



Brussels, nuclear and the Brexit

Berta Picamal

Energiforsk Annual Nuclear Conference 2017

25 January 2017



Content

- FORATOM: who we are, what we do...
- What's new on nuclear in the EU?
 - PINC (Nuclear indicative program)
 - Euratom Art. 41 – notification of investments
 - Clear Energy for all Europeans (the Winter Package)
- Brexit – what is at stake for the nuclear sector

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CEZ (Czech Republic) and PGE (Poland) are Corporate Members

Membership dates

- 1960: BE, LU (1960-1996), FR, DE (1960-2016), IT, NL
- 1961: CH
- 1962: ES, AT (1962-2008), PT (1962-1979)
- 1963: UK, DK (1963-1979), N (1963-1994)
- 1964: FI
- 1966: SE
- 1991: CZ+SK
- 1999: HU
- 2002: BG, RO, SK
- 2006: SI

FORATOM General Assembly SE representatives: Mats Ladeborn (Vattenfall; member of the FORATOM Executive Board and its past president), Inge Pierre (Energiföretagen Sverige), Aziz Dag (Westinghouse)

FORATOM Mission

- **Act** as voice of nuclear energy industry in EU energy policy debate.
- **Enhance** relations between nuclear industry and EU institutions.
- **Deliver** information on nuclear energy to EU institutions, media and the public.
- **Inform** members about developments emerging from EU institutions.
- **Interact** with intergovernmental organisations (IAEA, OECD/NEA, IEA, etc.).
- **Communicate** latest science and technology in co-operation with ENS.

Topics covered

EU Energy Policy

Climate change, energy mix/nuclear share, security of supply, market structure, energy economics, financing (new build) INSC, R&D EURATOM Treaty

Nuclear Safety

ENISS:

- Basic safety requirements & standards,
- radioprotection,
- regulatory framework,
- safety reassessments

Quality assurance (management systems)
lifetime extension/LTO, safety objectives for design of new reactors

Fuel Cycle

Radioactive waste and spent fuel management, reprocessing and recycling, reactor decommissioning, nuclear waste disposal, transport of fissile materials and isotopes

Communications

Social media, internet-based tools, opinion polls, media relations

Legal aspects

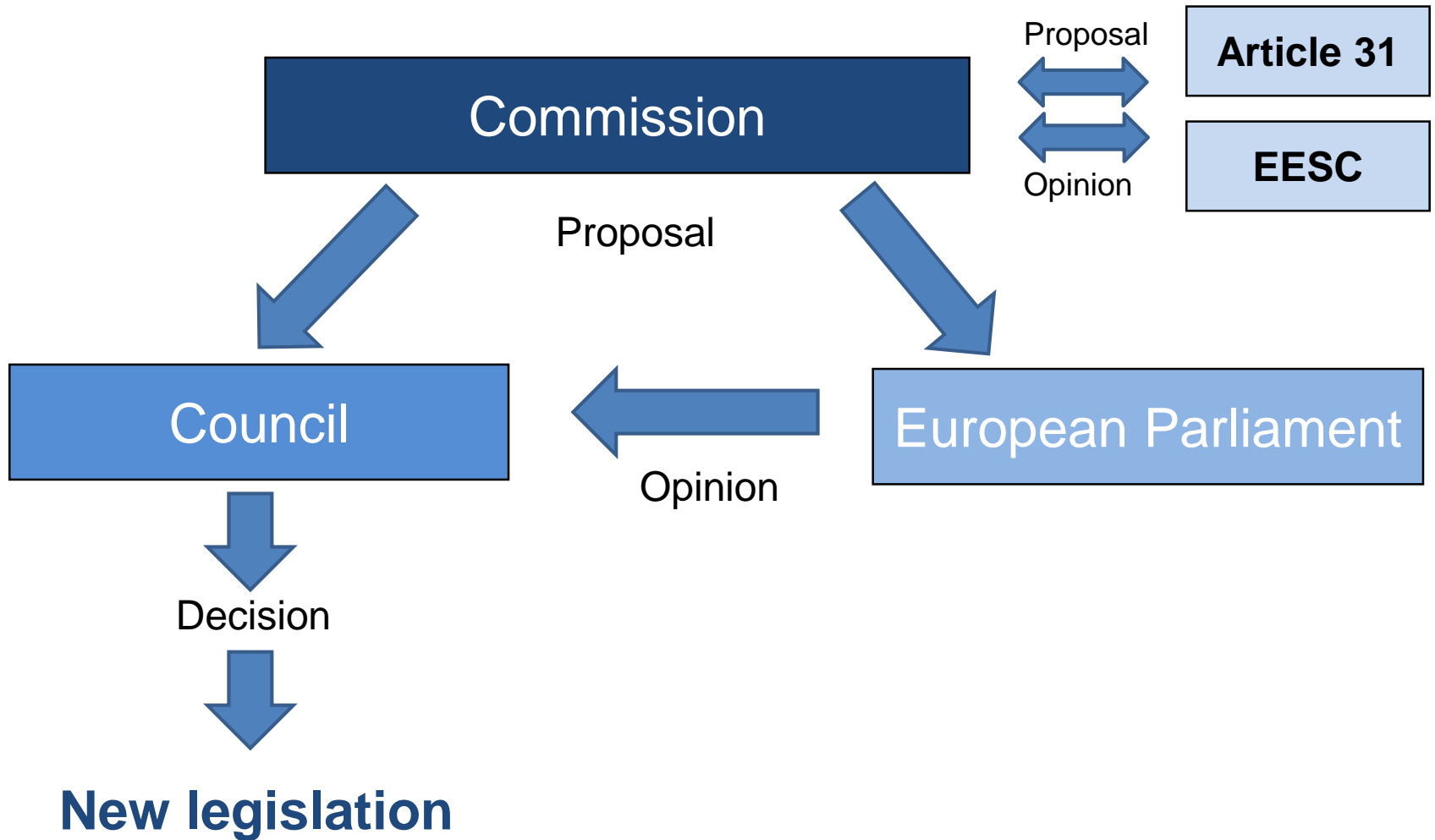
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Energy policy: Nuclear Energy Policy!

