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# **‘Ireland and Brexit: What happens next?’ seminar, 4 October 2017**

## **The electricity sector in Ireland**

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# Introduction

## Scope of presentation

- Single Electricity Market (SEM)
  - current market arrangements and benefits
  - key issues for SEM continuation post-Brexit
  - potential EU/non-EU electricity market templates
- Brexit as a United Kingdom problem
- Issues for Ireland
  
- Out of scope
  - I-SEM (update to SEM trading arrangements to comply with integrated pan-European market design)
  - issues related to suppliers, gas, etc

# I-SEM changes not relevant to Brexit

## Changes for I-SEM mandated by EU 3rd Energy Package

- EU law now mandates
  - ownership structure of Grid
  - key elements of generator bidding
  - active supplier involvement
  - pan-European market price formation for key time points
  - pan-European co-ordination of system dispatch & interconnector power transfers
- Does not affect EU/MoU legal structure underpinning the SEM
- Required legislative amendments for I-SEM are already in place in Ireland and NI
- Same issues apply to SEM/I-SEM when UK-EU treaty obligations end

# What benefits does the SEM provide?

- Single currency, cross-jurisdictional wholesale electricity market
- Based on overarching EU mandated convergence of energy policy/market structures
  - competition between suppliers
  - equal access to grid system
  - independent grid/market operations
- Value for customers
  - transparent long run marginal cost (LRMC) based market
    - generator bids regulated at short run marginal cost (SRMC)
    - regulated fixed cash sum for capacity payments
    - market price based on minimisation of production cost
- Includes environmental obligations
  - priority access for renewables
- Tangible delivery of UK/Ireland co-operation
  - inter-Governmental Memorandum of Understanding committed both Member States to co-operate on SEM

# UK Government position on a post-Brexit SEM

- There should be a new framework relevant to the energy market in Northern Ireland and Ireland that should “take account of the strategic importance to Northern Ireland and Ireland of maintaining affordable, secure, and sustainable supplies of electricity and gas for businesses and domestic consumers”\*
- “Negotiations with the EU will need to cover how best to avoid market distortions within a single electricity market following UK exit, and ensure that future legal and operational frameworks do not undermine the effective operation of an integrated market. Agreeing the principles set out above will be without prejudice to the wider UK-EU energy relationship, though the UK and EU will clearly need to consider the linkages with supporting efficient trading over the inter-connectors between the Single Electricity Market and Great Britain.”\*
- Is it possible for EU market rules be maintained and enforced on third party participants?

*UK Government Position Paper on Northern Ireland and Ireland (16 Aug 2017)*

# Expert evidence to UK Parliamentary Committees

Westminster Committees received a range of views when considering the issue of Brexit and the SEM

- “In relation to energy ... the immediate relationships that we have are robust to Brexit... I do not think that in the near term the relationships that we have will be encumbered by Brexit, but over the longer term as policy evolves, yes, there could be issues<sup>\*</sup>” *Edgar Morgenroth, ESRJ*
- “It will be difficult if different energy regulations apply in Ireland from those that apply in Northern Ireland ... This will be pretty complicated<sup>°</sup>”  
*John Bruton, former Taoiseach*
- A hard Border “would represent a physical and visible impediment providing a tangible distinction between North and South... This will inevitably cause some level of delay, frustration and inconvenience to people moving across the border and is also likely to result in ... legal complications for energy suppliers and other public utilities<sup>ø</sup>”. *Feargal Cochrane, University of Kent*
- “I do not even want to think about whether or not I would have to go to zones and have a higher price in Northern Ireland for our energy than in Southern Ireland. That is not something that I hope I will have to contemplate<sup>‡</sup>”  
*Jo Aston, NI Utility Regulator*

\* Lords European Union Committee, 18 October 2016

° Lords European Union Committee, 25 October 2016

ø Lords EU Select Committee, Brexit Devolution Inquiry, 2 March 2017

‡ Commons NI Affairs Committee 6 Sep 2016

# What might post-Brexit SEM look like

- Status quo (ish)
  - incorporate EU energy legislation into SEM market rules
  - create a legal framework for NI that requires acceptance of future EU mandated changes
- EEA – the Norway (or Swiss) option
  - direct participation in the EU market
- Other
  - Energy Community
  - WTO
- Key issue is governance of a post-Brexit SEM
  - how to provide an acceptable substitute for UK EU treaty obligations

