

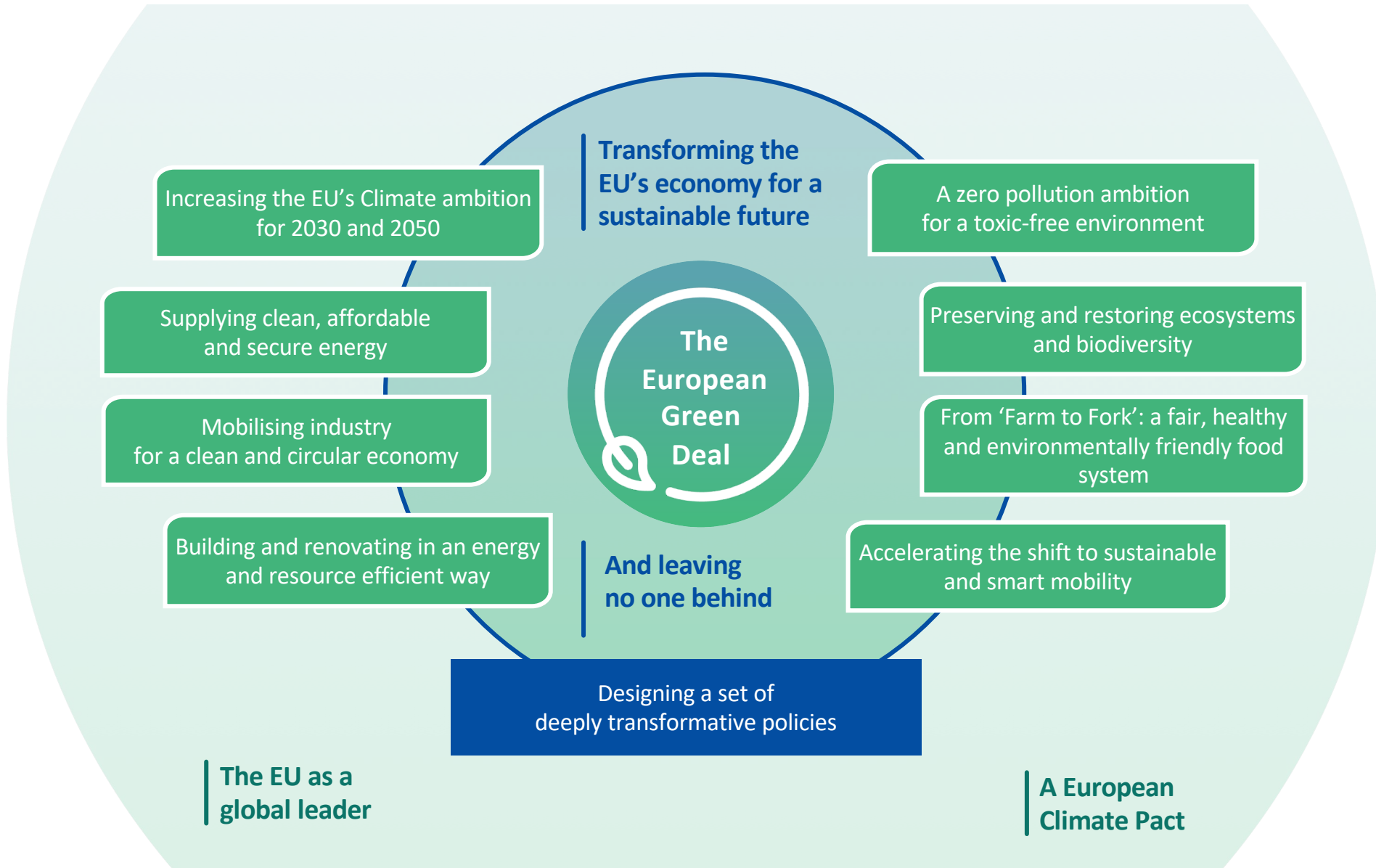


EU Environment law after Brexit

March 2021

Paul Speight

Negotiating aim – preserve our capacity to roll out the **European Green Deal**



Brexit deal = three interlocking legal components (and one to come...)