- Legal basis for EU energy policy initiatives is mainly two-fold:
 - Energy policy; Article 194 of the TFEU
 - Nuclear energy: **Euratom Treaty**
- Legislation under the Energy Article 194
 - Normal legislative procedure (former co-decision)
 - Energy Working Group, Coreper I, Energy Council
- **Legislation under the Euratom Treaty**
 - Special legislative procedure (EP has a consultative role!)
 - Atomic Questions Group, Coreper II, General Affairs Council

Decision making process (Euratom)



The way forward: PINC



Requirement of Euratom treaty (Art. 40): publication by EC of regular nuclear illustrative programmes (PINC) to facilitate development of nuclear investment

A draft PINC was published on 4 April 2016

Opinion of the EESC published end of September 2016

No reaction from EP expected, no reaction from Council expected

FORATOM recommends that the new PINC should clarify:

GHG mitigation	<ul style="list-style-type: none">• Importance of nuclear as effective GHG mitigation option
Public intervention	<ul style="list-style-type: none">• Actions on market design for low carbon technology guidelines for public intervention cases
Regulatory requirements	<ul style="list-style-type: none">• Need for harmonisation of regulatory requirements
Innovation	<ul style="list-style-type: none">• EU-level funding for development and demonstration of innovative nuclear design projects

EURATOM Treaty Art. 41



« Persons and undertakings engaged in the industrial activities listed in Annex II to this Treaty shall communicate to the Commission investment projects relating to new installations and also to replacements or conversions which fulfil the criteria as to type and size laid down by the Council on a proposal from the Commission. »

Public Consultation launched by EC (November 2015 to 25 January 2016)

FORATOM recommends that :

- Focus on the finance-related aspects
- Define a strict timeframe for the EC to issue its point of view
- Increase the threshold amounts for investments to reflect the current costs of nuclear projects (100m€)
- Do not include expenditure on decommissioning projects

EC expected to publish its proposal 1st quarter 2017

Clean Energy for All Europeans – EC proposal 30 Nov 2016



Contents

- Updated energy efficiency directive
- Updated renewable energy directive
- Updated internal electricity market directive
- Updated cross-border electricity trading regulation
- Updated regulation establishing ACER
- Updated performance of buildings directive
- New regulation on governance for all EU energy policies
- New electricity security of supply regulation
- ... and many ad-hoc other documents

<http://ec.europa.eu/energy/en/news/commission-proposes-new-rules-consumer-centred-clean-energy-transition>

Clean Energy for All Europeans

Key items for nuclear

- electricity market directive
- energy efficiency directive
- governance regulation

Analysis of the contents (2000 pages... work in progress...)

