



Faculty of Law and Administration  
University of Warsaw

## Fragmentation or enhanced integration?

### The consequences of Brexit for the EU ETS and emissions reduction legislation

Research project: Renationalising the integration process in the internal market of the European Union, No. 2015/17/B/HSS/00467

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## Plan of presentation

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  - 2.2. UK ETS – alternative solution.
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4. Possible impact on the opt-out clause demands.



## Brexit and the environmental legislation

- UK has developed its **own environmental protection policy, which was preceding the EU solutions** – integrated permitting system was primarily applied by the UK;
- UK is still bound by international obligations:
  - **Habitats Directive (92/43/EEC)** and **Birds Directive (2009/147/EC)** are fulfilling and developing obligations, which follows from the **Berne Convention**;
  - Labelling and packaging rules included in the **CLP Regulation (EC 1272/2008)** are following from the **United Nations' Globally Harmonised System of Classification and Labelling of Chemicals**;
  - **Shipment of Waste Regulation (EC 1013/2006)** which is directly linked to the obligations following from the **Basel Convention**.



## Brexit and the environmental legislation – Northern Ireland

**The UK proposes that the new framework relevant to the energy market in Northern Ireland and Ireland should:**

- take account of the strategic importance to Northern Ireland and Ireland of **maintaining affordable, secure, and sustainable supplies of electricity** and gas for businesses and domestic consumers;
- facilitate the **continuation of a single electricity market covering Northern Ireland and Ireland**.



## United Kingdom and the EU ETS – Brexit negotiations

Without a willingness to abide by the jurisdiction of the European Court of Justice (ECJ), and in the **absence of a new joint UK–EU compliance mechanism**, the UK may be **required to leave the EU Emissions Trading System (ETS)**.

Chatham House, Key Elements for UK–EU27 Energy Cooperation After Brexit, 11 May 2017.

While the UK Government is currently considering all options around our future relationship with the EU ETS, the outcome is subject to negotiations and **it is not possible at this stage to give assurances on the structure and timing of talks as regard the EU ETS**.

Department for Exiting the European Union, Response to the EURELECTRIC's letter, 3 August 2017.



## „Business as usual” scenario

- We will **not be seeking membership of the Single Market**, but will pursue instead a new strategic partnership with the EU, including an ambitious and comprehensive **Free Trade Agreement and a new customs agreement**.

HM Government, The United Kingdom's exit from and new partnership with the European Union, February 2017, p. 35

- „it is not necessarily a race to the bottom; it could be a **stroll to the bottom**. You could just have a little bit of this legislation taken off or rounded off, or at the next price review we are not looking so hard at this”.

House of Lords, 12th Report of Session 2016–17. Brexit: environment and climate change, February 2017, p. 13



## „Business as usual” scenario – the most preferable solution from the EC’s perspective

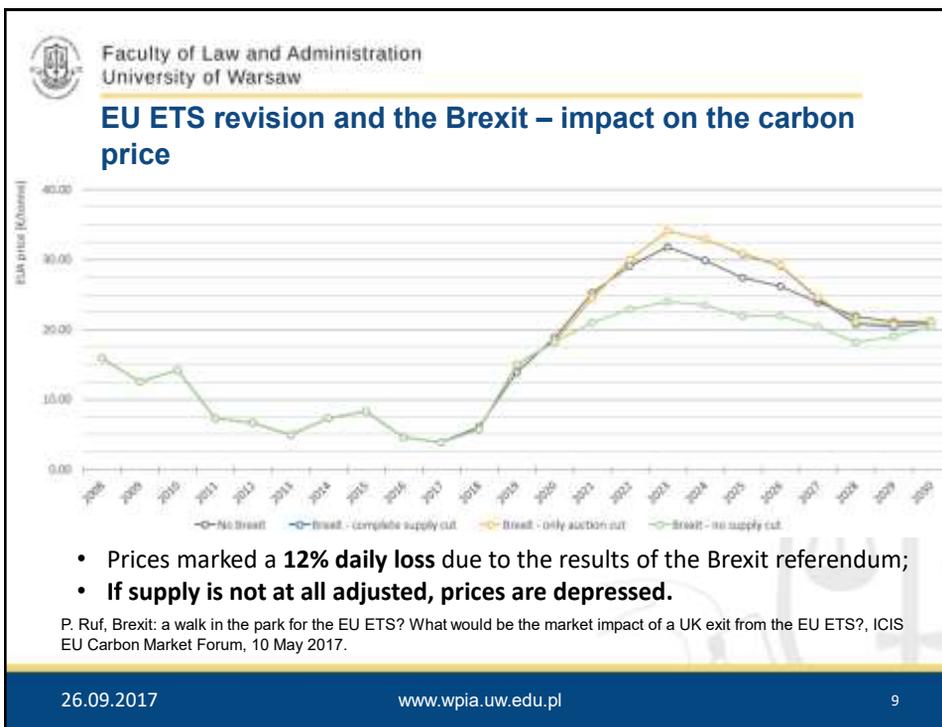


- Proposals submitted one year after the referendum proves that the EC considers UK still as the part of the post-2020 climate and energy framework.
- The UK will still be a Party to the UNFCCC, and will still be a signatory to the Paris Agreement.



## UK ETS – alternative solution

- UK ETS, which was introduced prior to the III phase of the EU ETS - *first national, multi-sector emissions trading program ever established*, replaced by the mandatory EU ETS in 2007;
- **UK Climate Change Act of 2008** put into statute a binding target for the UK to reduce its emissions by 2050 to **80% lower than in 1990**;
- UK ETS may provide an effective way of decarbonisation of the UK’s industry and **keeps control at the national level**;
- „regulatory competition” among Member States may place the UK in a disadvantage position due to the lack of any formal influence on the post-2020 changes.



