Brexit and climate policy: Political choices will determine the future of EU-UK cooperation

Milan Elkerbout

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Ever since the electorate of the United Kingdom voted to leave the European Union on June 23rd, there has been much discussion and speculation over what the decision implies for climate policy in the EU. This commentary looks at what may happen and the possible implications at various levels: globally at the level of the United Nations, the EU level and the implications for the UK.

Emissions trading in the EU

The principal policy instrument for addressing climate change in the EU has been the emissions trading system (EU ETS). The UK has long been a proponent of this instrument, and in the ongoing debates over the revision of the EU ETS, it has been a strong proponent of fortifying the system. With the UK being the EU’s second-largest emitter, a withdrawal from the EU ETS would depress demand for allowances, and thereby exert downward pressure on the price of carbon. Following the referendum, the EU’s carbon market seemed to respond immediately, with allowance prices dropping to below €4.50 (down from about €6) in the week following the Brexit vote.

The UK’s withdrawal would also necessitate a readjustment of the ETS cap. Such readjustments have been made before, when new member states (e.g. Croatia) joined, or when the sectoral scope of the ETS changed. However, these were always upward adjustments, unlike the case of a member state leaving. That notwithstanding, it is not inevitable that Brexit would lead to such a full withdrawal. The UK could set up its own ETS and negotiate with the EU to link to the EU ETS, as Switzerland had planned to do until the EU suspended negotiations in response to the Swiss referendum on limiting free movement of persons with the EU. Alternatively, it could remain a full part of the EU’s carbon market, through the European Economic Area, like Norway and Iceland have done.

As a non-EU member, the UK will not be able to influence the ‘split’ between the ETS and non-ETS sectors either, which affects the relative effort required by the two blocks of sectors: ‘traded’ sectors (like the power and industrial sectors) are assigned different GHG reduction targets than ‘non-traded’ sectors (like buildings and transport). If the UK decided to continue to (closely) cooperate with the EU on climate policy, this might affect its international climate position at the United Nations level as well. Its own targets are also likely to be influenced by possible arrangements with the EU.

Milan Elkerbout is a Researcher at CEPS Energy Climate House.

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EU commitments at the global level and implications for effort-sharing in the EU

Within the UN governance, both the EU and the UK are Parties to the UNFCCC – the UN body that deals with climate change and the framework within which the Paris Agreement has been concluded at the COP21 in December 2015. Ahead of COP21, the EU, on behalf of all its member states (including the UK), submitted its commitment (called INDC - Intended Nationally Determined Contribution) which sets out its ambition for 2030 of achieving “at least 40% domestic reduction in greenhouse gas emissions by 2030 compared to 1990”.

Under the UNFCCC, each INDC will need to be formalised into a NDC (without ‘intended’), which will be valid for five years, after which a new NDC will need to be communicated that represents “a progression beyond [its current ambition]”. For Parties that have a commitment period up to 2030, like the EU and the UK, this will need to be done through notification by 2020 at the latest, although the act of ratification of the Paris Agreement automatically serves as such notification.

The Paris Agreement has specific provisions for the joint fulfilment of objectives by member states of “regional economic integration organisations”, which are also Parties to the Agreement (e.g. the EU). This requires such organisations to notify the UNFCCC of the emissions level allocated to each Party. For the EU and the UK, this is to be achieved on the basis of the European Council Conclusions of October 2014. In these Conclusions, the European Council set out its separate GHG reductions targets for the EU emissions trading system (-43%), and non-ETS sectors (-30%), under what is called the effort-sharing decision.

For the EU to reach this -30% target in non-ETS sectors, there needs to be agreement on the individual member state targets, which together make up this EU target, as contained in the effort-sharing decision. These targets, which ostensibly represent the “Party emissions levels”, as referred to in the Paris Agreement, will be released together with the proposal on the effort-sharing decision that is expected to be released by mid-July 2016.

