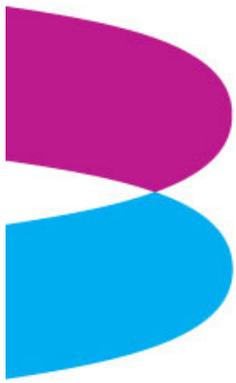
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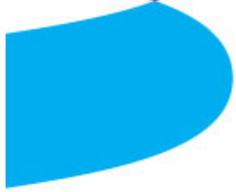


## **David Cameron**

Board Member  
Scottish Renewables

## **David Bone**

Company Secretary  
Scottish Renewables



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