

BREXIT, EURATOM AND NUCLEAR LIABILITIES:

The following series of articles is written further to Jonathan Leech's attendance at the Waste Management Symposia 2018 in Phoenix, Arizona, on 22nd March, and examines the UK's impending exit from EURATOM and responsibility for international nuclear safeguards.

See link to [Jonathan Leech's presenter profile](#), [List of exhibitors](#) and [Conference Program](#)

The second part of this series will examine the UK's nuclear cooperation agreements and post-exit relationship with EURATOM.

Introduction

The outcome of the UK referendum on withdrawal from the European Union resulted in UK Government confirmation that the UK must also withdraw from the European Atomic Energy Community (Euratom). The UK will automatically exit Euratom on 29 March 2019 unless Euratom members agree an extension, or the UK remains a member under some agreed transitional arrangement. As at the date of the Waste Management Symposia, half of the 2-year period for agreeing terms of exit and putting in place replacement arrangements had passed. This paper describes the position as at December 2017. There will of course be further developments before the Symposia.

Whether Euratom exit was a necessary consequence of withdrawal from the EU is now a matter for academic legal debate only. Certainly, there are good arguments that Euratom exit was not an automatic and immediate consequence of Brexit. Those arguments would have given the UK Government a choice, at least in relation to the timing of Euratom exit. Whether for reasons of legal necessity or political expediency, inclusion of additional notice relating to Euratom withdrawal within the UK's Article 50 notice on 29 March 2017 has ensured that the same 2-year timetable applies to both EU and Euratom withdrawal.

The Business, Energy and Industrial Strategy Committee report published on 13 December 2017 concludes that leaving Euratom "*is a wholly unwanted and potentially unintended consequence of our leaving the European Union.*" Exit from Euratom will create binary questions of acceptability of nuclear trade and collaboration with the UK, reflecting current reliance on the UK's status as a Euratom member. This in turn risks disruption of international nuclear cooperation and trade, including provision of resources and know-how in support of the UK waste and decommissioning effort, new build programme and international movement of waste for treatment. The task now is to minimise potential adverse impacts of departure.

Significance of Euratom

Since the UK's accession to Euratom in 1973 (alongside accession to the EEC, as it then was), the regulation and international acceptability of the UK nuclear industry have been closely entwined with Euratom.

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The Euratom Treaty sets out eight areas of activity:

- (a) promotion of research;
- (b) establishing and policing uniform safety standards;
- (c) facilitating investment;
- (d) ensuring a regular supply of ores and fuels (via the Euratom Supply Agency);
- (e) safeguards;
- (f) exercising rights of ownership over “special fissile materials”;
- (g) creation of a nuclear common market; and
- (h) establishing relations with other countries and international organisation to foster progress in nuclear energy.

Of these areas, safeguards and international relations (in the form of nuclear co-operation agreements) are likely to place the greatest strain on the exit timetable and are considered further below. The UK is reliant on its status as a Euratom member in establishing and implementing acceptable safeguarding requirements; ensuring inclusion of the UK within the scope of existing Euratom nuclear cooperation agreements; and as a basis for current UK bilateral nuclear cooperation agreements.

In terms of safety and security, Euratom is generally not the originator of regulatory standards and requirements. Instead Euratom regulations and directives aim to give consistent effect to international legal frameworks governing nuclear safety and security, including the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management, the Convention on the Early Notification of a Nuclear Accident, the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, the Convention on the Physical Protection of Nuclear Material, and the IAEA Action Plan on Nuclear Safety. That international framework of nuclear law will continue to apply to the UK. Withdrawal from Euratom is therefore unlikely to result in significant changes to UK regulatory standards.

UK Euratom exit: status of negotiations

The joint EU and UK report on progress during phase 1 of Brexit negotiations published on 8 December 2017 includes a summary of the position reached on nuclear specific Euratom issues:

“both Parties have agreed principles for addressing the key separation issues relating to the UK’s withdrawal from Euratom. This includes agreement that the UK will be responsible for international nuclear safeguards in the UK and is committed to a future regime that provides coverage and effectiveness equivalent to existing Euratom arrangements. Both sides have also

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agreed the principles of ownership for special fissile material (save for material held in the UK by EU27 entities) and responsibility for spent fuel and radioactive waste.”

This summary leaves significant scope for clarification and development. Despite the Government’s Safeguards Bill that is intended to provide the basis for a domestic safeguards regime, there is no clear indication as to how the UK’s responsibility for international nuclear safeguards post Euratom exit will be met. Also, commitment to “*a future regime that provides coverage and effectiveness equivalent to existing Euratom arrangements*” may imply that creation of such a regime is an objective for the future rather than something to have in place on Euratom exit. Reference to “*existing*” arrangements also suggest that the UK may not maintain equivalence with any future Euratom developments.

Government has also confirmed that bilateral negotiations with the IAEA on a future Voluntary Offer Safeguards Agreement are underway, and that this will be in place by March 2019. The UK’s current Voluntary Offer Safeguards Agreement under the Non-Proliferation Treaty is predicated on Euratom membership.

Jonathan Leech is a solicitor specialising in project and infrastructure work, with particular emphasis on the energy, nuclear and utility sectors. His work includes advising on legal and contracting strategies and regulatory issues associated with major nuclear development, decommissioning, waste and reprocessing projects, energy infrastructure and other utility and infrastructure related projects.

Prospect Law is a multi-disciplinary practice with specialist expertise in the energy and environmental sectors with particular experience in the low carbon energy sector. The firm is made up of lawyers, engineers, surveyors and finance experts.

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