



UiO : **Scandinavian Institute of Maritime Law**
University of Oslo

The Energy Union, EEA and UK post-Brexit

The Nordic electricity market in the Energy Union

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Introduction

- From an ambitious Energy Union policy to an ambitious EU energy law
- The internal energy market comprises more than the EU
 - The EEA Agreement
 - Treaty establishing the Energy Community
 - UK post-Brexit
- Challenges for the integration (and separation) of non-EU Member States
 - Legal challenges and market challenges

I BACKGROUND

The EU energy *acquis*

- TFEU – substantive primary law
 - E.g. Free movement, State aid, competition law
 - Corresponding provisions in the EEA Agreement
 - Energy Community Treaty – e.g. Chapter IV on the competition *acquis*
 - UK post-Brexit?
- Secondary energy market legislation
 - Adopted pursuant to Articles 114 (internal market), 172 (TEN), 192 (environment), 194 (energy) TFEU

EU energy market legislation (electricity)

Clean Energy package

Electricity Dir 2009/72/EC
Electricity Reg (EC) 714/2009
ACER Reg (EC) 713/2009
SoS Dir 2005/89/EC

+ Regulations on Energy Union governance and risk-preparedness

Water Dir 2000/60/EC

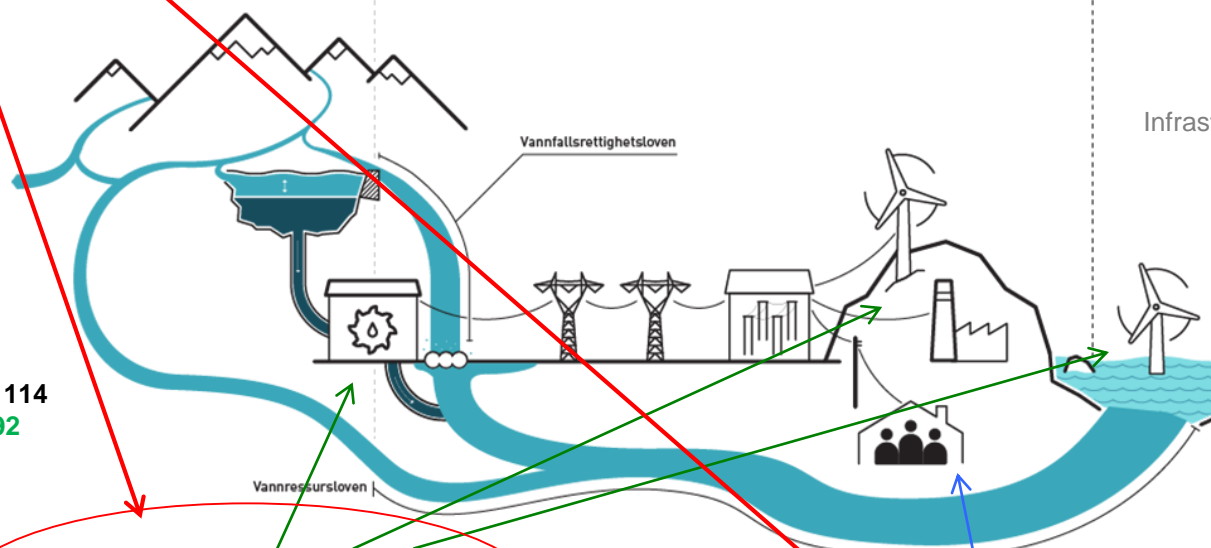
REMIT (EU) 1227/2011

Network codes

Vassdragsreguleringsloven

Energiloven

Havenergi-loven



Internal market, TFEU 114
Environment, TFEU 192
Energy, TFEU 194
TEN, TFEU 172

Infrastructure Reg (EU) 347/2013

Renewables Dir 2009/28/EC

Source: www.energifaktanorge.no (OED)

EU ETS Directive

Buildings Dir 2010/31/EU
Energy labelling Dir 2010/30/EU
Energy efficiency Dir 2012/27/EU