First reaction: very little in the package to support nuclear energy - no obvious market signals to encourage nuclear or low carbon investment.

FORATOM key considerations

- Right of MS to choose their energy mix (Art. 194 of the TEU);
- Technology neutrality;
- Ability to deliver the most affordable decarbonisation solutions, which may be different from one MS to the other;
- CO2 climate cost internalized in electricity prices – meaning an effective carbon price policy in a reformed well-functioning ETS;
- Full system costs internalized;
- Sustainable long-term price signals or predictable market-driven investment climate.

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« Brexit means Brexit »



... but that means very little for the time being...
... at least until Article 50 of the TEU is « invoked » ...

Text of the TEU



- Art. 50 - Treaty on the European Union
 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. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
 5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Remembering some dates...

- 23 January 2013 Cameron promised to offer UK a simple 'in/out' referendum choice on whether to stay in the EU (if he wins the elections of 2015)
- 18 -19 February 2016 - Cameron gets a deal at EU summit (addressing economic governance, competitiveness, subsidiarity, and social benefits and free movement)
- 20 February 2016 - Referendum date is announced: 23 June 2016
- 23 June 2016 – UK votes Brexit
- 24 June – EU summit deal becomes obsolete
- 24 June 2016 – Cameron steps down as PM
- 13 July 2016 – Theresa May (Remain campaigner...) becomes PM
- July 2016 – Creation of the Department for Exiting the European Union (Brexit Dept = DExEU)
- 17 January 2017: announcement of objectives from UK side
- Now: waiting ... (March 2017? later?)

Who is who? ... in the UK



David Davis (Secretary of State DExEU) + 5 members of May's cabinet form the nucleus of the ministerial team that will helm the negotiations to take the UK out of the EU



Liam Fox
International Trade



Boris Johnson
Foreign Secretary



Philip Hammond
Chancellor



Amber Rudd
Home Secretary



Michael Fallon
Defence

Who is who?... in the EU



Council: Didier Seeuws (BE diplomat) – in charge of the *Special Task Force on the UK* appointed by the Council to coordinate the political accords required to drive the process to a final deal (appointed in June 2016)



European Commission: Michel Barnier (former FR Commissioner (x2) and MEP) - European Commission's chief Brexit negotiator to detail legal negotiations (appointed in July 2016)

Sabine Weyand, German, former Deputy DG in DG TRADE: deputy chief negotiator for the Brexit negotiation team.

Tadhg O'Briain, responsible for the Energy chapter of the Brexit negotiations within the EC team. Irish citizen that joined the EC in 2008. Worked as an economist in the Northern Ireland Dept of Finance in Belfast for 4 years and in various finance roles in the private sector. More recently, he has held senior positions in the EC's SG and DG Energy.



European Parliament: Guy Verhofstad (former BE PM and MEP) – EP lead negotiator (appointed in September 2016)

Brexit key dates

24 January 2017: Supreme Court delivers ruling on whether TM has the power to trigger Art. 50 using a royal prerogative, rather than by an Act of Parliament

31 March 2017: Deadline TM has set for invoking Art. 50 by notifying the European Council of Britain's intention to leave the EU

30 September 2018: Date by which EU's chief Brexit negotiator, Michel Barnier, wants to wrap up terms of Britain's exit from the Union

31 March 2019: Date by which Theresa May wants to wrap up negotiations over Brexit



May 2019? Britain formally exits the EU, following ratification of Brexit by all other MS

Brexit : court battle over Brexit legality

- Legal dispute in a nutshell: **who** has authority to trigger formally Art. 50?



VS



Brexit : court battle over Brexit legality

- High Court has ruled that the Parliament must vote on whether the UK can start the process of leaving the EU.
- N° 10 maintains that the decision to depart has been taken by the referendum and that its executive powers, under the *Royal Prerogative*, gives the right to trigger Article 50.
- High Court claims that the referendum was merely consultative and that a decision to leave has not yet been taken. Parliament alone, they argue, has the power to decide.
- Supreme Court decided YESTERDAY

Brexit: the Royal Prerogative?

- The *Royal Prerogative* is a set of powers that gives the PM and the Government the authority to make decisions without consulting Parliament.
- These historic powers are officially held by the Queen, but in practice are used by cabinet ministers.
- In the past, the prerogative has been used to withdraw passports, make treaties and deploy armed forces. The powers also cover the appointment and dismissal of ministers, civil service officers and QCs, the granting of honours and the commissioning of armed forces officers.
- The Prime Minister can also use the prerogative to dissolve Parliament and call elections, declare war and recognise foreign states.