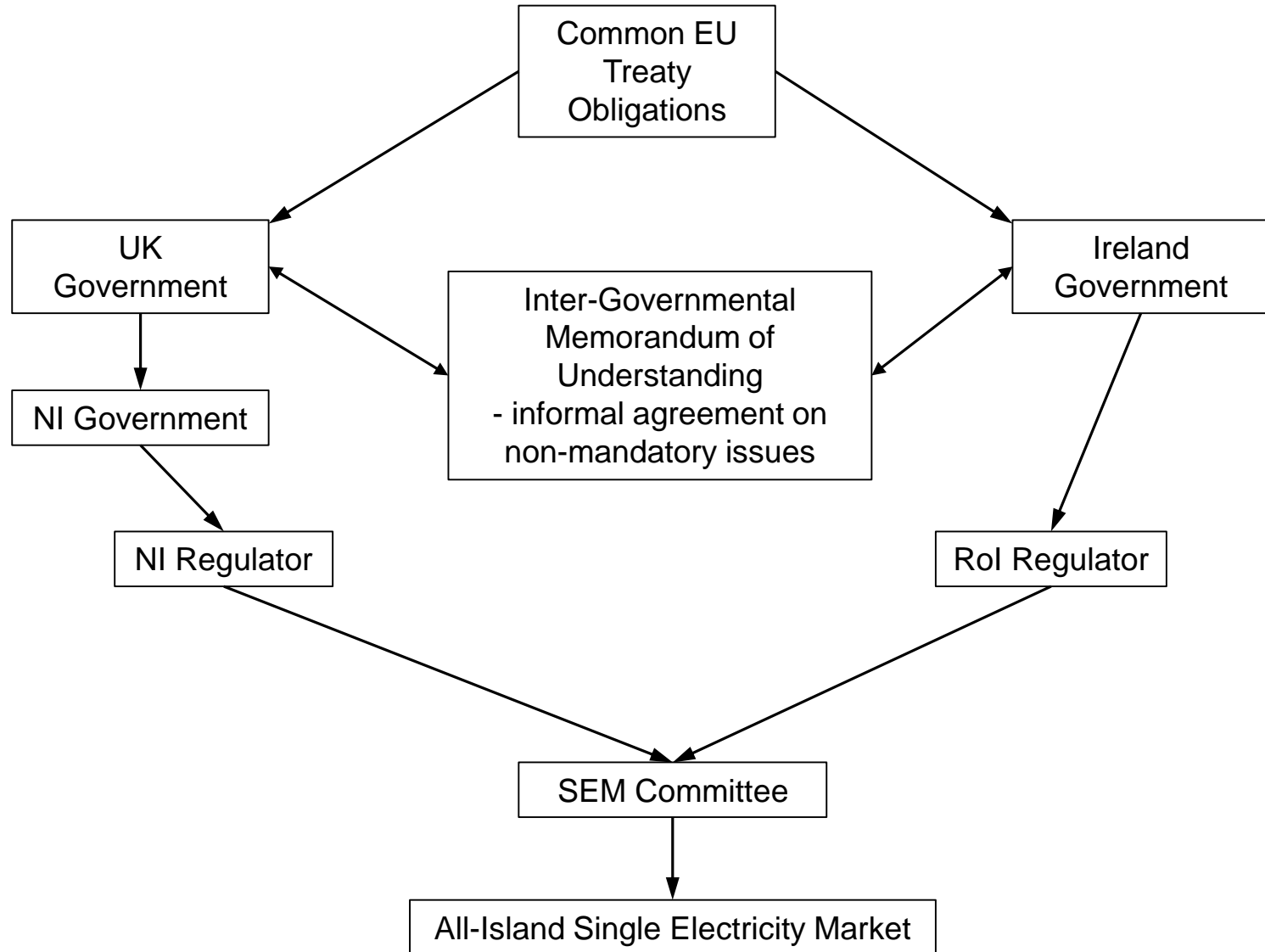
# SEM – framework

Current Single Electricity Market works because

- Common energy market treaty obligations for Ireland/UK
  - business separation
  - competition
  - renewables
  - environment (emissions/carbon)
  - other (MiFID/REMIT)
- Memorandum of Understanding
  - informal (non legally-binding)
  - co-ordinates non-mandated market arrangements
    - dispatch rules
    - market price calculation
    - regulatory framework
    - standard participant licence conditions
    - appointment of a market operator