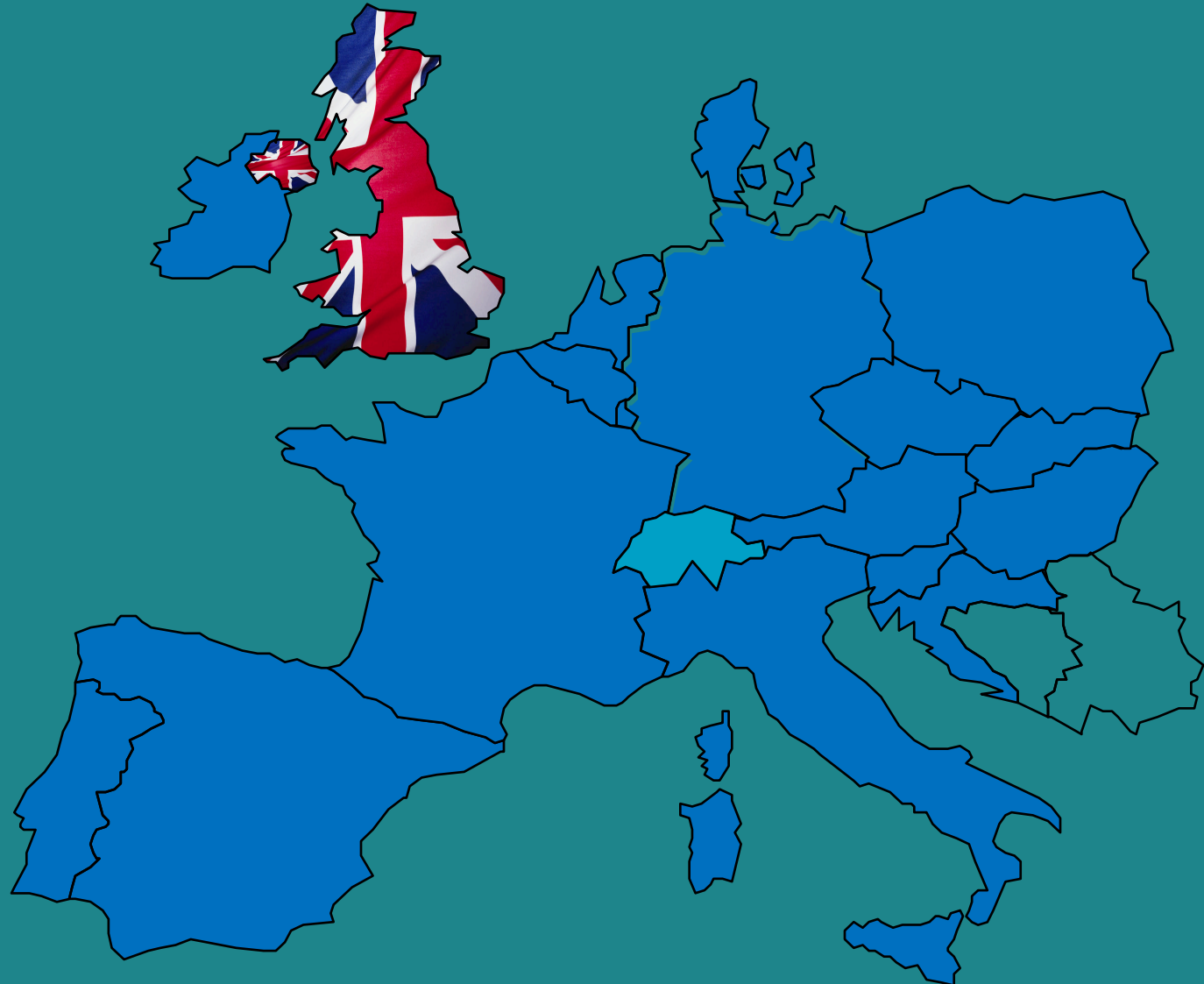


Gibraltar
(agreement
in principle
ES/UK)

What is in the Withdrawal Agreement (Feb 2020) versus the Trade and Co-operation Agreement? (May 2021)

| Withdrawal Agreement | Trade and co-operation agreement |
|---|--|
| Financial provisions but also ongoing programmes under current MFF (including LIFE) | Trade provisions, LPF |
| End of participation in committees and databases | General co-operation provisions (TSD type) |
| Ongoing procedures: Infringements, access to documents... | Sectoral co-operation provisions (Chemicals, energy) |
| Citizens rights | Level Playing Field procedures |
| Northern Ireland Protocol | Participation in Horizon |
| | |

Why is this FTA so significant for EU environment?