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## Stakeholders' perspective – no UK exit until 2020

„Many companies in the UK and Europe purchase up two to three years in advance to hedge compliance costs. Therefore, we urge that the UK and the EU agree early in their deliberations on a transitional phase for the UK's participation during the remainder of phase 3 of the EU ETS".

International Emissions Trading Association, Department for Business, Energy and Industrial Strategy, 24 April 2017.

„The UK's energy sector is the largest covered by the ETS and supports staying in the system. A sudden exit from the ETS at the same time as the UK departs the EU would come part-way through the current trading phase. That could cause chaos for all those countries involved and the consequences of the carbon price crashing could see millions of pounds of UK consumers' money wasted and undermine long standing efforts to reduce CO2 emissions".

Energy UK, Press release, 14/09/17

26.09.2017 [www.wpia.uw.edu.pl](http://www.wpia.uw.edu.pl) 10



## Brexit amendment to the EU ETS Directive adopted on 13.09.2017

In Article 12, the new paragraph 3a is added:

*In order to protect the environmental integrity of the EU ETS, aviation operators and other operators in the EU ETS **may not use allowances that are issued from 1 January 2018 onwards by a Member State in respect of which there are obligations lapsing for aviation operators and other operators.***

*The legal act referred to in Article 19 shall implement this paragraph.*

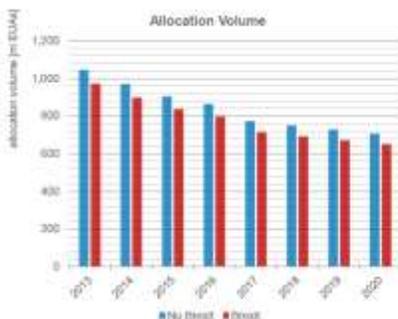
Amendment tabled by P. Liese (EPP, DE), Member of the ENVI Committee



## Scope of the Brexit amendment

To prevent the selling of all EUAs either

- allocated for free to UK installations from 2018 (ca. **180 mEUAS**), or
- sold at auction by the UK Government from 2018 (ca. **290 mEUAS**) if the UK were subsequently to leave the EU-ETS.





## Stakeholder's perspective

### EURELECTRIC's position:

- In the absence of concrete proposals on the table to regulate the future relationship between the UK and the EU ETS, EURELECTRIC welcomes the effort to address the potential negative impact of Brexit on the EU ETS. However, under the current circumstances, the **adoption of such a measure is premature and could limit the flexibility available to the Brexit negotiating teams** to engage on an important element of the negotiations.

EURELECTRIC, Brexit talks must ensure investors retain trust in EU ETS, 15 September 2017.



## Stakeholder's perspective

### European Federation of Energy Traders statement:

- It will **split the European carbon market** until it is known if a 'hard Brexit' can be avoided, regardless of EU Commission implementing measures;
- It will **cause confusion in the market**, reducing the appetite for UK EUAs while encouraging oversubscription to "EU-27" EUAs;
- As a consequence, it will **create considerable contractual and trading risks**, of a type which seems to not have been acknowledged by lawmakers.

Source: European Federation of Energy Traders, EFET calls on lawmakers to reconsider measures to protect EU ETS from BREXIT impact, 14 September 2017.



## Legal assessment

- **Bypassing current EU ETS revision process** – amendment provided through proposal for a regulation of the European Parliament and of the Council to continue current limitations of **scope for aviation activities** and to prepare to implement a global market-based measure from 2021;
- Conferring implementing power to the Commission – raises **legal uncertainty** about the exact amount of allowances – what about already concluded contracts?



## Further concerns about the current phase of the EU ETS

### BARCLAYS:

- Assuming the UK does not make a decision on whether it will remain in the EU-ETS or not until early 2019, and allowing for the fact that
  - freely allocated 2018 EUAs should have been distributed by 30 April 2018 and
  - at least some of the 2018 UK auctions will have taken place by then, UK entities could in theory use a significant amount of 2018-vintage EUAs for their 2017 compliance, thereby retaining a significant number of 2017-vintage EUAs either for future compliance use (should the UK remain in the EU-ETS after all), or
  - to sell back into the market in 2019 (should the UK leave the EU-ETS when Brexit takes effect).



## Market assessment

### REDSHAW:

- It exposes the Europe-wide EU ETS to a material risk of a **complete trading shutdown**.

### ICIS:

- Currently, it is impossible for market participants to differentiate allowances by their issuing country. To make this conditional eligibility enforceable, **allowances have to be marked with a country stamp when traded**.



## Possible impact on the opt-out clause demands

- Possible UK's withdrawal from the EU ETS and successful implementation of the reduction target determined pursuant to the Paris Agreement may lead to increase the demand for the EU ETS *opt-out* clause for Member States, which are not in favour of the EU emissions reduction regulatory policy.
- This issue may be addressed in mid 2020' with the next EU ETS directive comprehensive revision or by the Treaty-based amendment.



## Possible impact on the opt-out clause demands

- However, Brexit amendment may prevent taking effect by simple opt-out clauses. Traders, generators and industry representatives do not want to buy allowances, which may be declared as being non-tradable at all.
- In the post 2020-framework Brexit amendment may minimise the risk of oversupply, however if the UK decide to leave EU ETS and introduce the UK ETS instead, the comprehensive synchronization of the national and EU-wide systems would be necessary.