We have previously reported on what Brexit, and in particular what the departure of the UK from the European Atomic Energy Community ("Euratom") may mean for the British nuclear sector. In this Insight we consider the progress that has been made since it was acknowledged that Brexit would also lead to what has been coined "Brexatom" and measures the government has put in place to mitigate the resulting risks in preparation for the date on which the UK will (eventually) depart from the UK (the "Departure Date").

**Background**

For those unfamiliar with Euratom, this European community unites all 28 current EU member states into an integrated network in the nuclear sphere. This union not only ensures equivalence of standards and safeguards but also acts as a conduit for international co-operation, allowing each member state to benefit from Euratom's nuclear co-operation agreements ("NCAs") with third-party countries in turn enabling exchange of know-how and international trade.

Post Brexatom, the UK will no longer be permitted to 'piggy back' on Euratom's NCAs. In consequence, the UK will need to have bilaterally negotiated individual NCAs with states operating in the civil nuclear sector (such as (and as a priority) America, Canada, Australia and Japan) or else be prohibited from undertaking the nuclear trade which is so crucial to the continued operation of the UK nuclear sector.

Historically NCAs can be arduous and time consuming to agree. Add to this the fact that the UK needed to replace its safeguarding regime wholesale as a pre-requisite to agreeing replacement NCAs, the scale of the work required within a tight timeframe has
been quite astounding.

**Where are we now**

On 26 January 2017, in the draft European Union (Withdrawal) Bill the Government confirmed that (notwithstanding objections by the House of Lords) Brexit would also mean Brexatom.

Since then, the UK and EU have sought to agree a negotiated settlement for Brexit. At the time of writing this settlement remains elusive. With regard to Euratom, if a deal is achieved the key focus will be upon the continued participation in Euratom Research and Training Programmes, in particular the International Thermonuclear Experimental Reactor, as well as upon matters such as the ownership of fissile material, responsibility for radioactive waste, community equipment, safeguarding and the positioning of nuclear supply contracts.

In terms of the UK’s ability to continue to benefit from Euratom’s NCAs, the EU has said that the UK may no longer be able utilise these post Brexit. The UK government has interpreted this as confirming that the UK will not be able to use the NCAs and so has sought to put alternative arrangements in place (including the underpinning safeguarding framework) so that there is no gap in the UK’s ability to conduct international nuclear trade from the eventual date of departure.

**Safeguards**

As a fundamental pre-requisite to getting NCAs in place, the UK first faces the challenge of 'onshoring' its nuclear safeguarding system.

Key to safeguarding nuclear material and knowhow is the reporting and verification process whereby the UK demonstrates that its civil nuclear materials are not diverted into military or weapons programmes. During the UK’s membership of Euratom, safeguarding measures have been implemented by the European Commission who, in a trilateral arrangement, feed this information to the International Atomic Energy Agency ("IAEA"), the world’s nuclear inspectorate. This process demonstrates compliance with international standards and provides a green light for NCAs with many countries.

To close the lacuna that may therefore open post Brexatom, the UK has passed new legislation providing that the Office for Nuclear Regulation (the "ONR") will have domestic oversight post Brexit (Nuclear Safeguards Act) and has also entered into two new bilateral
agreements with the IAEA (a Voluntary Offer Agreement and an Additional Protocol) in respect of its new safeguarding arrangements.

The legal framework for ONR oversight has been codified with impressive speed and the public consultation in respect of the draft Nuclear Safeguards Regulations (the "Regulations") (which set out the detail of a new domestic civil nuclear safeguards regime) closed in September 2018, with the Government publishing a response in November 2018 and Parliament debating and approving the regulations in January 2019. As part of this legislative dialogue, some industry stakeholders observed that, as initially drawn, the proposals raised concerns regarding the resource and cost burdens that these may impose on the nuclear industry. In addition, questions arose about the bedding in of the administrative load that safeguarding operations will entail. However, the efficiency with which the regulations were put in place has meant that the target for additional inspectors was met in good time for the original Departure Date of 29 March and the additional time afforded by the delays in exiting Euratom will no doubt allow the new inspectorate to find its feet.

Whilst this process has been ongoing, progress has been made in terms of the infrastructure of the new safeguarding arrangements. The ONR has placed the IT contract for the ONR's 'Safeguards Information Management and Reporting System' and this has been running in parallel alongside Euratom since January 2019 and was fully functioning as at 29 March 2019. Add to this the fact that the government had also provided assurance that it will be committed to covering all set-up costs of the new ONR safeguarding regime and that the Infrastructure and Projects Authority has been seen as giving a 'vote of confidence' in the new regime, the overall impression is one of focused impetus to ensure all necessary arrangements are in place to provide a domestic nuclear safeguards regime offering coverage and effectiveness equivalent to that of Euratom.

NCAs

In parallel with getting the domestic safeguarding system up and running, the UK has agreed NCAs with the US, Australia, Canada and Japan to take effect from the eventual Departure Date. This is imperative to secure ongoing nuclear trade with these partners so as not to disrupt the UK’s electricity supply (a fifth of which is nuclear powered), the £60 billion of planned investments in nuclear or the UK’s ongoing decommissioning activities.

As highlighted above, negotiating such agreements can be a protracted exercise. Despite this, the UK’s long reputation of competence in the nuclear sector and extensive nuclear capabilities have eased the trajectory of agreements, and NCAs entered into with Canada,
the US and Australia are in the process of being ratified by Parliament. What is more, the UK has been in a bilateral arrangement with Japan since 1998 and measures to ensure the continuation of this post Brexit have been subject to 'productive' discussions between the two countries.

The NCAs with each of these countries will be readily enforceable on the Departure Date (or otherwise capable of implementation when required) and will be on terms equivalent to the existing arrangements in place with Euratom (thus facilitating a smooth transition).

Turning to the UK's continued relationship with Euratom, the government has recorded that it "seeks a close association with the Euratom Community" post Brexatom to "maintain … mutually successful civil nuclear co-operation". Following a planned two year implementation period, in a negotiated scenario this is envisaged as an 'enhanced' NCA, to establish a cooperation mechanism between ONR and the European Commission in respect of safeguards, to provide for continued participation in the Euratom Research and Training Programme, to ensure continued contractual arrangements for the supply of nuclear materials and to minimise barriers to trade.

Of these aspirations, to date only the safeguarding mechanism and continued involvement in the Joint European Torus has been settled in principle. If the government and UK fail to reach agreement on Brexit more generally it may mean that the UK is in a position of reduced influence in nuclear cooperation across Europe. The government stated the UK to be a "strong supporter of Euratom". It has gone as far as considering a continued role for the ECJ in this area as "the well-established and significant economic benefits of close association with, or membership of, Euratom should not be put at risk to escape any hypothetical and unidentified adverse impact on the civil nuclear sector arising from European Court of Justice jurisdiction". The Euratom community will be similarly keen to ensure that a deal is reached in this area, but as with everything Brexit related, this may be contingent on the nature of the eventual political resolution.

Where next

Safeguarding and international trade agreements are fundamental to the continued operation of the civil nuclear industry. Much has been done to address the fall-out of Brexatom to date (and the picture is far clearer than that for the post-Brexit landscape generally, with some commenting that the nuclear landscape is the most settled on the Brexit terrain) but, as is the theme of Brexit, there is still much to do and (at the time of writing) no certainty on the timetable. Such uncertainty can be disruptive to business, particularly one (civil nuclear) contributing circa £6.4 billion to the UK economy last year
and employing 65,000 people.

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