

The UK's relationship with Euratom: What next?

As Global Counsel and Herbert Smith Freehills convene a discussion on the UK's future relationship with Euratom, this paper provides an overview of the legal and political background. The paper also identifies some of the potential options for mitigating the impact on the UK. Lastly, the paper identifies the six next steps the UK must undertake if it is to minimise disruption from 'Brexitom'.

The UK's exit from Euratom

On 29 March 2017, the Government of the United Kingdom formally provided the European Council with its Withdrawal Notice, triggering Article 50, and setting out its intention to withdraw both from the European Union, and the European Atomic Energy Community, otherwise known as Euratom.

In justifying its decision to trigger the United Kingdom's exit from Euratom, Government argued that the EU and Euratom are "uniquely legally joined", noting that "it uses the same institutions as the EU including the Commission, Council of Ministers and the Court of Justice". This line of argument has subsequently been used repeatedly by ministers and was included in the policy paper "United Kingdom's exit from, and new partnership with, the European Union".

It is Herbert Smith Freehills's view that the UK Government was not legally required to withdraw from Euratom when triggering exit from the EU. The intention to leave Euratom was not explicitly highlighted in the Withdrawal Act, which received Royal Assent on 16 March 2017 (although it was referred to in the explanatory notes). Further, even the Withdrawal Notice did not refer to Article 106a of the Euratom Treaty which is the relevant substantive provision relating to withdrawal.

In recent months a number of MPs from across the political spectrum have questioned whether the UK leaving Euratom is the right course, most notably [Rachel Reeves](#) and [Ed Vaizey](#). However, the UK's intention to withdraw from Euratom is clear and consequently, the UK is on course to leave Euratom on 29 March 2019.



Key areas of impact

The decision to leave Euratom could, if replacement measures are not put in place in time, have significant negative impacts on a range of sectors:

- **Civil nuclear industry:** The most direct area of impact is on the UK's civil nuclear industry where the potential for disruption is very high. Unlike other sectors where trade may be impacted by tariffs or other trade barriers subsequent to Brexit, import and export of key materials for the nuclear industry could become illegal unless there is a seamless transition to replacement arrangements.
- **Nuclear decommissioning:** The UK's Nuclear Decommissioning Authority (NDA) relies on a range of materials, equipment and services sourced from outside the UK which could face disruption;
- **Research:** UK involvement in joint research programmes such as ITER and JET Fusion 4 Energy is based on Euratom membership, bringing scientific and economic benefit to the UK including £50 million a year to run JET, and supply chain contracts worth up to €500 million. The EU's Horizon 2020 Fission R&D programme funds further research into nuclear activities and opens opportunities for investment in UK R&D. Without a new framework for collaboration research in the UK could be curtailed;
- **Medicine:** The UK Government has denied that leaving Euratom could interrupt the trade in medical isotopes. However, in any event, there will need to be a new

regulatory framework governing the trade in such materials; and

- **Other:** A wide range of other industries also make use of radioactive materials, including the automobile, aeronautics, as well as mining and petroleum industries. Beyond those directly affected are a range of businesses within supply chains who stand to suffer if trade is disrupted.

What has been done so far?

The UK Government's aspiration – set out in a position paper on “Nuclear materials and safeguards issues” – is to reach agreement on new nuclear safeguards arrangements with no interruption from the Euratom regime, and “provision of legal certainty on immediate issues related to nuclear material in both the UK and Euratom”. The UK's position paper was mirrored by an EU paper released in July, covering much of the same issues.

Following the conclusion of the fourth round of Brexit negotiations in late September, Brexit Secretary David Davis highlighted nuclear safeguarding as one area of progress, and that both sides were “close to reaching agreement on the vast majority of issues set out in our position papers”. However, there remains significant work to be done on the future UK-Euratom relationship, as well as getting the UK itself ready to leave. The UK has begun this work with the first reading of the Nuclear Safeguards Bill, and seeking powers to enhance the role and responsibilities of the Office for Nuclear Regulation (ONR).

“... [EU and Euratom are] uniquely legally joined”

UK GOVERNMENT

“... the UK Government was not legally required to withdraw from Euratom when triggering exit from the EU”

**SILKE GOLDBERG,
HERBERT SMITH
FREEHILLS**

UK-Euratom relationship: what are the options?

1. Could the UK remain in Euratom?

There have been attempts to keep the UK in Euratom even as it leaves the EU. In February 2017, an opposition amendment to the Brexit bill, seeking to keep the UK in Euratom, was defeated by a majority of 49. While further amendments could be attached to the UK Withdrawal Bill, any attempt to force the UK Government to rescind its decision to leave Euratom would face key technical and political challenges:

- the United Kingdom would need to negotiate and make changes to the Euratom Treaty, to reflect that the United Kingdom was subject to the institutional arrangements (notably the European Commission, the European Parliament, the European Council and the European Court of Justice) solely for the purposes of the Euratom Treaty;
- an amended format would be required for continued engagement of the United Kingdom with European Union institutions in relation to Euratom;
- this would probably include a revised basis on which the United Kingdom's representatives in the relevant institutions were elected or nominated, given that these persons would have had a role only in respect of the United Kingdom's membership in Euratom; and
- financial arrangements would have to be amended to allow the United Kingdom to contribute (as a non-European Union country) to the budget of Euratom.

