

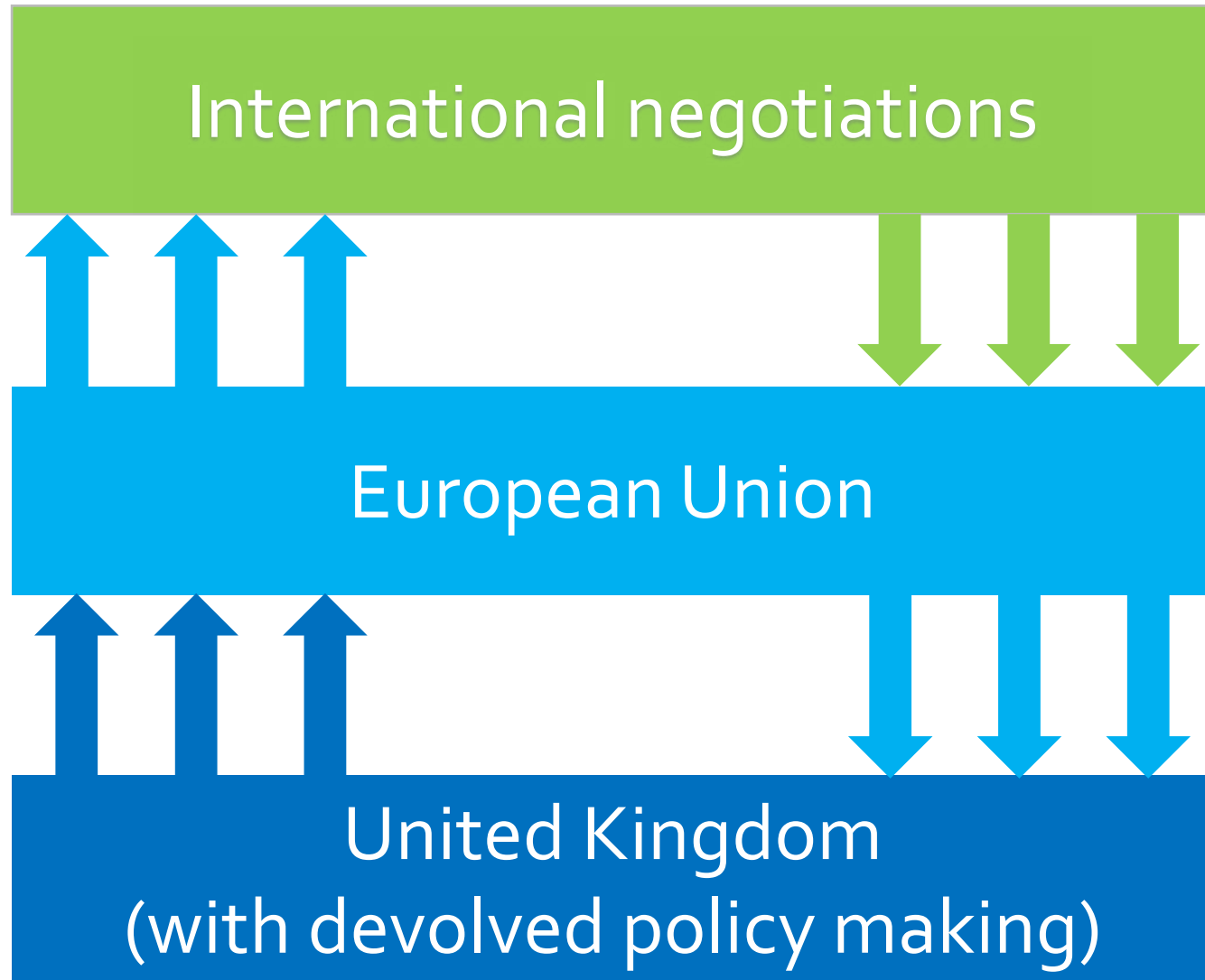
Brexit and its potential impacts on UK and EU climate policy

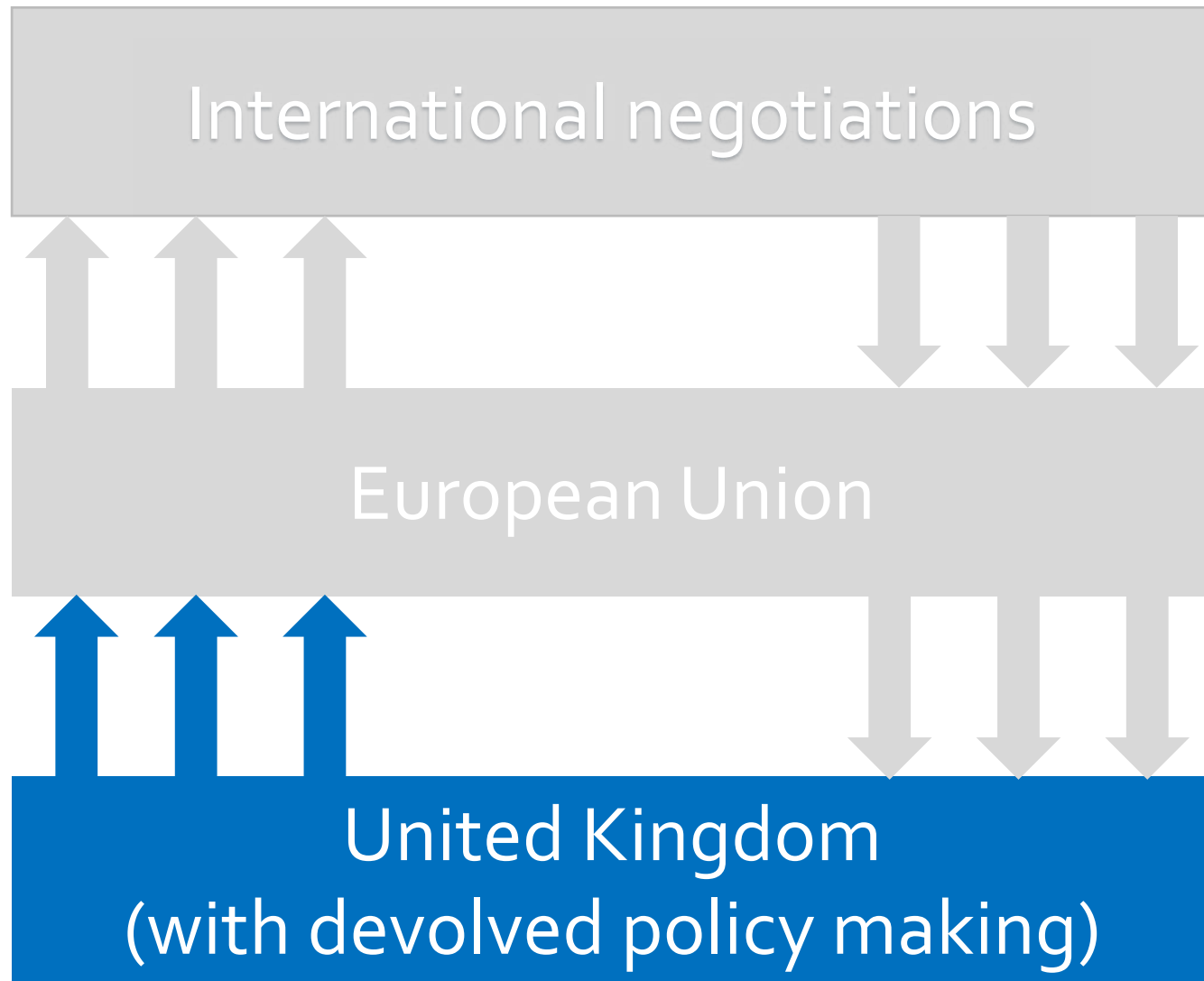
Dr Brendan Moore
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Climate change: European responses and Brexit
10 December 2019

