ENERGY, RENEWABLES AND NATURAL RESOURCES

Brexit: the EU-UK Trade and Cooperation Agreement and Energy on the Island of Ireland

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Given that electricity and gas systems on the island of Ireland are physically connected to those of GB, clarity on post-Brexit rules for trading across these systems is important to the energy sector here. Now that the EU-UK Trade and Cooperation Agreement has been agreed in principle, what do we know about how we will trade with GB and, for that matter, the EU?

What does the EU-UK Trade and Cooperation Agreement cover?

The EU-UK Trade and Cooperation Agreement is provisionally applicable as of 1 January 2021. There are many general provisions, but energy matters are explicitly addressed in several sections.

Part One explains the institutional framework: a Partnership Council will oversee the implementation of the Agreement. Its supporting committee structure includes a **Specialised Energy Committee**, as well as other trade focused committees into whose ambit certain energy matters fall.

Part Two, Heading One is concerned with trade. **Title VIII** (Energy) states that its objectives are "*to facilitate trade and investment between the Parties in the areas of energy and raw materials, and to support security of supply and environmental sustainability, notably in contributing to the fight against climate change in those areas*". (Connected Annexes are ENER-1 (List of Energy Goods, Hydrocarbons and Raw Materials); ENER-3 (Non-application of Third-Party Access and Ownership Unbundling); and ENER-4 (Allocation of Electricity Interconnector Capacity at the Day-Ahead Market Timeframe).) Title VIII sets out chapters on:

- *Electricity and Gas:* This chapter first addresses competition by requiring the Parties (the EU and the UK) to ensure that certain principles are applied to the functioning of, and access to, their markets and infrastructure. The principles include transparency, non-discrimination towards the other Party's investors / enterprises, observance of market-based principles, and integration of renewable energy into energy systems. The Parties make commitments in the areas of regulatory frameworks; customer switching; wholesale market prices; balancing markets; electricity capacity mechanisms; third-party access to networks; and the operation of transmission systems. There are also provisions prohibiting market abuse, and continued cooperation with the ACER in this area (and others) is envisaged. Next, a section is devoted to facilitating trade over the interconnectors that connect GB to EU Member States and the island of Ireland (discussed further below.) The Parties also commit to cooperate on network development and security of supply. They commit to ensure cooperation between their system operators and regulators and, in this, the new Specialised Committee on Energy plays a role to bridge the gap in light of the UK's position outside ENTSO-E, ENTSOG and ACER. The UK is no longer part of the energy single market but high level principles which underpin it are woven through this chapter. Consideration of necessary work to come – such as infrastructure development and gas decarbonisation – is evident.
- *Safe and Sustainable Energy:* The Parties commit to promote energy efficiency and renewable energy, and they reaffirm targets. Offshore renewable energy gets a specific forum for technical discussions and the Parties commit to sharing best practice and facilitating the development of specific offshore projects. The UK is no longer a member of North Seas Energy Cooperation, but continued

cooperation in this area is vital if the considerable potential of offshore wind power is to be maximised through, for example, projects that combine largescale windfarms with physical interconnection of countries.

- *Energy Goods and Raw Materials:* This chapter prohibits Parties from imposing a higher price for exports of energy goods or raw materials as compared to the price charged to the domestic market. It permits regulation of domestic supply prices for public policy objectives only, and only if the price is clearly defined, transparent, non-discriminatory and proportionate. It requires fairness in the grant of authorisations for exploration and production of hydrocarbons and generation of electricity.

Title VIII ceases to apply on 30 June 2026, although this date is extendable to a final cut-off in 2028 by the Partnership Council.

Energy matters are also explicitly addressed under **Title XI (Level Playing Field for Open and Fair Competition and Sustainable Development)** and Annex ENER-2 (Energy and Environmental Subsidies). The Parties reaffirm their ambition to achieve economy wide climate neutrality by 2050, and provisions include those relating to:

