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BREXATOM - BRITAIN SET TO EXIT THE EUROPEAN ATOMIC ENERGY COMMUNITY - POTENTIAL IMPLICATIONS

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TOPICS: ENERGY

13 February 2017

Hidden away in the notes to the Brexit withdrawal bill was the revelation that, as part of Brexit, the UK will also exit the European Atomic Energy Community (“EURATOM”) in what has been termed “Brexatom”.



The role EURATOM has played to date in the UK nuclear market is not commonly appreciated, but is a matter of great practical significance.

Since 1957, EURATOM has not only established a European market for the provision of nuclear goods and services within Europe, but has also ensured the application and observance of international safeguards, provided a framework for trade relations with other key players in the nuclear arena and facilitated the UK's involvement in revolutionary R & D projects.

The consequences of Brexatom are therefore likely to reverberate throughout the nuclear sector.

EURATOM

EURATOM has a broad remit within the international nuclear field. To date, the UK has benefited from its membership, taking assurance from the safeguards EURATOM applies and monitors, as well as enjoying the security of the supply chain provided by the common market in goods, services and knowledge which EURATOM creates within Europe and facilitates internationally.

Relationships

At its core, EURATOM creates a joined up European nuclear energy industry, uniting all 28 current EU member states into an integrated network which applies equivalent standards, safeguards, collaboration and development within the nuclear sphere.

In addition to this, and reflecting the inherently global nature of the nuclear industry, EURATOM creates a basis for international co-operation. Through a series of co-operation agreements with third-party countries with nuclear sectors, EURATOM acts as a conduit for each of its members (significantly, only by virtue of their membership of the community) to exchange knowledge and trade at the international level. For example, by virtue of the UK's membership of EURATOM, it is covered by the bilateral s123 Agreement made between the Community and the USA and also a nuclear co-operation agreement with Canada. Trade with either country, as with many other states operating in the civil nuclear industry, is prohibited by domestic laws in the absence of such an agreement.

Following Brexatom, the UK will cease to be part of the European community for nuclear relations, and will have difficulty exchanging goods and services with the other 27 members until suitable arrangements are in place. That will be a particularly pressing issue for companies in the uranium,

fuel, and nuclear services sectors whose operations may be in several EU countries.

To resolve this, the UK can seek to negotiate an agreement with EURATOM as a non-EU country, such as the association agreement reached with Switzerland. The ability to reach a new settlement in relation to civil nuclear energy will be influenced by the willingness of the UK Government to accept a continuing role for the EU institutions, which are inextricably linked to EURATOM, in any future co-operation. Thus far the UK government has shown a strong reticence about deferring to the EU institutions (the Commission, the Council or the European Court of Justice) in any manner. Whether or not this attitude will apply to a matter bearing on shared energy security only time will tell.

By ending its participation in EURATOM, the UK will end the existing co-operation agreements with third party nations. The UK will have to negotiate new agreements to maintain a presence within the international nuclear industry.

The experience of others seeking to put in place such agreements in recent years has not been easy. For example, the most recent s123 Agreements entered into by the US, including that made with the UAE in 2009, have been granted on restrictive terms and the bilateral agreement between Japan and India took five difficult years of negotiations to conclude. Others remain resolutely stuck, often on issues of national sovereignty. The UK, of course, starts from a different place and with an extensive nuclear capability of its own, but it may still face unpalatable and intrusive requests from counter-party nations that the EU has historically resisted.

Seeking to negotiate a wholesale replacement of the UK's current nuclear co-operation agreements, with their uniquely byzantine requirements and the need to satisfy a range of vested interests, therefore presents a herculean task with distinct complexities. This is compounded by the timetable - the department for Brexit has indicated that Brexatom will take place at the same time as Brexit, that is two years from the anticipated triggering of Article 50 on 9 March 2017. This brief time frame, together with the interests which the UK has in ensuring co-operation as a matter of high priority, may serve to limit the UK's leverage at the negotiation table.

Goods and services

Brexit poses its own issues for the UK nuclear industry, with factors including the prospect of tariffs, fluctuating exchange rates and the impact on foreign direct investment on which new nuclear in the UK is currently reliant. Brexatom adds a potential risk to the nuclear industry, if the period between exit and any new arrangements curtails the UK's access to the core markets in the nuclear industry.

The central tenet of the European and international relationships EURATOM creates is that of a common market in nuclear goods and services. This provides for the flow of nuclear materials, free movement of skilled workers and a pooling of knowledge against a background of safeguards.