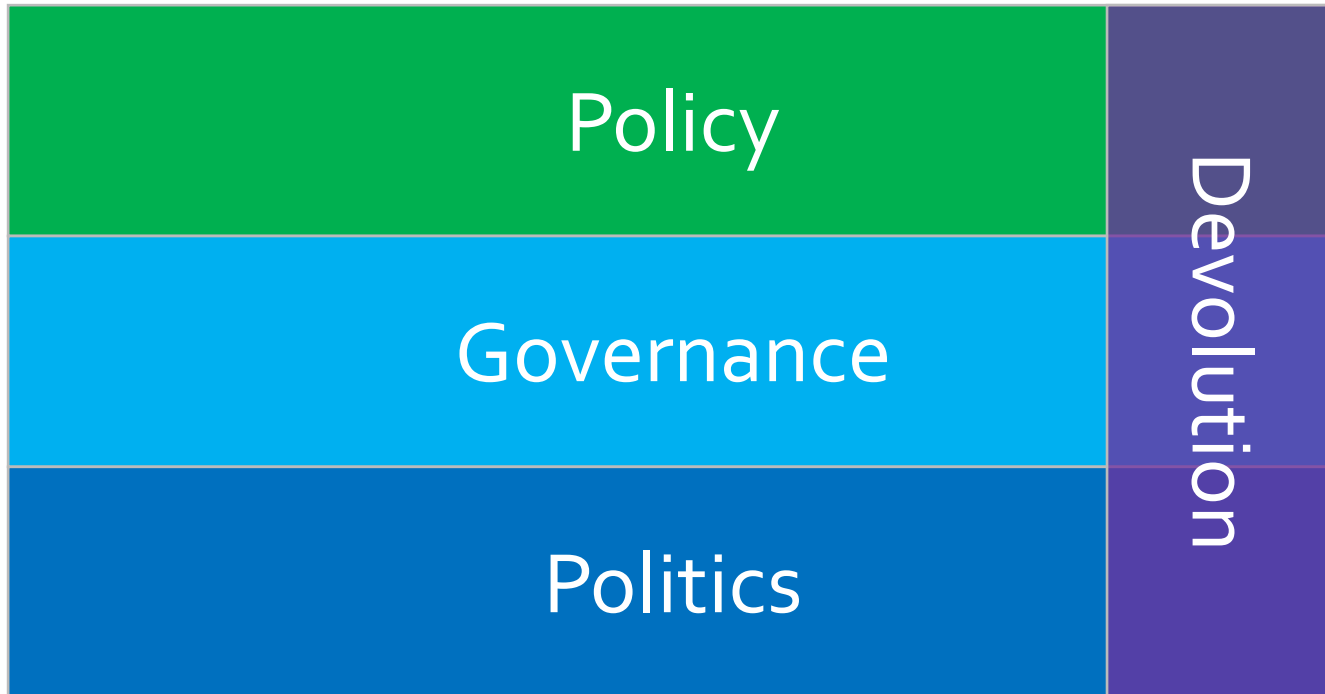
Overview

1. United Kingdom
2. European Union
3. International Negotiations



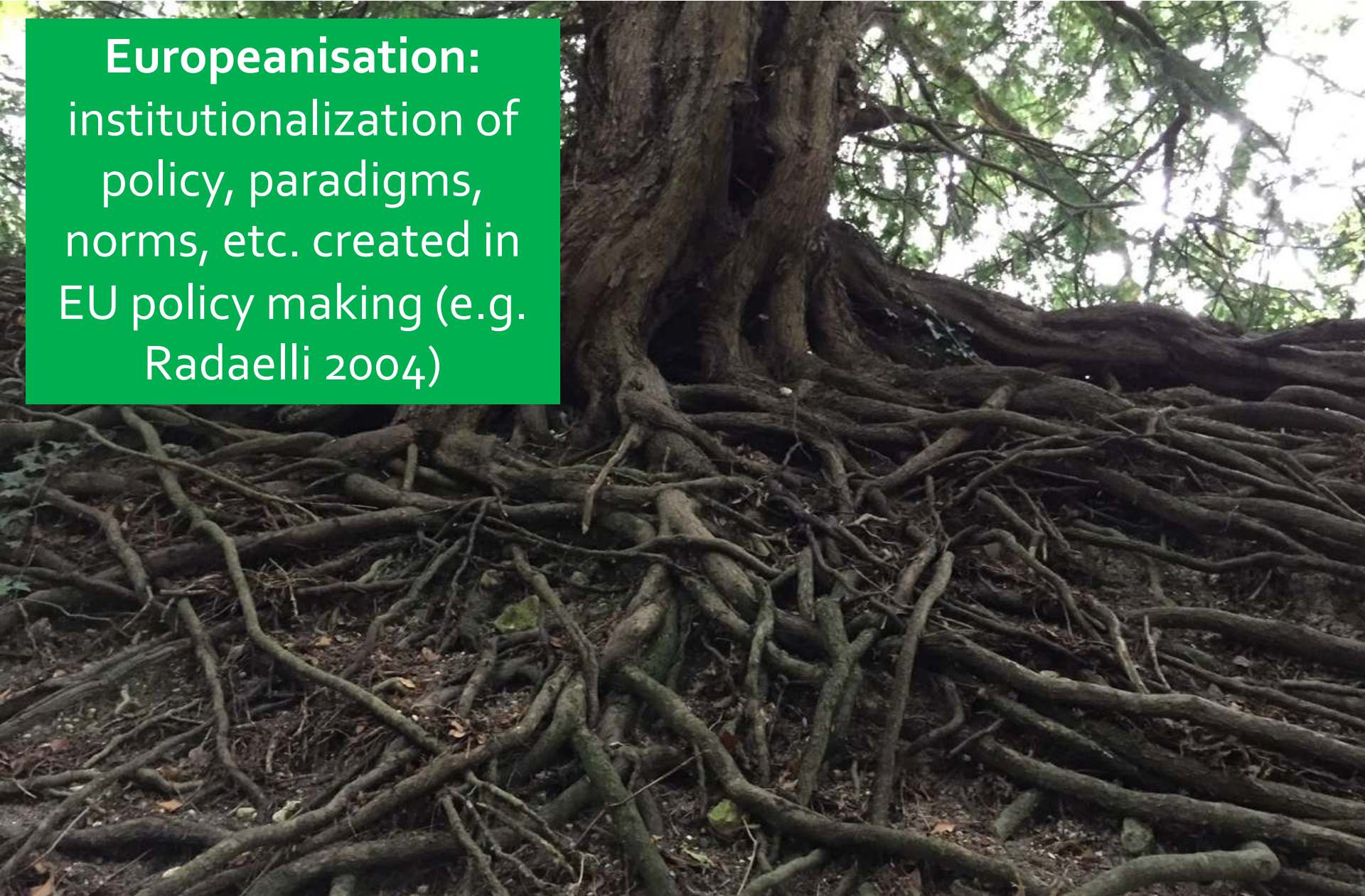


UK Policy and Governance





Europeanisation:
institutionalization of
policy, paradigms,
norms, etc. created in
EU policy making (e.g.
Radaelli 2004)



5 June 1972


Stockholm Conference on the Environment



1 January 1973

UK accedes to the European Communities

De-Europeanisation depends on (highly uncertain) future relationship.

