



The EU Internal Energy Market



Despite the insistence of both the Conservative and Labour parties that the UK will be leaving the EU Single Market as part of the Brexit process, both political parties are equally insistent the UK should seek to remain in, or very closely aligned with, the EU Internal Energy Market (IEM) post-Brexit.

Whilst there are important political and economic reasons for politicians to voice support for continuing IEM participation, they may not be as forthcoming in accepting the significant price likely to be demanded by the EU in exchange, notably in terms of regulatory oversight.

On 2 March 2018, Prime Minister Theresa May [said the government wanted to, “secure broad energy co-operation with the EU”](#), including by, “exploring options for the UK’s continued participation in the EU’s internal energy market”. A few days earlier, on 26 February, Jeremy Corbyn, the Leader of the Opposition, [confirmed his commitment to the IEM](#) and the need to “maintain our standards to ensure barrier-free trade of low carbon goods”.

Support for IEM participation will be warmly welcomed by many UK energy sector stakeholders. British energy traders will be keen to ensure continued access to deep and liquid wholesale markets that are becoming more and more integrated across the EU. Energy producers across the UK will also value continued participation in the EU-wide emissions trading regime. Consumers, in turn, will benefit from the added security of supply flowing from growing interconnection. And, very significant in political terms, continued IEM membership will help underpin north-south energy cooperation in Ireland.

Of course, it cannot be taken for granted the EU27 will wish to permit the UK to continue participating in the IEM after Brexit, whatever the benefits that may accrue to them (and notably to Ireland) as a result. After all, the

EU has been consistent in warning the UK that sector-specific participation in the Single Market will be viewed as (unacceptable) cherry-picking. However, even if an energy sector deal is offered, the regulatory ‘strings’ attached to it may create headaches for UK politicians keen to reap perceived Brexit dividends.

The IEM, like every other EU Single Market regime, is built upon a set of binding, common rules designed to ensure a level playing field for energy firms, enforced by the European Commission and overseen by the Court of Justice of the European Union. Those rules, which touch on highly sensitive policy areas, ranging from the setting of retail tariffs to the allocation of renewable subsidies to the control of grid access and investment, deliberately limit the scope for elected politicians to intervene in the running of the energy sector.

Taking two topical examples: the UK Government’s plans to impose caps on the ‘standard variable tariffs’ charged by energy suppliers and the Labour Party’s proposals to take energy infrastructure into public ownership.

On the planned tariff caps, the IEM rules prohibit interventions in retail supply markets which are, broadly speaking, disproportionate. Compliance with this proportionality standard might result in limits to the scope, duration and/or level of the caps.



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Turning to the nationalisation proposals, the IEM rules require independent regulators, rather than elected politicians, to oversee the operation and development of energy networks. This requirement may materially limit the way in which any such nationalised assets are managed.

The UK and EU negotiators may well manage to resolve the thorny question of how to ensure effective supra-national enforcement and independent judicial oversight of these fundamental IEM rules in the United Kingdom following Brexit. Nonetheless, the constraints imposed by those rules on future British politicians will continue to bite in years to come.

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