II EEA

Challenges in extending the energy *acquis*: substantive provisions

- Lack of influence in legislative process
 - Example: TSO unbundling and NRA independence discussions in Electricity Directive 2009/72/EC
- Tailor-made solutions vs technical amendments
- EEA relevance
- Delayed implementation

Challenges in extending the energy *acquis*: institutional measures

- National institutions
 - NRA requirements (i.e. organisation of RME)
- EU (energy-related) institutions
 - ACER, ENTSOs, EU DSO, ROCs
 - Significance and powers beyond the EU?
 - In the following: ACER and ENTSO implementation challenges

ENTSO-E and ENTSO-G

- Establishment
- Purpose
- Key function: draft network codes
- Participation
 - ENTSO-E: 43 member TSOs from 36 countries, including EFTA and some Energy Community states
- No formal powers to adopt binding decisions
 - non-EU membership less challenging

ACER

- Purpose
- Functions
 - Cooperation, issue opinions and recommendations, assist in regulatory development, decisions
- Challenges in extending the ACER model
 - For EU Member States
 - For Non-EU Member States
 - The EEA agency model – and other alternatives

Conclusion

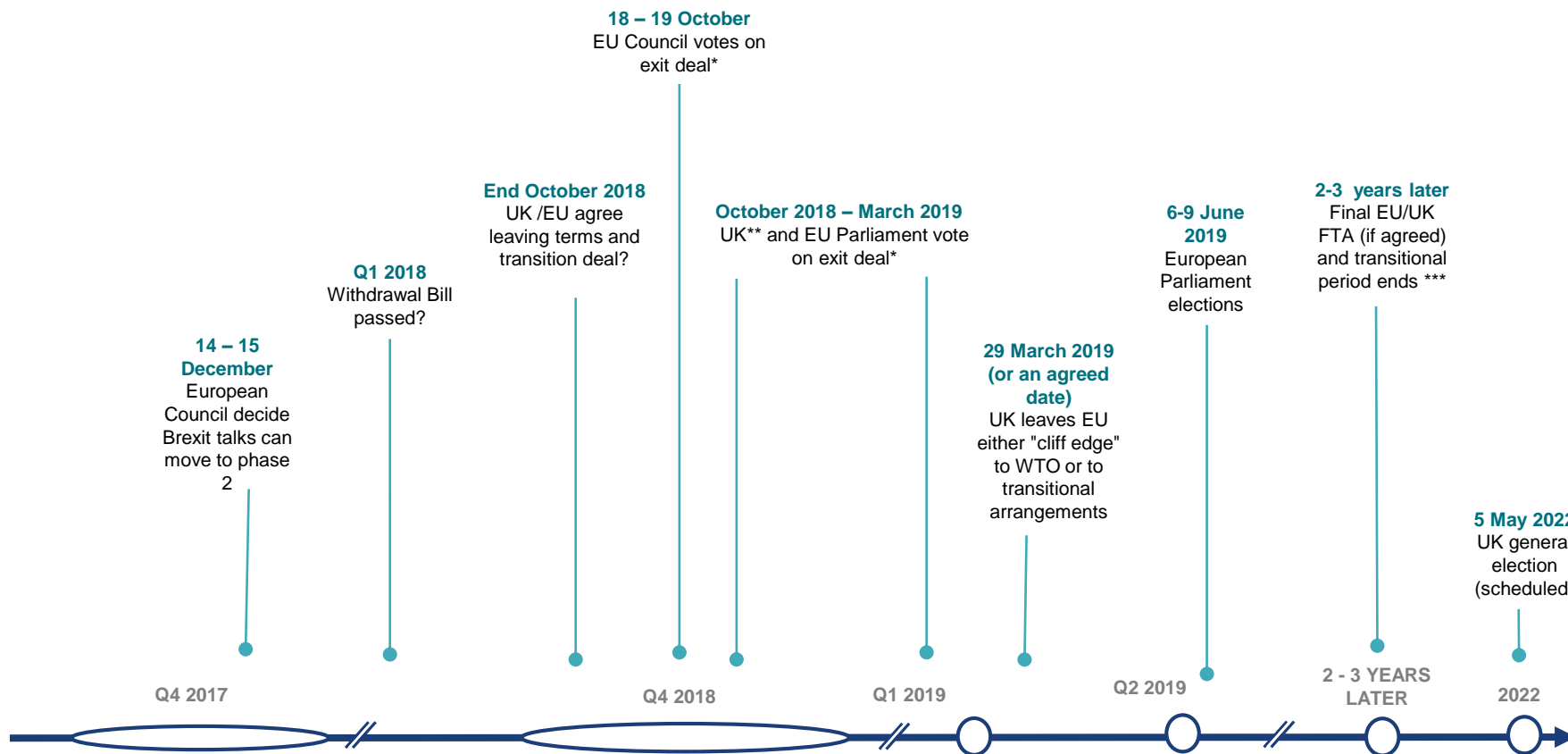
- The relationship between substantive law and the competence of supervising institutions
 - The former most important, but the latter more challenging?
- So far a pragmatic approach
 - But what are the limits of pragmatism as the regulatory system develops further?