Policy Areas	Distance from EU 				
	Norwegian option	Canada option	Turkish option	Planned No Deal	Chaotic No Deal
Habitats and Birds	Very High Risk	Very High Risk	Very High Risk	Very High Risk	Very High Risk
Bathing Water	Moderate Risk	Moderate Risk	Moderate Risk	Moderate Risk	Moderate Risk
Drinking Water	Limited Risk	Moderate Risk	Moderate Risk	Moderate Risk	Moderate Risk
Water Framework	Limited Risk	High Risk	High Risk	High Risk	High Risk
Urban Waste Water	Limited Risk	High Risk	High Risk	High Risk	High Risk
Ground Water	Limited Risk	High Risk	High Risk	High Risk	High Risk
Nitrates	Limited Risk	Very High Risk	Very High Risk	Very High Risk	Very High Risk
Climate and Energy	Moderate Risk	High Risk	High Risk	High Risk	Very High Risk
Ozone and Related Substances	Limited Risk	Moderate Risk	Moderate Risk	Moderate Risk	Moderate Risk
Transboundary Air Pollution	Limited Risk	Moderate Risk	Moderate Risk	Moderate Risk	Moderate Risk
Ambient Air Quality	Limited Risk	High Risk	High Risk	High Risk	High Risk

Policy: Climate Change Mitigation

“Brexit means Brexit.”

–Theresa May, 30 June 2016

“After the binary question of June there are many possible Brexits.”

–Hugo Rifkind, *The Times*, 30 August 2016

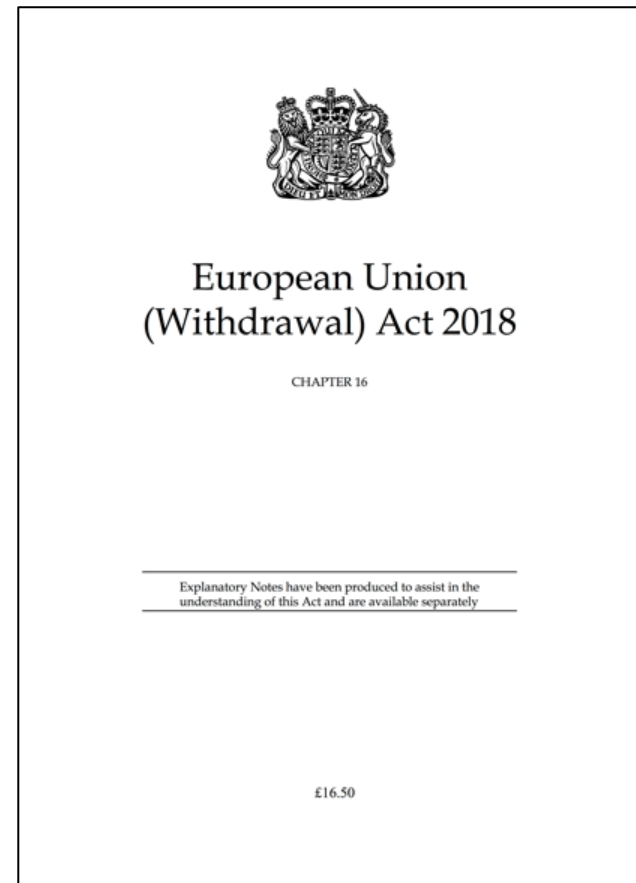
65% apply to Norway

GHG Targets/Monitoring	Transport
Common Agricultural Policy (25% Climate)	Consumer Information on Cars/CO ₂
Effort Sharing Decision	Clean Sky Regulation
GHG Monitoring	Emission Standards for Commercial Vehicles
Land Use, Land Use Change and Forestry	Emission Standards for Passenger Cars
EU Emissions Trading System	Energy-efficient Road Transport
Fluorinated Greenhouse Gases	Fuel Quality Directive
Energy Efficiency	Energy Production
Energy Performance of Buildings	Cogeneration
Eco-design	CCS
Energy Efficiency Directive	Energy Taxation
Energy Labelling	Renewable Energy Directive

A Map of EU Climate Policy
(Based on Nachmany et al. 2015)

The EU Withdrawal Act

- UK policy: net zero target, Climate Change Act, carbon budgets.
- EU law ‘cut-and-pasted’ to UK.
- To be changed later?



Policy

Governance

Politics

Devolution

Governance (gaps)

- EU law & policy enforced by European Commission, Court of Justice of the European Union (CJEU).
- Infringement procedure, 'shadow of fines.'



Fines are rare but painful

Ireland 95% short of emissions reduction target, Bruton admits

State will only achieve 1% reduction by 2020 versus 2005 – the EU-set target is 20%

© Wed, Nov 28, 2018, 20:51

Harry McGee Political Correspondent



Richard Bruton has set out a "stark" context for the performance of Ireland's climate change policies. Photograph: Gareth Chaney/Collins

'Inaction' on climate goals could cost Government up to €600m

European Commission report warns of limited progress in decarbonising the economy

© Thu, May 24, 2018, 18:48

Kevin O'Sullivan Environment & Science Editor



European Commission report concludes "existing climate change mitigation efforts will not enable Ireland to achieve its Europe 2020 climate goals domestically". Photograph: PA

**“the effectiveness of the EU regulatory regime is thanks in part to the deterrent effect of the power... to levy fines”
(House of Lords EU Committee).**

European Commission ... and the [CJEU]”.⁹⁵ Mr Hutchings agreed: “A whole range of accountability mechanisms are potentially at risk as we leave the EU.”⁹⁶

69. In evidence to the Environmental Audit Committee in February 2016, the Commission stated that 30 environment cases brought by the Commission against the UK had resulted in judgments against the UK.⁹⁷ Such enforcement proceedings have been a driver for environmental improvement, as Mr Andrews told us: “The EU conducted a review of air quality law in 2013 and the Government were very open about their intention to use that process to avoid the risk of infraction, which is code for avoiding the risk of being sued by the Commission.”⁹⁸ Ms Mukherjee made a similar point: “Governments pay a lot of attention to the risk of being infringed because it is very expensive and it is not brilliant for your reputation”.⁹⁹

70. Mr Jacobs agreed that, during his time as a Government adviser, “the threat of infraction drove environmental policy. Our recycling targets were driven by the threat of infraction, and the sums of money that we were going to be fined were absolutely at the heart of that process.”¹⁰⁰ Similarly, according to Mr Andrews, “the main driver behind [the Government’s] new air quality plan was not the Supreme Court order from the UK in 2015, but the threat of being infringed by the Commission. They aimed to comply based on when they thought the Commission might move to issuing fines.”¹⁰¹ This was underlined in the High Court’s ruling on the case brought against Defra by ClientEarth, which stated: “A principal driving factor in selecting 2020 [as the date for introducing measures to reduce nitrogen dioxide emissions] was not the obligation to remedy the problem as soon as possible but to remedy it in time to avoid EU infraction proceedings.”¹⁰²

Conclusion

71. **The European Commission and the Court of Justice of the European Union have had a strong impact in ensuring the UK’s compliance with EU legislation that affects environmental protection. The evidence we have heard suggests the effectiveness of the EU regulatory regime is thanks in part to the deterrent effect of the power of EU institutions to hold Member States to account and to levy fines upon them for non-compliance.**

UK judicial oversight

72. Following Brexit, without the jurisdiction of the CJEU, it would be for domestic courts to enforce public authorities’ and Ministers’ compliance with environmental legislation, typically by means of judicial review.¹⁰³ Witnesses expressed differing views on the effectiveness of domestic judicial review.