Level Playing Field (TCA)

How level will the playing field be in 2021?

Level playing field

Non regression commitment

Future
proofing

Governance
arrangements

'levels of
protection'

Trade impact
test

Obligation to
enforce

Wide scope +
principles

How level will the playing field stay in the future?

Level playing field

Non regression commitment

Future
proofing

Governance
arrangements

'levels of
protection'

Trade impact
test

2030 targets

Rebalancing
measures

Review clause
(2025)

How binding is the level playing field?

Level playing field

Non regression
commitment

Future proofing

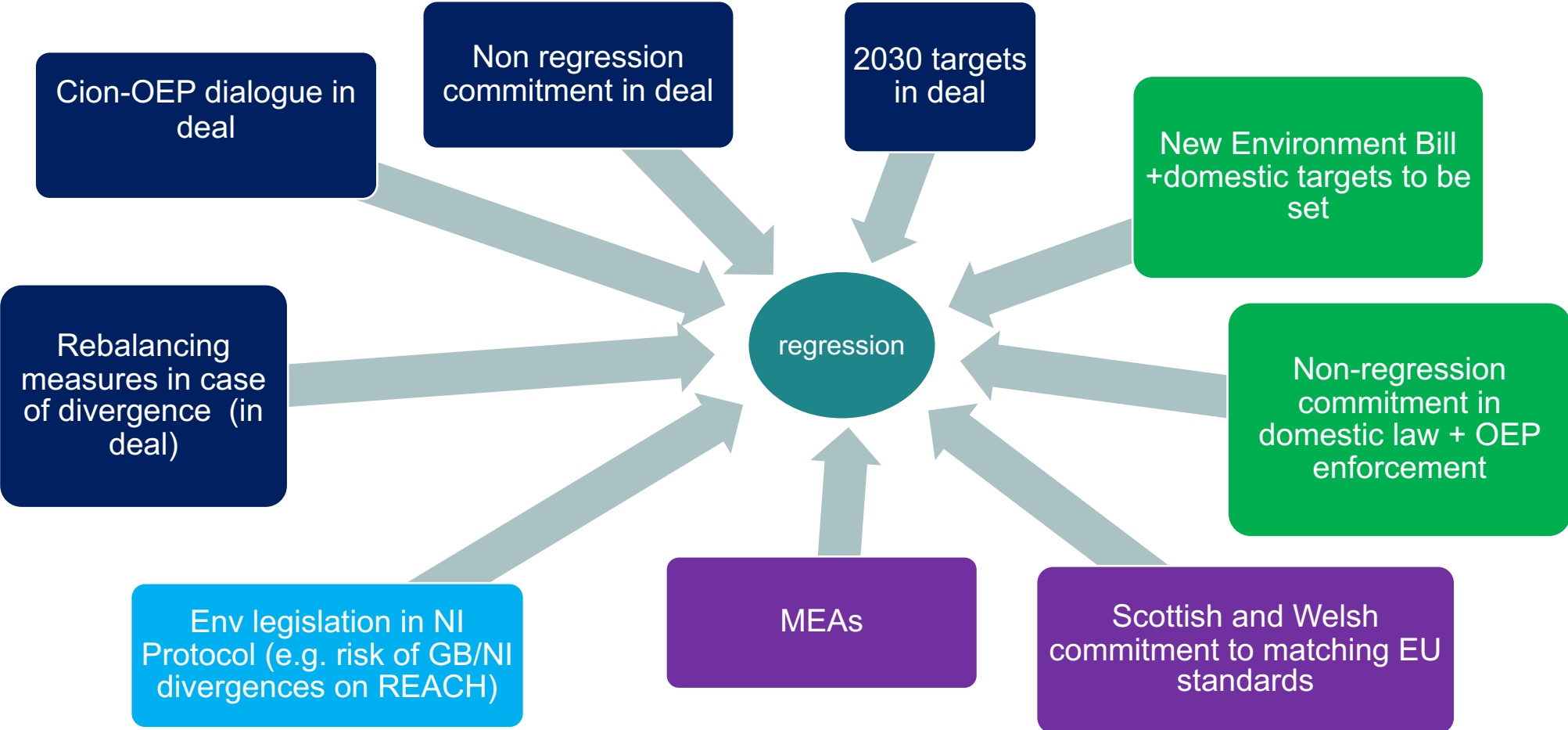
Governance
arrangements

Binding panel of experts

Rebalancing measures
subject to panel of
arbitration

Supervisory co-
operation + committee
structure

Restrictions on UK env policy -> 2030



Points to note on non-regression

- Lowering of environmental standards that have only a weak link to economic/trade impacts (e.g. species protection)
- Changes in regulatory approach where it is arguable that the same result is arrived at (e.g. change from target to emission trading system)
- Single decisions on e.g. a chemical product
- Process elements (e.g. noise plans)
- Non-harmonised data

Freedom to regulate

No constraints on EU regulatory freedom

- Right to regulate and use the precautionary principle fully preserved
- Virtually no interlinkage of EU and UK product standards
- No entry into the EU internal market decision making process

Co-operation

Trade and sustainable development (chapter 8)

- All classical elements of TSD included
- Co-operation foreseen on MEAs
- Articles on biodiversity + CITES, trade and forests, sustainable fishing
- No real sharing of data, outside of MEAs – UK did not ask to stay in the European Environment Agency (Copenhagen)

Sectoral regulatory co-operation

- Chemicals annex (TBT-3)
 - Light regulatory co-operation
 - use of GHS/CLP
 - Possibility of information exchange (non-confidential information)
- Energy Heading
 - Co-operation on development of offshore (including maritime spatial planning) – link to EIA provisions will be important) – building on North Seas Energy Co-operation
 - Provisions on renewable energy

Climate specific aspects

Provisions on climate

- Fight against climate change is an essential element
- Climate neutrality by 2050 – presented as a common ambition
- Carbon pricing is spelt out in non-regression
- ETS – scope of EU/UK ETS set out (departing flights)
- No linkage at this stage, but not ruled out (Art 7.3)