III BREXIT

Content



The clock is ticking



* Simple majority for EU Parliament, qualified majority for EU Council

** UK PM has said that UK Parliament will vote on deal before EU Parliament votes on deal

*** As above, except if such an agreement is a "mixed" agreement dealing with matters that are in shared or sole competence of the individual Member States, it would also require the approval of all the continuing Member States in accordance with their individual processes for treaty approval.

What we can know (or not)

- Short Parliamentary debate – Feb 2017
- Publication of White Paper – Feb 2017
- Trigger Article 50 – 29 March 2017
- European Council discussion of UK's request to leave the EU – April 17
- 2 years to conclude negotiations – 18 months technical/political: 6 months institutional ratification
- White Paper: “We are considering all options for the UK's future relationship with the EU on energy”
- Brexit also means Brexatom

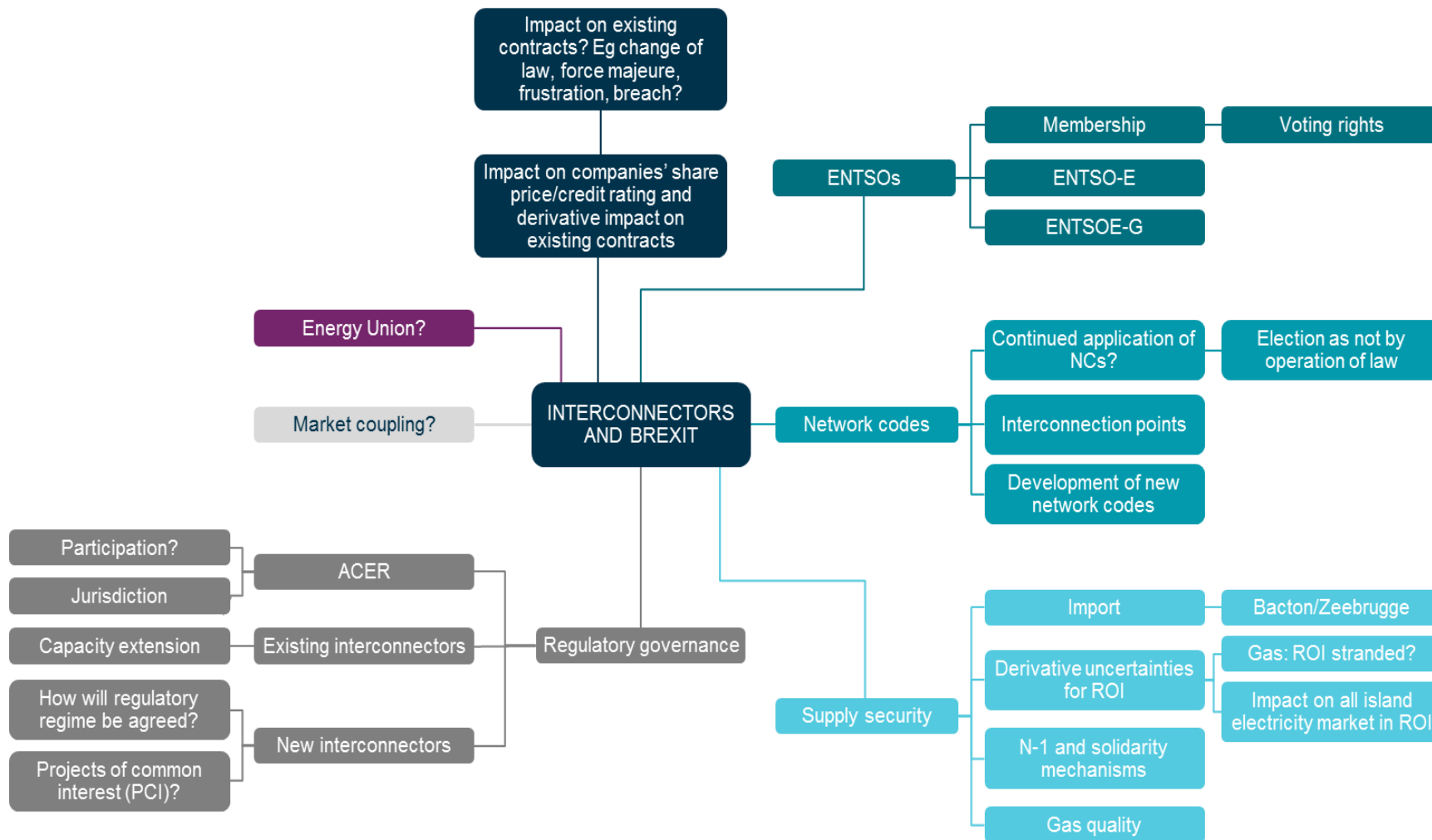
What we can know (or not)