Being party to EURATOM is a pre-requisite to accessing the European supply chain which is important to the success of nuclear projects. To date, the UK has been able to enjoy the simplicity of a single market that underpins a nuclear power model supplying nearly a fifth of the UK's electricity.

Looking ahead, this is brought into sharper focus, as the majority of the designs which will be utilised in any new wave of nuclear stations are not British in origin. Without participation in EURATOM, or replacement arrangements in place, the UK's ability to utilise these designs, import key components and bring in the materials and personnel which are crucial to delivering the

projects, may be thrown into doubt. The Government is all too conscious that without access to overseas vendors' knowledge and services for major civil nuclear stations or SMRs, the UK may inhibit delivering its nuclear ambitions .

Safeguarding

Brexatom also poses the risk that the UK will have to adopt an entirely new approach to safeguarding.

A core objective of EURATOM has been to establish uniform safety standards and a centralised monitoring system. Through directives, EURATOM has comprehensively pursued this objective, addressing the entire life cycle of nuclear installations, reinforcing monitoring and ultimately creating a consistent EU-wide safety framework covering nuclear installations and nuclear waste management, as well as protection of workers and the public. EURATOM's ability to make sensible international relationships has been predicated on the assurance that this safeguarding system provides.

The UK's legislative regime and safeguarding programme is inherently interwoven with the EURATOM directives. While it may be that many of the relevant provisions can be maintained post-Brexatom, in the long term the evolution of these will require careful consideration which will add a technical workload for the Brexit taskforce.

In the short term, leaving the EURATOM safeguarding framework will present a more immediate practical challenge. While we remain a member of EURATOM, the European Commission is responsible for overseeing inspections of nuclear operators and ensuring compliance with non-proliferation commitments. Once the UK has ceased to be a member of EURATOM, a lacuna will emerge in the supervision of nuclear safeguards. Filling this gap will be critical to ensuring that the UK can evidence its compliance with the international standards that are an essential component in securing new co-operation agreements and trade within the nuclear sector.

However, finding a suitable, competent and equipped successor may not be simple. Options include establishing a new entity, extending the remit of the Office for Nuclear Regulation or having recourse to the overstretched IAEA. Whichever route is chosen will require considerable funding, resourcing and structuring within an uncomfortably short time frame.

Research

The funding provided by EURATOM within the UK for nuclear research and development has been of considerable importance to date. In addition to the substantial loans made by EURATOM, the UK has been able to participate in projects which stand at the forefront of the development of atomic fusion energy.

The UK has been heavily involved with the International Thermonuclear Experimental Reactor ("ITER") research and engineering megaproject under construction in the south of France, which has the objective of producing a large-scale and carbon-free source of atomic energy. The UK's ability to participate in ITER and to share in its outputs, including invaluable IP rights and knowledge, is presently governed by membership of EURATOM.

While third party countries also participate, the structure and depth of the UK's future involvement is, at this stage, unclear. The UK could pursue an associate membership, such as that held by Switzerland, or a third party membership, like that of the USA. The form of membership will dictate not only the continuing role of the UK within the project, but must also govern unvested rights in the

project and its significant funding obligations among a vast range of issues. While ITER is primarily a scientific community with less propensity for political infighting, agreeing on these issues may not be a simple matter as the outputs of ITER are potentially hugely important. Again, it may be difficult to achieve within the two-year Brexatom timetable.

A matter of more urgent concern may be the Joint European Torus (“JET”) facility in Oxfordshire. JET is currently the world’s leading fusion device investigating the potential of fusion power as a “safe, clean and virtually limitless energy source” and, crucially, is seen as the forerunner to ITER.

The UK’s hosting of JET is conditional upon EURATOM membership, which in addition to providing a pool of circa 350 highly-skilled scientists also supplies 87.5% of funding for the project. The UK’s current contract to operate the device is due to expire in 2018. Brexatom may have serious implications for the continuation of this contract, especially as negotiations will be required while the UK’s nuclear agreements remain in a state of flux prior to the 2019 exit date. The willingness of the EU to continue to participate in and fund JET may also alter following Brexatom.

The Government has repeatedly stated that the UK nuclear industry remains of key strategic importance within its industrial strategy, most recently during debate of the Brexit bill. However, given the significant work to be undertaken across a broad spectrum of areas, (and not just related to Euratom) it is unlikely that all of these will be allocated the resource they would like to negotiate replacement agreements and commercial principles on equivalent terms to those which the UK has enjoyed hitherto.

While the UK may possess the technical abilities to utilise nuclear energy within a modernising energy strategy, whether it will have the underpinning financial and political support in this new era of civil nuclear governance remains to be seen.

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