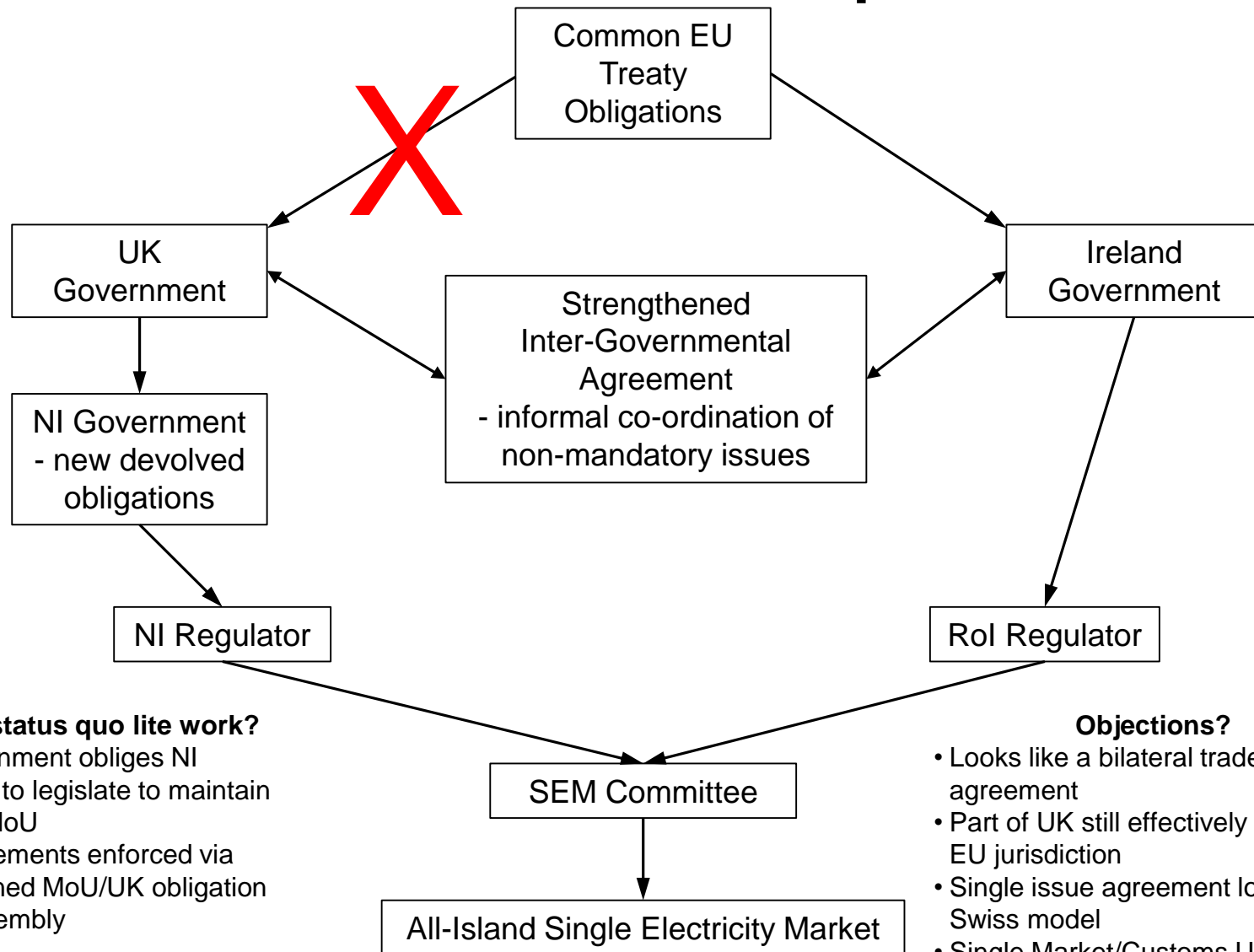
# Existing SEM legal framework and governance



# Could EU law be transposed into SEM rules?

- Essential criteria
  - single market rules cannot be differentiated across jurisdictions
  - alignment must be guaranteed for the future
- Could writing EU law into SEM rules work?
  - significant impact analysis required to determine required scope (eg Industrial Emissions Directive, financial regulation, reporting)
  - who pays?
  - could work be completed before Brexit?
- Could a strengthened MoU adequately enforce EU governance?
  - What level of external jurisdiction would the UK accept?
- What happens when EU mandates market changes or UK law changes and conflicts with the market rules?
  - how robust is NI devolution settlement to changing UK policy (eg on renewables support)?