- Will UK have sectors that remain part of the Customs Union (As does Turkey: Agriculture, Steel and Coal)?
- Will there be a transitional agreement? (Probably)
- For how long? (Possibly until December 2020)
- Will the UK remain part of the IEM? (*De facto* or *de jure*?)
- Will the UK remain part of the EU's research and development framework? (Possibly?)
- How will Ireland be treated as special case? (Not yet solved)
- Position of the Labour party? (Critical for Customs Union/ Single Market)

Focus on:

- Interconnectors
- Euratom/Brexatom
- Ireland

Interconnectors and Brexit – A Mind Map



Impact on interconnectors

- Four operational interconnectors between the UK and the rest of the EU: one each with France and the Netherlands and two with the island of Ireland
- At least 12 more UK interconnectors are at varying stages of construction or planning, five with France and others with Belgium, Denmark and Germany, as well as with non-EU Norway and Iceland
- UK is usually a net importer from the rest of the EU, with some sustained periods of export due to shutdowns of French nuclear plants
- UK- EU interconnectors: Projects of Common Interest

Position of the French regulator



*DÉLIBÉRATION N° 2017-253
Délibération de la Commission de
régulation de l'énergie du 16
novembre 2017 portant orientation
sur les nouveaux projets
d'interconnexion avec le Royaume-
Uni et décision de transfert à l'ACER
de la demande d'exemption déposée
par la société AQUIND Ltd.*

- Decision «not to take a decision»
- Ignores PCI status of GB/EU interconnectors
- Referral of Aquind exemption to ACER
- First interconnector exemption referral
- Timing
- Impact on other interconnectors?

Ireland

- The energy system of the Republic of Ireland (ROI) could be significantly affected by Brexit because the ROI operates a joint electricity market with Northern Ireland (NI), trades electricity with Great Britain (GB) and buys a significant amount of gas from GB.
- Over 46% of the electricity generated came from natural gas in 2014
- 56% direct dependency on deliveries from UK; ... plus ...
- All of Ireland's natural gas imports are transited through the UK
- Role of Moffat interconnector
- Ireland may be unable to keep the lights on if the UK is no longer obligated to follow the Solidarity Principle.
- Single Energy Market (SEM) // iSEM issues

Ireland: price volatility?