- *Environment and Climate:* The Parties are prohibited from weakening or reducing, in a manner affecting trade or investment between them, their "environmental levels of protection" or "climate level of protection" in place at the end of the transition period. These are both defined terms based on the Parties' laws and the 2030 emissions' reduction targets, including each Party's system of carbon pricing. The 2030 targets are those currently in law, rather than the newly announced EU targets, which we discussed here, but the Parties commit to strive to increase levels of protection. As for carbon pricing, each Party will now have its own system to cover emissions from electricity generation, heat, industry and aviation. There is, however, a commitment to cooperate on carbon pricing and give serious consideration to linking systems. Each Party agrees to respect the internationally recognised environmental principles to which it has committed, and to implement the Paris Agreement.
- *Subsidy Control:* The Agreement sets out principles for permissible subsides of large cross border or international cooperation projects. Subsidies relating to energy and environment must aim to deliver a secure, affordable and sustainable energy system and a well-functioning and competitive energy market: the Parties are recorded as recognising the importance of this "*in relation to the fight against climate change which represents an existential threat to humanity*".

What is the impact on the all-island Single Electricity Market (SEM)?

The SEM continues to function across the island of Ireland. This was underpinned by the Ireland/Northern Ireland Protocol in the Withdrawal Agreement, which became operational on 1 January 2021. It provides that key EU energy legislation continues to apply in Northern Ireland insofar as it applies to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity. It is also worth noting that Directive 2003/87/EC on GHG emission allowance trading still applies in Northern Ireland, notwithstanding the separation of the UK's system from that of the EU under the Trade and Cooperation Agreement.

However, the Withdrawal Agreement does not cover trade across interconnectors between GB and the island of Ireland.

Why is interconnection important?

In the SEM, ability to trade electricity across the East-West and Moyle Interconnectors with GB means access to larger wholesale trading markets, price convergence, increased economic efficiency and improved capability of the grid to accommodate higher volumes of renewable energy and facilitate efforts to address climate change.

Before Brexit, the Commission for Regulation of Utilities in Ireland published a no deal contingency notice. While trading across interconnectors could continue in the event of a no deal Brexit, there was potential for Day Ahead trading to become less efficient because Ireland would no longer have access, via interconnection with GB, to the pan-European day-ahead market. The notice indicated that the relevant stakeholders were working to minimise any loss in efficiency. Fall-back arrangements were put in place with the aim of facilitating efficient trade.

What does the Trade and Cooperation Agreement say about electricity interconnection?

The EU and UK agreed principles to ensure efficient interconnector trading. These include ensuring that capacity allocation and congestion management of interconnectors is market-based, transparent and non-discriminatory; that the maximum level of interconnector capacity is made available; and that capacity is only curtailed in emergency situations and in a non-discriminatory way. System operators are required to coordinate, including to develop arrangements to deliver robust and efficient outcomes for all relevant trading timeframes (forward, day-ahead, intraday and balancing).

The Specialised Committee on Energy must ensure, as a matter of priority, that the system operators set out technical procedures for capacity allocation and congestion management at the day-ahead stage in accordance with Annex ENER-4, which provides that the new arrangements for allocation of capacity on interconnectors in the day-ahead market will be based on the concept of "multi-region loose volume coupling". While it is not exactly clear what this will entail, it involves development of a market coupling function to determine the net energy positions between EU and GB interconnectors. The net energy position will be calculated by applying an algorithm to certain data (including day-ahead commercial bids and offers, network capacity data and system capabilities). The process and algorithm are described, however, as being distinct from that used in the EU. The new procedures have to be in place within 15 months, that is by April 2022. We understand that, until the new procedures are in place, fall-back arrangements put in place by the systems operators will apply.

The Specialised Committee on Energy will also be responsible for keeping under review arrangements for all timeframes and may recommend preparation of technical procedures to improve arrangements.

What about gas interconnection?

The Agreement also provides for efficient use of gas interconnectors. The Parties must ensure that the maximum level of capacity is made available. Capacity allocation mechanisms and congestion management procedures must be market-based, transparent and non-discriminatory. Auctions should be used for the allocation of capacity at interconnection points. System operators will be required to coordinate procedures and endeavour to offer jointly standard capacity products that consist of corresponding entry and exit capacity.

We understand that trade across gas interconnectors will continue to be facilitated by Primsa, the existing European trading platform.

What next?

Tackling climate change, a goal shared by the EU and UK, requires integration and joint development of energy systems, as well as collaboration to create the necessary regulatory, funding, and route to market conditions for international renewable generation projects.

Developing the new arrangements mandated in the energy sections will take time but it is critical that these be advanced expeditiously given their significance to security of energy supply for the island of Ireland and achievement of Ireland's decarbonisation ambitions.

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