⁹⁵ Written evidence from The Wildlife Trusts (E/C05/07)

⁹⁶ Q.12

⁹⁷ Further written evidence from the European Commission to the Environmental Audit Committee (A/E06/05) p 3

⁹⁸ Q.28

⁹⁹ Q.30

¹⁰⁰ Q.36

¹⁰¹ Q.39

¹⁰² *ClientEarth v Secretary of State for the Environment, Food and Rural Affairs*, (2016) EWHC 2740 (Admin), para 66. ClientEarth took Defra to court to challenge its Air Quality Plan, as required by the Air Quality Directive (2008/50/EC).

¹⁰³ Q.1 (Prof Maria Lere); Q.24 (Alan Andrews)

Governance (gaps)

- Environmental principles (EU Treaties, e.g. precautionary, high level of protection).
- Proposed UK Office for Environmental Protection (and e.g. Committee on Climate Change).
- Appointments/funding by government; similar procedure but less teeth.



Policy	Devolution
Governance	
Politics	

Politics: Loosening the constraints?

**EU policy &
governance has
constrained UK-level
political
contestation.**

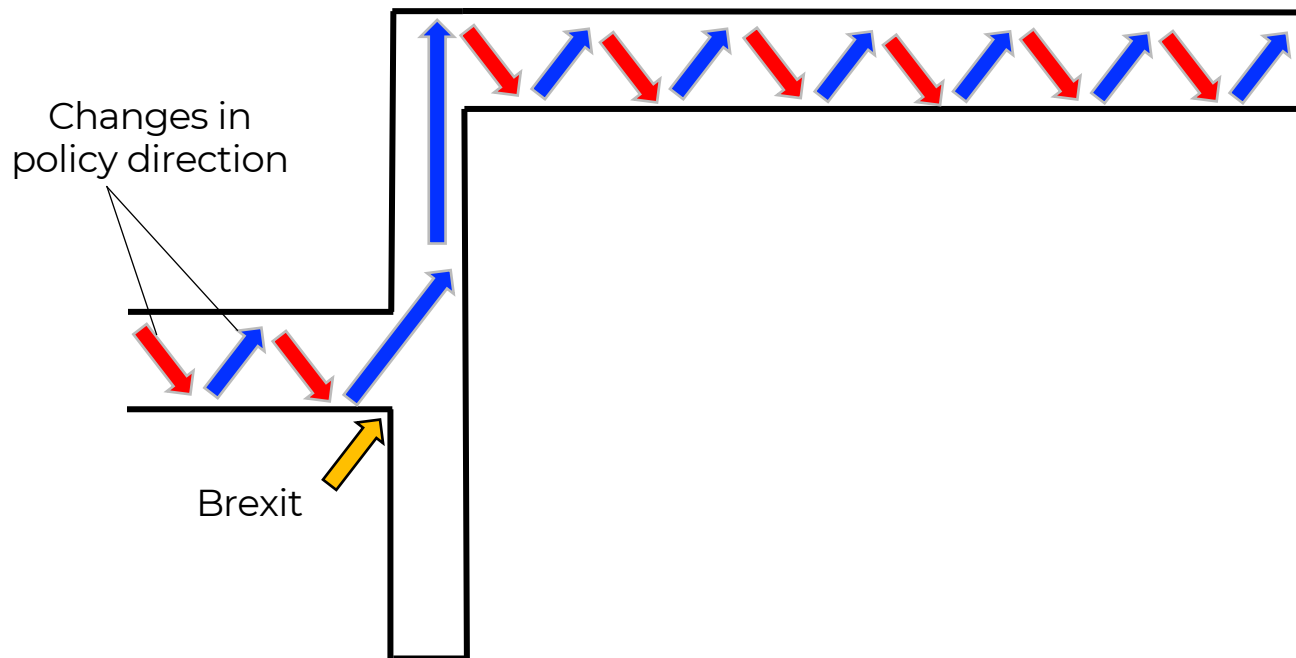
**The implications of 12
December General
Election**



Politics: Is Brexit a critical juncture?

Critical juncture: “...brief phases of institutional flux [...] during which more dramatic change is possible.”

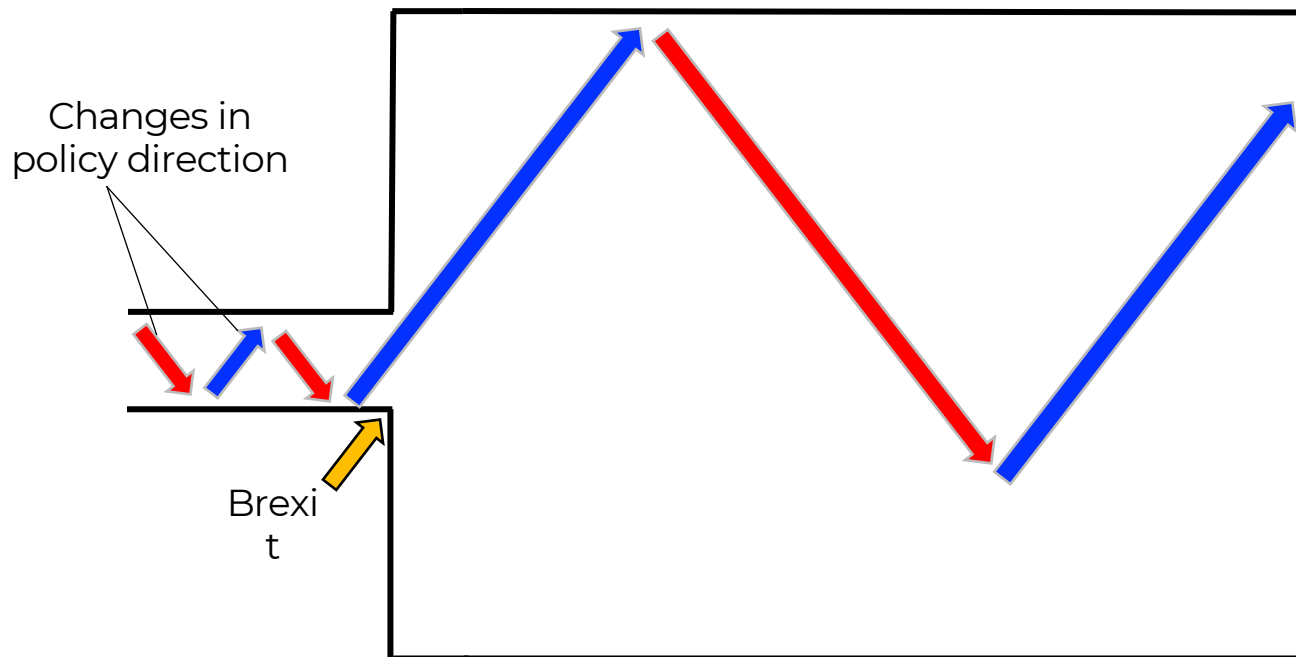
(Cappocia and Kelemen 2007, pg. 341, emphasis added)



Politics: A permanent change?