However, the fact that the Brexit vote took place before the effort-sharing targets are agreed may make it difficult to conclude these negotiations. In the event that the UK would withdraw from the effort-sharing decision, the other member states’ targets would need to be adjusted to ensure that the EU still reaches its overall target. Given that the targets will be differentiated according to relative GDP per capita, a departure of the high-income UK will likely imply higher targets for a number of other member states.

Some problems and uncertainties also exist with regard to continuity. While various arrangements are possible for (close) cooperation after a member state leaves, the fact that the withdrawal of a member state and its future relationship with the EU are negotiated separately may complicate matters.

At the UN level, while there are some legal unknowns about a Party withdrawing from a ‘regional economic integration organisation’, there are no obvious barriers to the UK simply deciding to complete the first Paris cycle without anything changing as a result of Brexit. As soon as the EU ratifies the Paris Agreement, its intended commitment will automatically become an official commitment. The UK and the EU would then be bound by the targets set in this commitment up to 2030, and afterwards could go their own way, to be decided in 2025.

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1 The EU made a single commitment (INDC) to the UNFCCC, on behalf of the 28 member states. As a result, the EU member states did not make individual commitments as Parties to the UNFCCC.
2 Art. 4 (para. 16-18) of the Paris Agreement.
3 See the EU’s INDC, para. 3.
4 CP.21 para. 22.
Even if ratification of the Paris Agreement is complicated for the EU, so long as the UK remains a member state (which appears likely for at least a number of years), there is no reason why this process could not be completed.

**Paths forward for the EU and the UK?**

Hence, much depends on political will. As a current EU member state, and assuming a deal can be struck with regard to the targets under the effort-sharing decision, the UK could jointly fulfil the first of the 5-year ‘Paris cycles’ together with the EU. By 2025, the EU will need a new commitment for the post-2030 period. If the UK is no longer a member of the EU at that time, the UK can present its own commitment as an individual Party to the UNFCCC, while the 27 remaining EU members could agree on a new collective EU target.

Close cooperation between the UK and the EU would still be possible, or potentially even required, once the UK is no longer a member state. Norway and Iceland, in fact, as members of the European Economic Area (EEA), will be part of both the EU ETS and the effort-sharing decision for the period 2021-30. The EEA Agreement requires its contracting parties to sign up to a vast body of EU environmental law, which includes the two primary frameworks of climate policy.

In their commitments to the UNFCCC, both Norway and Iceland intend to fulfil their commitment jointly with the EU (which makes the EEA a ‘regional economic integration organisation’ as well), and in the event that negotiations fail, to implement the commitment itself, in the case of Norway and to communicate a new commitment to the UNFCCC, in the case of Iceland.

At the national level, no problems should occur, whether the UK is an EU member state or not. Both EU member states, and countries that associate themselves with EU climate policy e.g. through the EEA sometimes have climate targets for 2030 that exceed those of the EU, or that go beyond their official commitments to the UNFCCC. In fact, one week after the Brexit vote, the UK itself adopted a 57% GHG reduction target for 2030 through its “fifth carbon budget”.

This shows that national targets can go beyond those agreed in the EU, or those communicated to the UNFCCC. Thus, these EU and global targets represent the floor of the required effort. In the case of the UK, unlike with countries that would prefer slower emissions cuts, the country’s ambitious GHG reduction targets should make it easy for the UK to achieve the EU targets. Nor will the UK worry about having to present a new commitment by 2025 that would represent a “progression beyond the current commitment”, as mandated by the Paris Agreement, as it already has a more ambitious 2030 target compared to the EU.

The situation with respect to the commitments that the UK has already undertaken may make it easier for it to continue to cooperate with the EU on setting and implementing a joint ambition at the EU and international levels, provided that there is the political will to do so. Both technically and materially, there are few impediments to such continued cooperation, but the UK might consider it politically unattractive, whether for reasons of sovereignty or other considerations.

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5 Ratification requires the consent of all the individual member states.
6 CP.21, para. 24.
7 Arts 73 and 74 of the EEA Agreement and Annex XX.
8 See Norway and Iceland’s INDCs to the UNFCCC