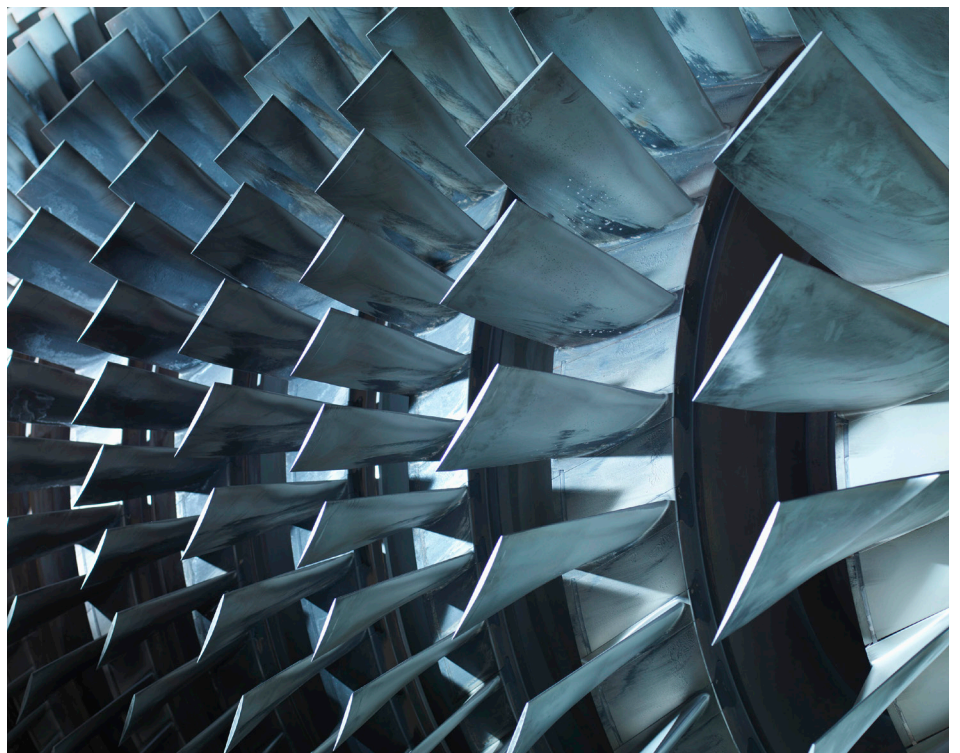
None of these challenges are insurmountable; the bigger barrier is perhaps political. Withdrawing the UK's decision to exit Euratom would require amendment to the UK's Article 50 Withdrawal Notice. To do so would require consent from the EU27, but perhaps more significantly, would implicitly acknowledge that the rescinding of the UK's decision to leave the EU were possible; something likely to be politically unpalatable to the UK Government.

2. Associate agreement

Under Article 206 of the Euratom treaty, there are provisions for associate agreement with Euratom, with “reciprocal rights and obligations, common action and special procedures.” Euratom currently has such an agreement with Switzerland, although this agreement is focussed on scientific research partnership, and is a long way short of a replacement for the full terms of membership. An associate agreement would require unanimity in the Council – raising the question of how anti-nuclear countries such as Austria might approach the issue – and consent from the European Parliament.

3. Third country status

Alternatively the UK could simply accept third party status, and seek the requisite Nuclear Cooperation Agreement with Euratom. However, agreeing a replacement agreement with Euratom would require a qualified majority (ie 55% of the Council Members representing EU Member States comprising at least 65% of the total EU population must vote in favour).



What else needs to be done?

Beyond establishing a new relationship with Euratom, the UK will also need to:

- conclude a new Voluntary Offer Agreement with the International Atomic Energy Agency (IAEA) to remain in compliance with its international law obligations. This would cover the UK's safeguarding operations (this is likely to be a key requirement for the UK to put into place any replacement arrangements); and
- sign new Nuclear Cooperation Agreements (NCAs) with third countries to replace current agreements with Euratom. In the US such a "123 Agreement" is a legal pre-condition to nuclear trade, while countries such as Canada and Australia require as policy an NCA as a pre-condition to nuclear trade. The Nuclear Industry Association has identified as priorities, NCAs with the US, Canada, Japan, Australia, Kazakhstan and South Korea and note that the UK will be subject to the legislative and policy imperatives of such countries.

Transition

The clock is now ticking on an exit from Euratom. As with the UK exit from the EU, attention is turning to the potential transition period during which time the UK could put in place the requisite safeguarding processes, and conclude the NCAs it requires to continue seamlessly its trading and research relationships with third countries.

This course has been advocated by industry, and would offer business much needed certainty at a critical time for UK nuclear. However, such an agreement would have to be potentially agreed with all Euratom members, again raising the question of how anti-nuclear member states such as Austria may respond, as well as providing leverage against the UK in the wider negotiation.

What needs to happen now

Assuming the UK will leave Euratom, the UK Government needs to:

1. Put in place transitional arrangements which will apply from 29 March 2019 until such time that the future relationship with Euratom has been fully defined and documented in appropriate treaties.
2. Prepare a back-up plan for the improbable and undesirable version of 'Brexitom' in which the UK departs after the two-year notice period, without having agreed any replacement arrangements.
3. Put in place a new, post-Euratom security and safeguarding regime for the UK.
4. Define the UK's future relationship with Euratom, in particular as to whether it would seek "associated" status or accept third country status and seek a Nuclear Cooperation Agreement with Euratom.
5. Conclude a new Voluntary Offer Agreement with the IAEA to remain in compliance with its international law obligations to cover the UK's safeguarding operations.
6. Sign new NCAs with third countries to replace current agreements with Euratom. The Nuclear Industry Association has identified NCAs with the US, Canada, Japan, Australia, Kazakhstan and South Korea as priorities.

Conclusion

Brexit and Euratom exit do not need to be part of the same legal or political debate and the solutions, including for the vital transition period, can be different.

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