- Barriers to aviation fuel taxation removed (in aviation section)

Northern Ireland Protocol

ENV legislation covered – internal market and border control + IED where linked to single electricity market

- Chemicals: REACH, PIC, CLP, POPs, Mercury
- Waste/internal market: Eco-label, waste shipment, ship recycling, WEEE+RoHS, Batteries, packaging + Single use plastics in part and delayed
- International/biodiversity: CITES, FLEGT, EUTR, seal products, leghold traps, invasive alien species
- IED (where linked to electricity generation)
- Climate: ODS, ETS for electricity generation

How does the NI Protocol work

- UK agrees to apply the EU legislation listed in the annex in Northern Ireland, including enforcement, monitoring and reporting
- Dynamic alignment (new laws in the sectors incorporated via the Committee processes)
- Export restrictions in NI-GB trade apply only to the extent strictly required by international obligations of EU (EU and UK have same interpretation except for waste shipments)
- Supervision by Commission – so far more a negotiated process, but subject to infringements (including role of ECJ)
- Runs at least until 2025, but probably longer (vote in NI Assembly in 2024)

Gibraltar

Gibraltar

- Agreement in principle (31/12/20) between UK and Spain makes it clear that environment will be covered
- Environment was already in Gibraltar Protocol of WA
- Mandate for EU-UK agreement now being prepared
- Dynamic alignment?
- Scope?
- What kind of EU supervision/role? ECJ?
- Mandate, form of agreement...
- Format of negotiations

Conclusions

How will Commission be interacting with the UK as regards environment?

WA

NI Protocol

Ongoing cases
(till 2025 latest)

Remaining LIFE projects etc
under current MFF

TCA

LPF specialized committee

Supervisory co-operation
Art 7.6

Sectoral regulatory co-operation
(chemicals, energy)

TSD and MEA co-operation
(chapter 8)

Other

Gibraltar (precise text to be
negotiated)

MEA/UN/OECD derived co-
operation

Few thoughts on the relationship in practice

- Co-operation or positive competition (spirit of Brexit...)?
- Co-operation in global context – UK host of climate COP + chair of G7
- Impact of NI Protocol on relationship as a whole
- Managing desire for divergence plus natural drift
- Cost of disconnection
- EP watching carefully
- Link to wider trade policy reform

Post Brexit - EU environmental law preserved, with room for growth!



Thank you!



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