REGION UK
„BREXIT, CLIMATE CHANGE & THE EU EMISSIONS TRADING SCHEME“

On 13 July 2017 sustaining member Luther Rechtsanwaltsgesellschaft and Addleshaw Goddard LLP organised the BCCG’s conference “Brexit, Climate Change & the EU Emissions Trading Scheme”, bringing together four experts for an open panel discussion. The event welcomed a broad audience from various industry and policy stake-holders.

Given that the UK is the EU’s second biggest emitter of carbon allowances and given the prospect of a hard Brexit, panelists and audience members broke down perspectives of European climate politics and carbon trading. Following welcoming words from Andreas Meyer-Schwickerath, managing director of the British Chamber of Commerce in Germany, former Member of the European Parliament and Liberal Democrat Chris Davies opened the panel with remarks about the history of the EU ETS and the UK’s leading role in climate policy. He showed that the previously existing UK Emissions Trading Scheme was created as a pilot to the EU scheme. Davies then highlighted the tangible loss of UK leverage in climate policy and its impact on everyday political work.

The panel later shifted to the controversial question of how the UK will leave the EU trading scheme. Since its beginning, the EU ETS has been mandatory for members of the EU. Today, over 10 million allowances are traded daily. The exchange happens without identifying the Member State of origin. As a result, operators are mostly uninformed as to whether they hold a UK allowance in their hands. The UK may still have the chance to stay in the EU ETS because the scheme is open to non-EU members, provided they accept CJEU rulings. As the country prepares for Brexit, its future participation in the EU ETS has yet to be decided.

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Panelist Stefan Altenschmidt, Partner at Luther in Dusseldorf, pointed out that the legal uncertainty over owner rights for carbon allowances would be a major exit impediment. Without any specific Brexit arrangement, he argued, UK companies would lose access to their ETS accounts and the allowances held in them. One way of exiting the scheme would be to cancel all allowances that were issued to UK operators. Alluding to the polluter-pays principle, he even claimed Britain probably would have to recompense affected operators. Favouring less stringent measures, audience members argued this would conflict with the principle of proportionality. One mechanism to circumvent these cancellations would be to set up a parallel registry for the UK.

In addition to the mammoth task of finding an agreement and with so much at stake, the discussion also drew attention to evolving policy choices and potential for innovation. Roz Bulleid, panelist and policy advisor to the Engineering Employers' Federation, the British manufacturers' association, said UK manufacturers were worried the issue would be overlooked by the Department for Exiting the EU. However, business leaders would hope that an exit of the trading scheme could eventually make UK companies more competitive and hence more attractive for investors. She also highlighted that the EU ETS was highly deficient in its current state, especially referring to the carbon price. Bulleid voted for a more differentiated pricing system for sectors to ensure growth for businesses with limited reduction possibilities. Her argument was furthered by panelist Rachel Solomon-Williams, Managing Director of Sandbag, a a climate policy-specialised London-based NGO. She agreed that regardless of Brexit, the EU ETS needed urgent reform to manage the current oversupply of allowances and the carbon floor price. She said, from an EU perspective, it was even more important to create a meaningful carbon price and adjust the EU ETS once the UK leaves the scheme. Exiting the trading scheme, the UK could also pursue its ambitious climate goals through different national measures, e.g. through taxes on carbon emission. Solomon-Williams argued that either way, the UK should take up the potential for innovation and follow its path as a leader in climate policy.

The panelists all agreed that an exit should only take place in line with the end of Phase III of the EU Emissions Trading Scheme in 2020 in order to minimise market disruptions. If the UK leaves the Scheme, an agreement would not only have to tackle it's complex technical provisions but also find an answer to ownership rights of the issued allowances. Even though the current state of the EU ETS showed some deficiencies, the panelists welcomed its overall benefits. Besides fulfilling its main purpose of reducing greenhouse gas emissions, the scheme also introduced regular audits for energy-intensive installations. By putting a financial value to each tonne of saved emissions, operators are encouraged to use the most cost effective emission reduction measures. On a final note, Chris Davies shared his view on the UK's general role in climate policy. He underlined that the climate policy project was an international challenge and the UK was about to lose its leadership. To him, Brexit appears as if Britain was only swapping global influence for national sovereignty.

Panelists and audience members later enjoyed lively conversations during the reception and further discussed how an exit could be implemented.

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