More space for policy change with government change.

More differentiation?



Policy

Governance

Politics

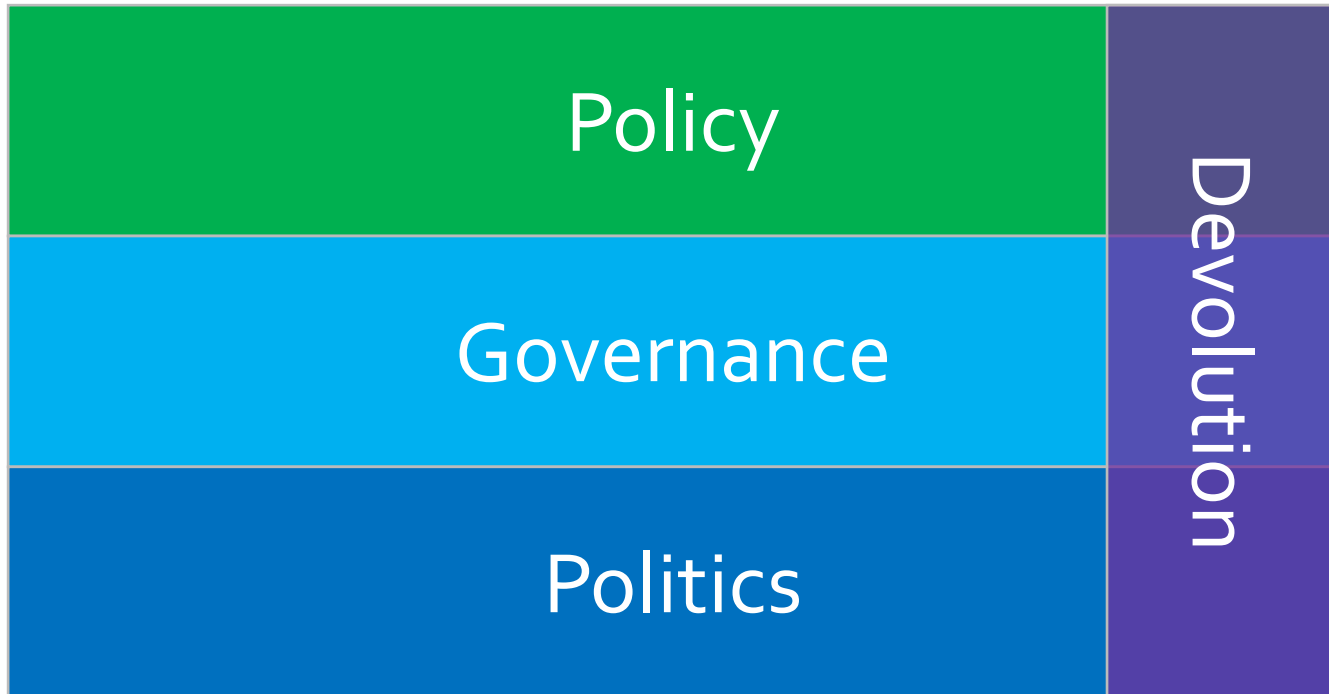
Devolution

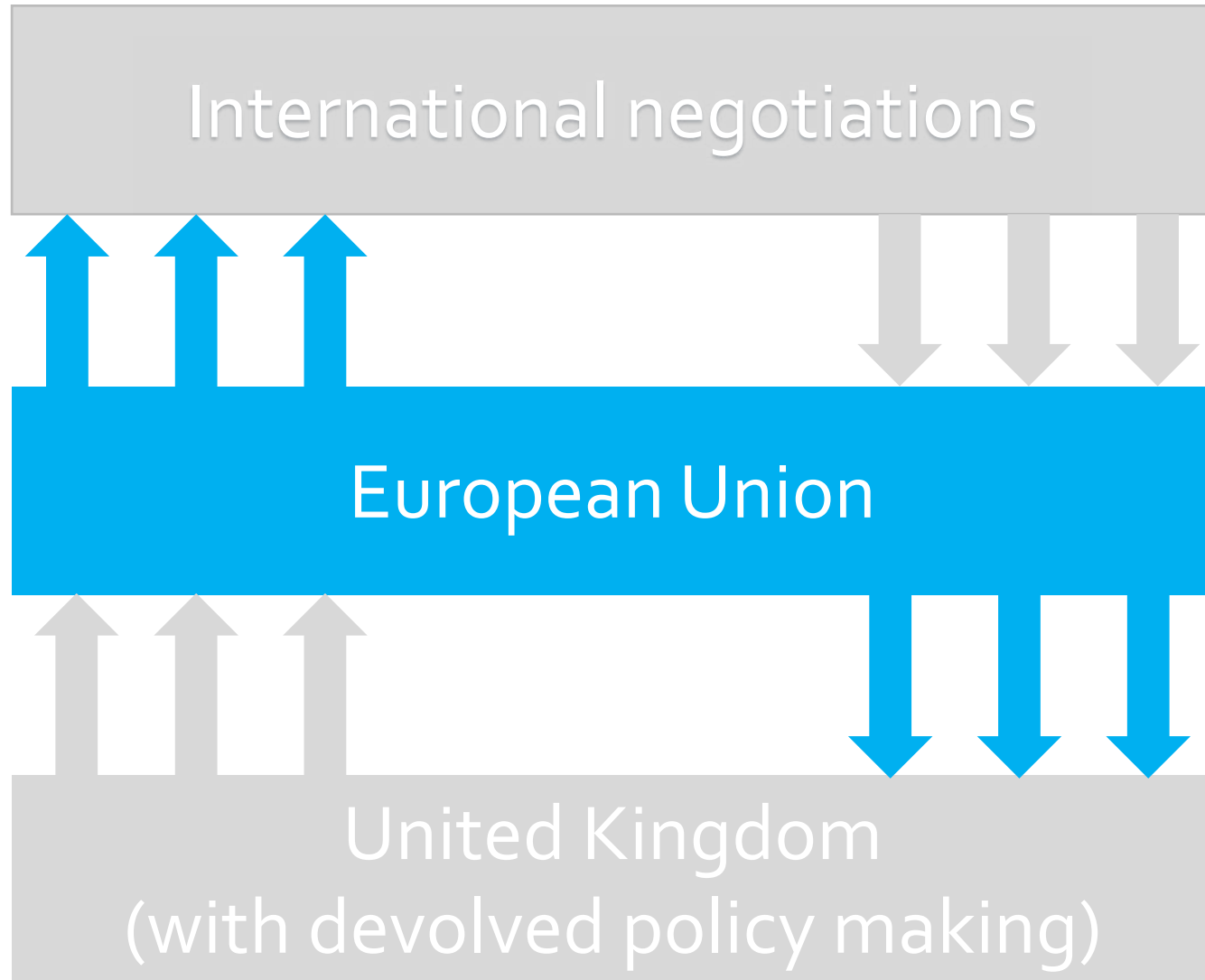
Devolution

- Devolution adopted in Scotland, Wales, Northern Ireland in context of EU environmental policy.
- Many environmental policies devolved (climate uneven).
- EU served as baseline, “minimum common standards.”
- Who designs post-Brexit policy?