May's 12 objectives (Speech 17 January 2017)

- Certainty
- Control of our own laws
- Strengthen the Union (their Union, their 4 nations: Britain, Wales, Northern Ireland and Scotland...)
- Maintain the Common Travel Area with Ireland
- Control of immigration
- Rights for EU nationals in Britain, and British nationals in the EU
- Protect workers' rights
- Free trade with European markets (*"But I want to be clear. What I am proposing cannot mean membership of the Single Market."*)
- New trade agreements with other countries
- The best place for science and innovation (*"We will also welcome agreement to continue to collaborate with our European partners on major science, research, and technology initiatives... From space exploration to clean energy to medical technologies,..."*)
- Cooperation in the fight against crime and terrorism
- A smooth, orderly Brexit

EU leaders reactions: EC

- Jean-Claude Juncker : "We will react to specific information and requests, only when the Article 50 process has been triggered".
- Michel Barnier:



EU leaders reactions: Council and EP

- Donald Tusk:



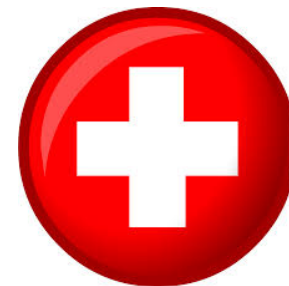
- Guy Verhofstadt:

- "it is an "illusion" to think that Britain could enjoy the advantages of the European Union's single market without accepting the obligations that come with it."
- "... the EU would not accept a Brexit deal that would leave Britain better off than a full membership of the bloc."

Which relationship after the “divorce”?