# Brexit – SEM framework loses important link



## Could status quo lite work?

- UK Government obliges NI Executive to legislate to maintain intent of MoU
- EU requirements enforced via strengthened MoU/UK obligation on NI Assembly

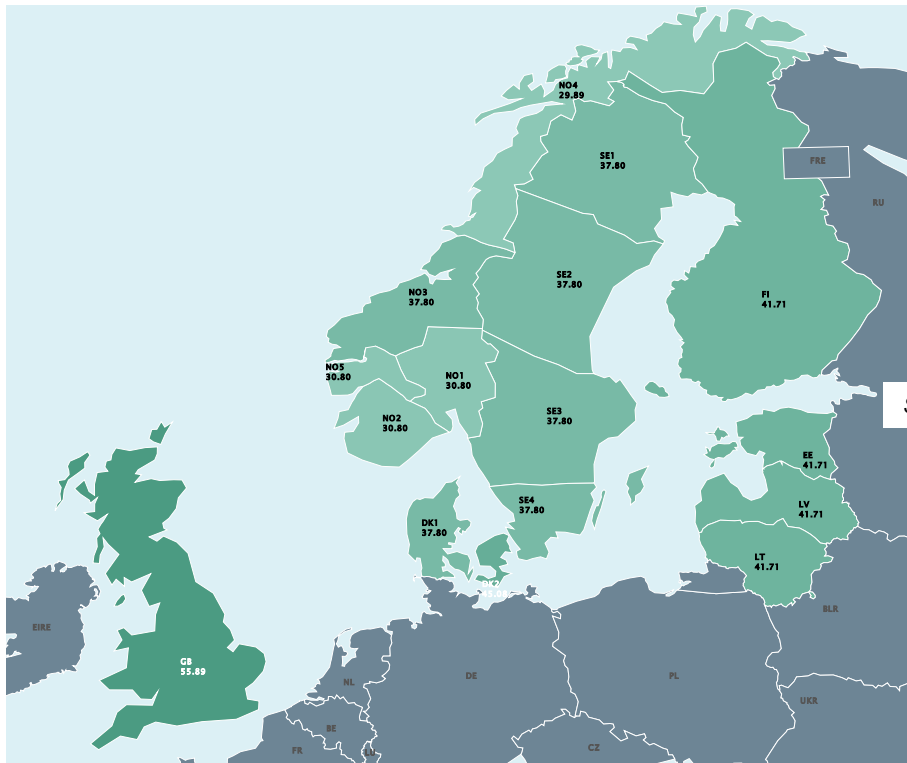
## Objections?

- Looks like a bilateral trade agreement
- Part of UK still effectively subject to EU jurisdiction
- Single issue agreement looks like Swiss model
- Single Market/Customs Union issues?