- Link between liquidity of the UK gas wholesale market (NBP) and more volatile and somewhat higher prices.
- Irish gas prices will remain tied to the UK gas market and this would affect Irish consumers.
- Risks for Irish consumers if EU solidarity rules cease to apply
- 1993 protocol between the network operators on dealing with gas emergencies
- Consequence of Brexit: Will Ireland be an energy island?

Ireland: Northern Ireland

- Imports electricity and gas from the Republic of Ireland
- Planned power station closures
- (i)SEM predicated on EU rules
- Too small to sustain its own separate functioning electricity market
- Risk of outages

Ireland: SEM// iSEM

- Single Electricity Market (SEM): subject to the EU energy sector regime.
- Risk that Brexit reverses a decade of energy integration on the Irish island.
- Possible post-Brexit solutions:
 - Designate Northern Ireland a special zone in that it is understood that the all-Irish market will continue to be subject to EU law;
 - Create a special status for SEM which, whilst compliant with EU law, would not subject Northern Ireland to the jurisdiction of the European institutions (ie an 'EU– compatible' solution);
 - Unwind SEM which is unlikely to be politically palatable in either the Republic or Northern Ireland;
 - Grant ROI permission for bilateral agreement with UK.

Ireland: trading issues

- From a trading perspective, the European Commission is, in relation to the setting of any tariffs, under a Treaty obligation to
 - *"be guided by... the need to promote trade between Member States and third countries ... [and] the need to avoid serious disturbances in the economies of Member States"* (Article 32 TFEU).
- Any tariffs set by the EU affecting the UK energy sector would be likely negatively to affect the Irish energy market, making the imposition of tariffs in the energy sector less likely.

Brexatom: Key areas of impact

- The decision to leave Euratom could, if replacement measures are not put in place in time, have significant negative impacts on a range of sectors:
 - Civil nuclear industry: The most direct area of impact is on the UK's civil nuclear industry where the potential for disruption is very high. Nuclear decommissioning: The UK's Nuclear Decommissioning Authority (NDA) relies on a range of materials, equipment and services sourced from outside the UK which could face disruption.
 - Research: UK involvement in joint research programmes such as ITER and JET Fusion 4 Energy is based on Euratom membership.
 - => Without a new framework for collaboration research in the UK could be curtailed.

Brexatom: Key areas of impact

- **Medicine:** The UK Government has denied that leaving Euratom could interrupt the trade in medical isotopes. However, in any event, there will need to be a new regulatory framework governing the trade in such materials.
- **Other:** A wide range of other industries also make use of radioactive materials, including the automobile, aeronautics, as well as mining and petroleum industries. Beyond those directly affected are a range of businesses within supply chains who stand to suffer if trade is disrupted.

Brexatom: What needs to be done?

- UK needs to:
 - Define the UK's future relationship with Euratom, in particular as to whether it would seek “associated” status or accept third country status and seek a Nuclear Cooperation Agreement with Euratom.
 - Put in place transitional arrangements which will apply from 29 March 2019 until such time that the future relationship with Euratom has been fully defined and documented in appropriate treaties.
 - Conclude a new Voluntary Offer Agreement with the International Atomic Energy Agency (IAEA) to remain in compliance with its international law obligations.

Brexatom: What needs to be done?

- Sign new Nuclear Cooperation Agreements (NCAs) with third countries to replace current agreements with Euratom.
- Put in place a new, post-Euratom security and safeguarding regime for the UK.
- Prepare a back-up plan for the improbable and undesirable version of 'Brexatom' in which the UK departs after the two-year notice period, without having agreed any replacement arrangements.

Outlook

- No agreement yet on a transition deal
- Dependent on solution to Irish border issues
- HMG not internally aligned on Customs Union and Single Market
- Broad agreement within the EU27 that the transition can be extended, if necessary
- Commission insists that the transition should end on 31 December 2020 (to fall in line with the current budget cycle)
- Future FTA?

Thank you for your attention!

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