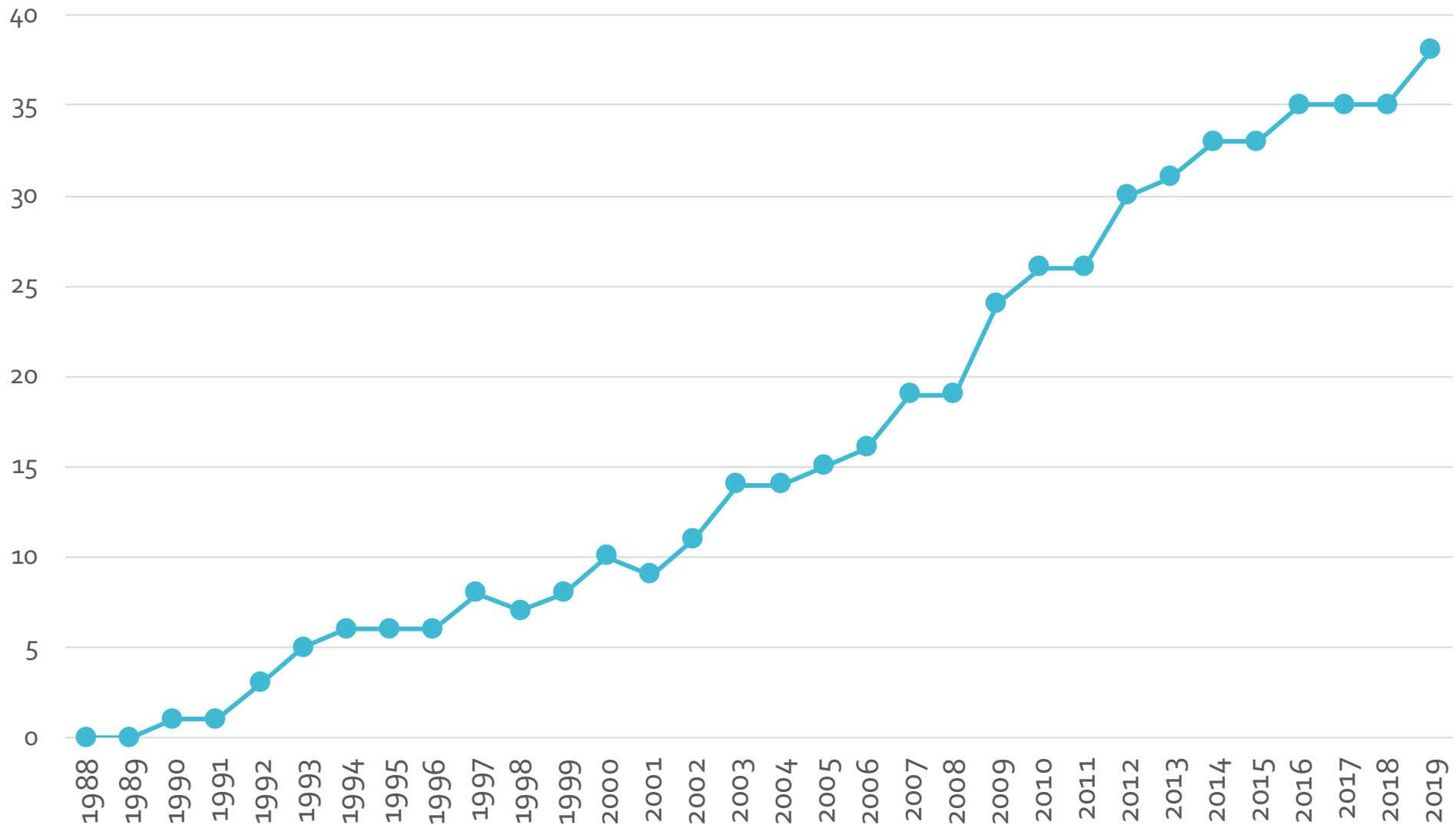


UK: Important, uncertain, differentiated





European Union Climate Policy Instruments in Force (1988-2019)



GHG Targets/Monitoring Common Agricultural Policy (25% Climate) Effort Sharing Decision GHG Monitoring Land Use, Land Use Change and Forestry EU Emissions Trading System Fluorinated Greenhouse Gases	Transport Consumer Information on Cars/CO2 Clean Sky Regulation Emission Standards for Commercial Vehicles Emission Standards for Passenger Cars Energy-efficient Road Transport Fuel Quality Directive
Energy Efficiency Energy Performance of Buildings Eco-design Energy Efficiency Directive Energy Labelling	Energy Production Cogeneration CCS Energy Taxation Renewable Energy Directive

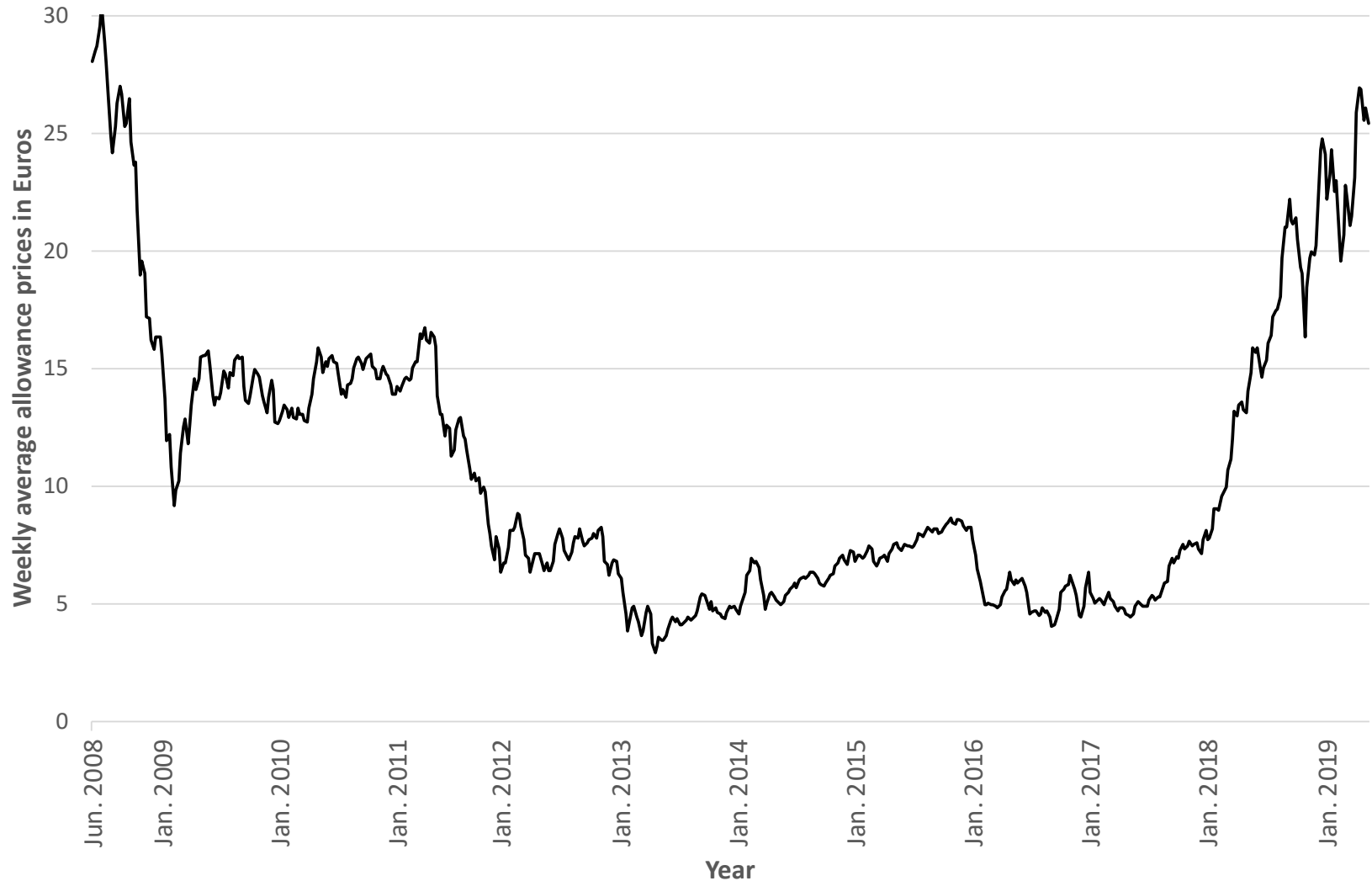
A Map of EU Climate Policy (Based on Nachmany et al. 2015)