Norway
EFTA + EEA



Switzerland
EFTA, no EEA

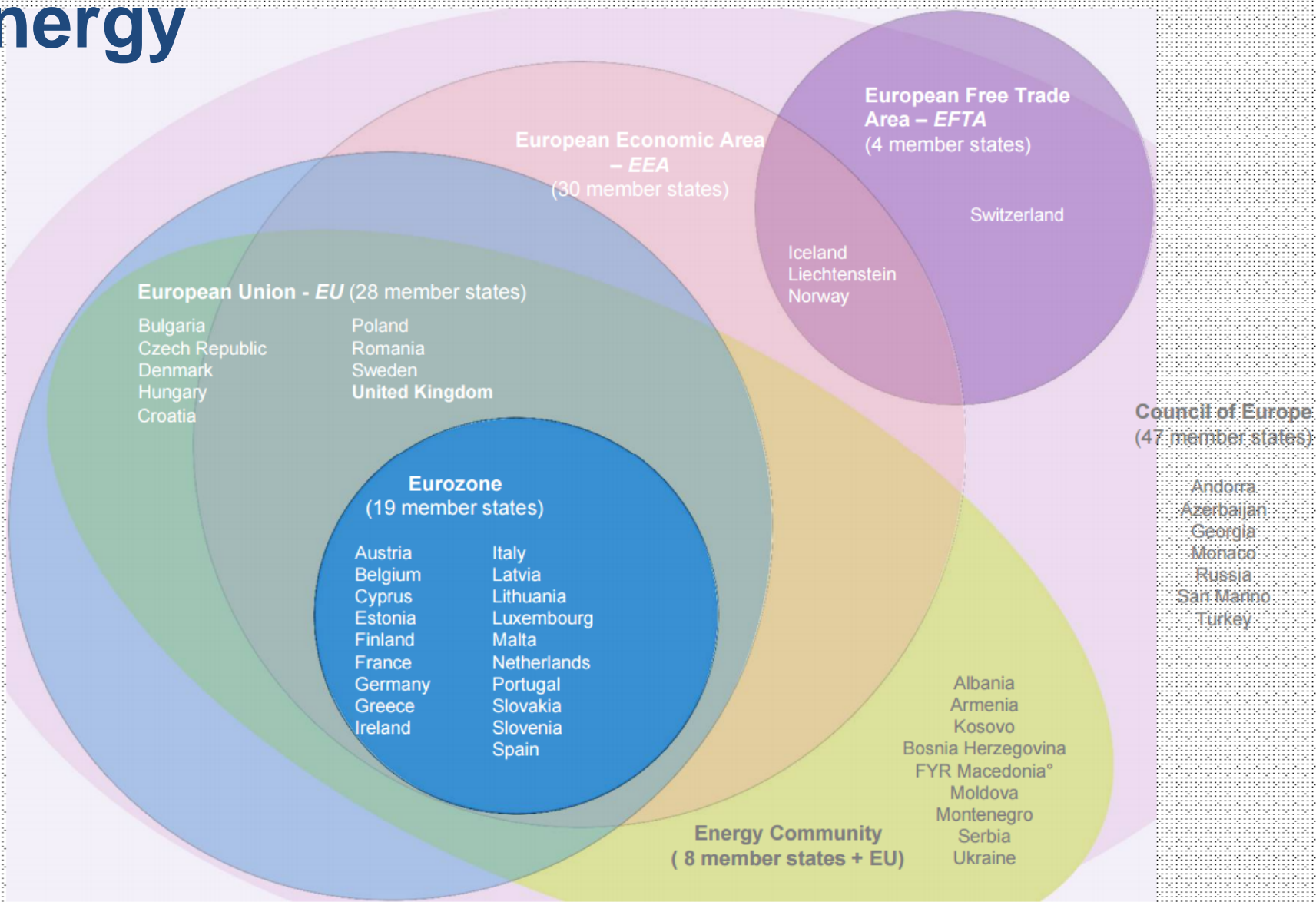


Turkey
Custom Union



US
Trade agreement

Key treaty relationships relevant to EU energy



Source: DLA Piper

What about Energy?

- Many analysis done so far... most conclude that impact still unclear... because many outcomes possible
 - Continued membership in Internal Energy Market? (similar to status of Norway: implementing EU legislation, paying and no voting rights on the relevant legislation?)
 - Continued application of EU legislation and regulatory regime without any formal arrangement?
 - EU-Swiss model with bilateral agreements in sector specific issues?

What about nuclear?

- EURATOM Treaty:



Experts still analysing the issue...

But... Art. 106a of the EURATOM Treaty says:

« Within the framework of this Treaty, the references to the Union, to the 'Treaty on European Union', to the 'Treaty on the Functioning of the European Union' or to the 'Treaties' in the provisions referred to in paragraph 1 (of which Art. 50) and those in the protocols annexed both to those Treaties and to this Treaty shall be taken, respectively, as references to the European Atomic Energy Community and to this Treaty.»

What about nuclear?

- State aid clearance? – if not EU, then WTO... (if UK in EEA (European Economic Area), then EU state aid rules apply, without possibility of influencing...)
- R&D? – UK net beneficiary of funding from EU-funded research programmes (ie: FP7); that would be over (UK contributed €5.4bn but received back €8.8bn); likewise, what about the JET fusion project directly financed by the EU and contribution to ITER?
- EU legislation that has already been incorporated in UK law (NSD RWM, BSS, etc...) and will continue to apply unless repealed (and that might take also very long) will evolve and without influence from the UK

What about nuclear?

- Relationship with ENSREG and WENRA?
- New Electricity Market Design that will impact nuclear
- Climate change: EU commitments vs UK commitments?
- Nuclear politics in general...

UK instrumental to voice the nuclear case in a delicate balance views within the EU (« likeminded »)

What about nuclear?

- Despite everything, it seems clear that for the EU/UK nuclear industry the best would be that the **UK remains within the EURATOM Treaty**.
- The Treaty establishes a **common market in nuclear goods, services, capital and people** within Europe, and there would be a significant risk to the UK and the EU nuclear industry if leaving Euratom led to an interruption of, or barriers to such trade.
- The nuclear industry is **multinational in nature and goods and services, and personnel**, often cross UK/EU borders. There could therefore be **major disruption to supply chains** if there is any interval between the UK leaving Euratom and alternative agreements being put in place.
- Euratom also provides other benefits to the UK such as **route to market overseas** through the NCAs, and **nuclear safeguards services**.

Conclusion

- All in all, whatever the new relationship between the UK and the EU and its MS, we face a period of uncertainty that has a clear impact on investments that could lead to increased investment costs and further delays in investment decisions in the whole energy infrastructure (for new build projects in all technologies, or on development of interconnections and trade links)

... since the referendum, there are more questions than answers...



HERGÉ

THE ADVENTURES OF TINTIN

TINTIN AND THE BREXIT PLAN



FORATOM