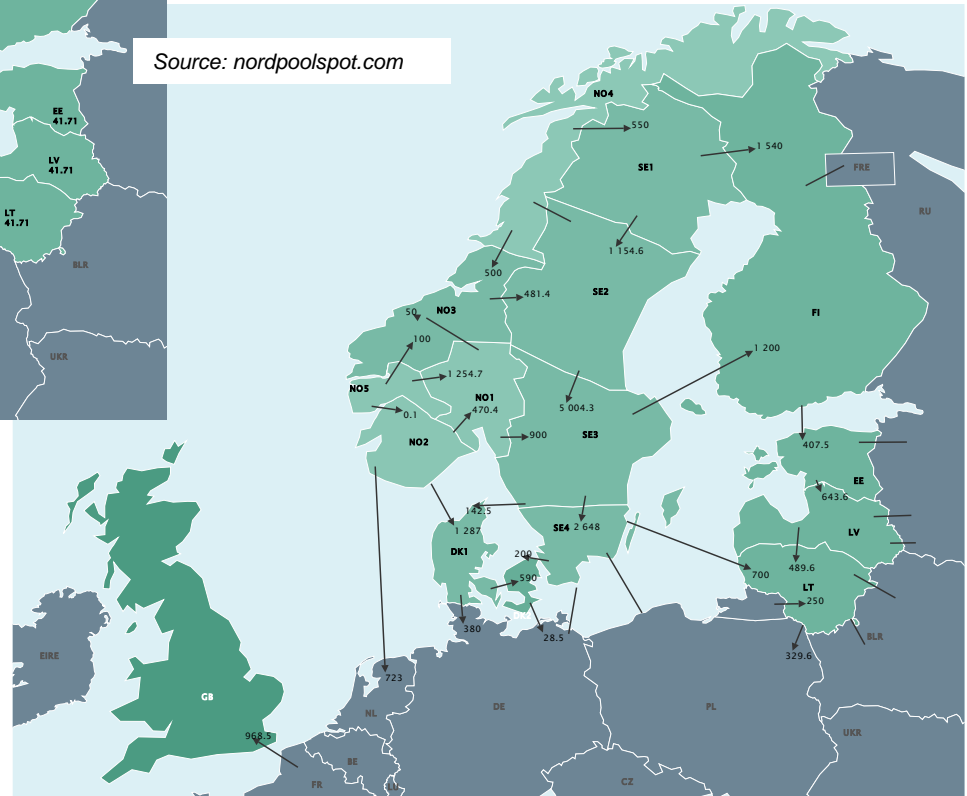
# A Norway/EEA model for post-Brexit SEM?

## EU 3<sup>rd</sup> Package market model

- Co-ordinating power flows to deliver co-ordinated prices
- Open to EU & EEA states
- Governed by EU → EEA Agreement that maintains Norway's market compliance



Source: nordpoolspot.com



## UK Participation in EU markets

- EU unlikely to endorse a new single electricity issue (EFTA/Swiss) type agreement
- UK currently rejecting Single Market and EEA membership
- GB participation in EU market post-Brexit is undermined

# Summary of EEA/EFTA model

- Already working for non-EU participant (Norway)
  - would allow SEM to continue
  - Norway (EEA) is
    - inside the Single Market
    - outside Customs Union
    - subject to the EU's EFTA Surveillance Committee
    - indirectly subject to ECJ (via EFTA court)
- Switzerland (EFTA) trading relationship with EU
  - similar to EEA,
  - sectoral rather than comprehensive
  - was supposed to be transition to EU
  - electricity market is not in scope
- Would still require SEM market impact assessment
  - could work be completed before Brexit?
  - who pays?
- Would not fit with UK 'taking back control' agenda

# Other options – Energy Community

Source: [energy-community.org](http://energy-community.org)



A legally-binding, multi-lateral treaty to extend the EU internal energy market rules and principles to countries in South East Europe, the Black Sea region and beyond, on the basis of a legally binding framework

# Other options – Energy Community

- Energy Community
  - an existing legally-binding, multi-lateral treaty
  - provides ready-made framework for participation in EU electricity market to which the UK can accede
  - single sector (energy)
  - does not require free movement of labour (explicitly excluded by Article 42)
  - could be bridge to more enduring arrangement, but
    - lag before EU requirements incorporated into treaty
    - requires an accession process
    - SEM impact assessment, cost and timescale issues remain
- indirect ECJ jurisdiction unacceptable to UK – similar to EEA

# Other options – World Trade Organisation

- Potentially of interest to UK, as
  - no jurisdiction for European Court of Justice
  - tariffs on gas/electricity are zero, but
    - non-tariff barriers likely (eg option value of take or pay [put option] contracts)
    - could affect participation in SEM by some participants (eg pure traders)
- Opaque relationship to EU law
  - SEM could impact Ireland's ability to comply with EU Treaty obligations (non-compliant link to third country)
- Compatibility with SEM difficult to see
- SEM impact assessment,
  - cost and timescale issues remain



# Conclusions

- Participation in EU market requires acceptance of EU governance
  - unlikely to be acceptable to UK
- Continuation of the SEM will depend on compatibility of wider UK political objectives with participation in EU market
- Timescale for decision on future relationship with EU and subsequent SEM market impact/cost assessment
  - Probably not compatible with a March 2019 Brexit date
  - 2-year transition would help
- NI issues have not always been a high priority for UK Government (eg post-ROC renewable support)

Notwithstanding UK's stated position on the SEM, it would be prudent for Ireland to have robust contingency plans in place for going it alone

# Thank you