More recently: the Energy Union Governance Regulation; National Energy and Climate Plans;
von der Leyen/ Timmermans Green New Deal

Brexit & European Union climate politics: A case study of the EU ETS

Based on: Dupont, C. & Moore, B. (2019). Brexit and the EU in Global Climate Governance. *Politics and Governance* 7(3). DOI: [10.17645/pag.v7i3.2137](https://doi.org/10.17645/pag.v7i3.2137)

The economic crisis led to falling emissions, surplus allowances, and a falling carbon price



Source: Sandbag EUA Price Viewer

Raising the carbon price

Direct price management (price floors) had limited support, so...

Volume management: reduce allowances in circulation to raise prices

The UK in the Council

A skilled negotiator for increased ETS
stringency

The UK Government

Supported raising allowance prices, including:

- Backloading (with cancellation of allowances)
- Market Stability Reserve
- Doubled intake rate into reserve of 24%
- Allowance cancellation
- Increase of EU 2020 greenhouse gas target to 30% after Copenhagen
- Conditional 50% target for 2030

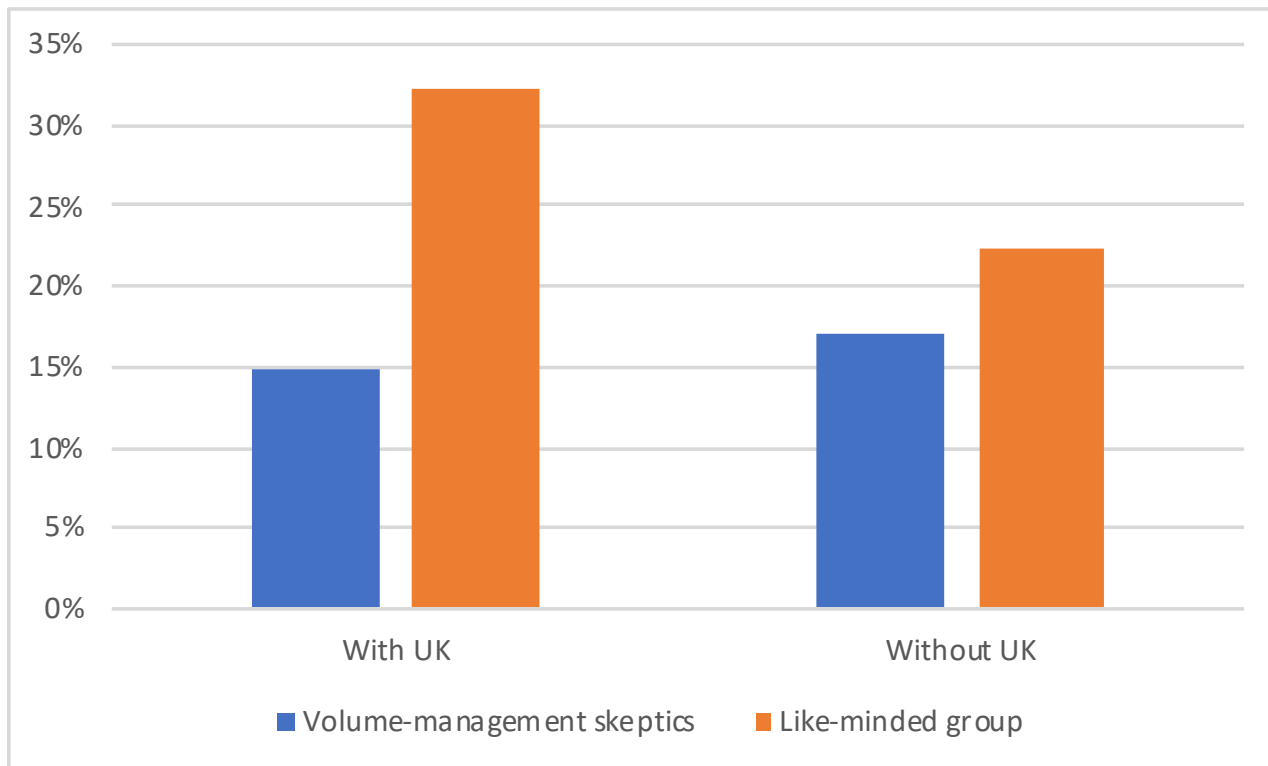
	Votes/ Population Needed to Adopt	Vote with UK	Vote without UK
Backloading Decision (1359/2013)	74%	92.3%	91.6%
MSR Decision (2015/1814)	65%	84.5%	82.2%
2018 Directive (General Approach)	65%	72.4%	68.3%
2018 Directive (2018/410)	65%	89.9%	88.4%

Like-minded group (coalition in favor of more volume management):

UK, France, Sweden, Netherlands, Denmark, Luxembourg

Volume-management skeptics:

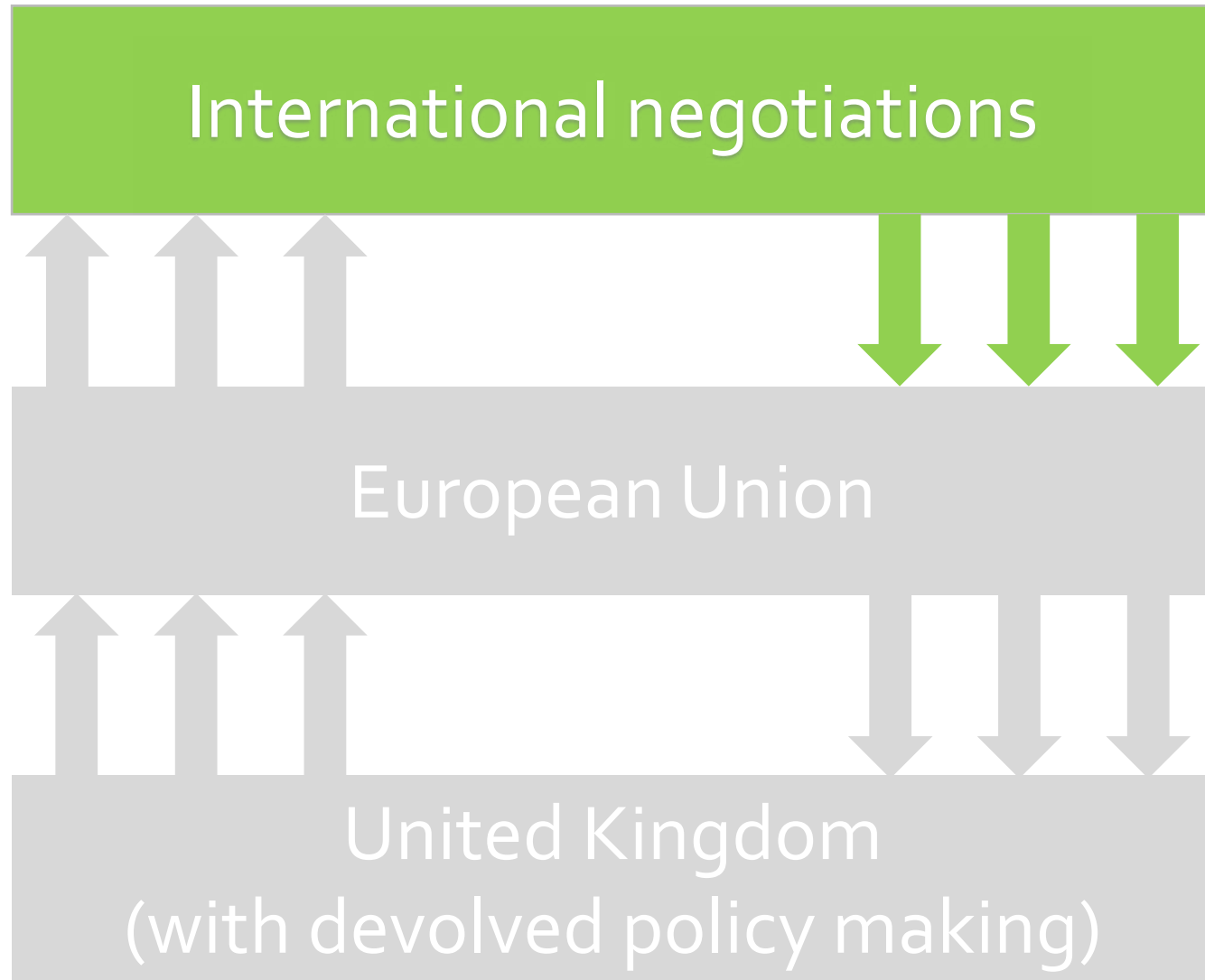
Poland, Bulgaria, Romania, Hungary, Cyprus



The UK in the European Parliament

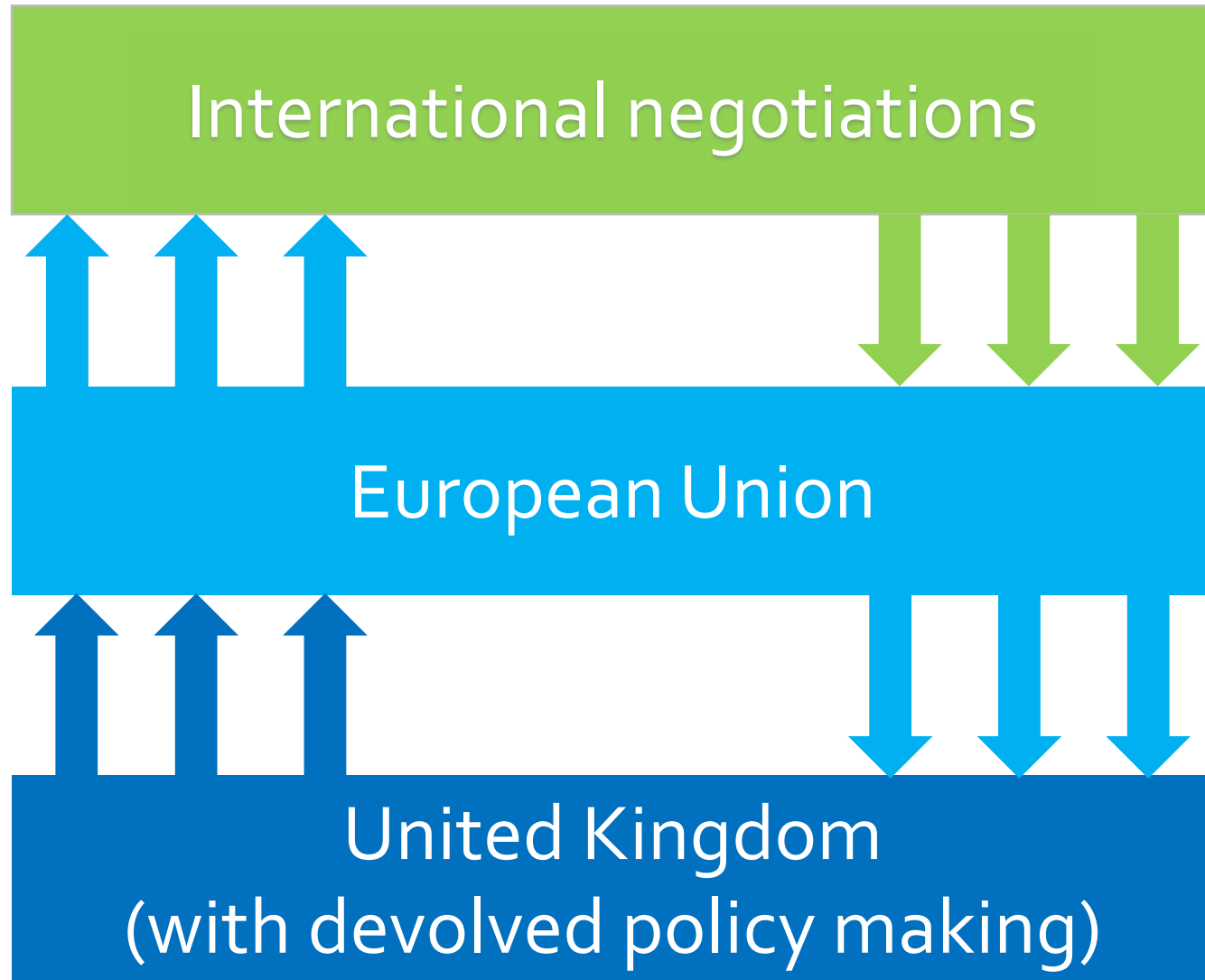
Unified parties, split delegation

Parties (EP Group)	Members	Cohesion	Vote For
Conservative Party (ECR)	20	82.35	75%
Labour Party (S&D)	20	84.21	85%
UK Independence Party (ENF)	20	100	0%
Green Party (G/EFA)	3	100	0%
Independent (ENF)	3	100	0%
Scottish National Party (G/EFA)	2	100	100%
Democratic Unionist Party (NI)	1	100	100%
Liberal Democrats (ALDE)	1	100	100%
Plaid Cymru (G/EFA)	1	100	0%
Sinn Féin (GUE/NGL)	1	100	0%
Ulster Unionist Party (ECR)	1	100	100%
UK Delegation	73	52.78	51%



Paris Agreement implementation, Madrid 2019, Glasgow 2020

The UK Government a highly effective,
respected part of EU negotiating team.
EU risks losing capacity; UK risks losing clout.





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Thank you!

- Questions/comments welcome!
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