

EXPLANATORY MEMORANDUM ON A PROPOSAL FOR A DECISION OF THE COUNCIL ESTABLISHING AN EU POSITION AHEAD OF A WITHDRAWAL AGREEMENT OR TRADE AND COOPERATION AGREEMENT GOVERNANCE COMMITTEE

COM(2022)651 + Annex

Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the EU-UK Specialised Committee on Energy established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, concerning the EU-UK electricity trading arrangements

Submitted by the Department for Business, Energy and Industrial Strategy on 13 December 2022

SUBJECT MATTER

This Council Decision concerns the UK and EU's obligations under the Energy Title of the UK-EU Trade and Cooperation Agreement (the 'TCA').

The Energy Title establishes a number of commitments related to *inter alia* the efficient use of interconnectors and cross-border electricity trading, security of supply cooperation and cooperation on renewable energy in the North Seas. The Specialised Committee on Energy (hereafter 'Committee') is the joint UK-EU governing body that oversees the implementation and functioning of the Energy Title. It has a particular focus on the development of new efficient electricity trading arrangements between the UK and EU, which is identified as a priority in the Energy Title.

This Council Decision establishes the position the EU will take on the Committee's adoption of a Recommendation to each Party concerning the development of new trading arrangements for the efficient use of electricity interconnectors. This Recommendation has been jointly drafted by the Parties to progress implementation of TCA Article 312(1) and Article 317(2) concerning electricity trading.

This Council Decision is part of the internal procedures the EU must complete before the Committee can adopt the Recommendation. This Decision will give the European Commission the mandate it needs to agree to the adoption of the Recommendation by the Committee.

SCRUTINY HISTORY

There is no previous formal scrutiny of this issue through the provision of earlier EMs and is the first such EM to be submitted.

The UK Co-Chair of the Specialised Committee notified the House of Commons European Scrutiny Committee and the House of Lords European Affairs Committee of the publication of the agenda and minutes of Specialised Committee meetings, at which the efficient use of electricity interconnectors was discussed.

MINISTERIAL RESPONSIBILITY

Grant Shapps, Secretary of State for Business, Energy and Industrial Strategy

INTEREST OF THE DEVOLVED ADMINISTRATIONS

Energy policy is devolved in Northern Ireland but not in Scotland or Wales. We engage Devolved Governments regularly concerning electricity trading arrangements to ensure their respective interests are taken into consideration, in particular Northern Ireland because its electricity wholesale market operates as part of the Single Electricity Market across the island of Ireland (SEM) and as a result UK-EU trading arrangements apply to GB-SEM trade.

NI officials observe as members in all Committee meetings with the EU (alongside officials from the Welsh and Scottish governments), and officials in NI are involved in wider engagement between UK Transmission System Operators, and UK Regulators.

Devolved Governments have been consulted in the preparation of this EM, and they provided no comments.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base:

The legal bases of the proposed Council Decision are said to be Article 194(1) TFEU in conjunction with Article 218(9) TFEU.

Article 194(1) of the TFEU provides that EU policy on energy shall ensure or promote certain objectives, including security of supply and the interconnection of energy networks. It is identified as one of the bases for the proposed Council Decision on grounds that its main objective and content relate to energy policy.

Article 218(9) of the TFEU states that “[t]he Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement” (emphasis added).

The act in respect of which the Council is called upon to adopt a decision establishing the position to be adopted on the EU’s behalf within the Committee, being the Committee Recommendation, constitutes an act said to be likely to have legal effects. It contributes to discharging the obligations agreed upon by the Parties in Article 312(1) and Article 317(2) of the Trade and Cooperation Agreement. Since the Committee Recommendation conditions and frames the development of electricity trading arrangements between the EU and the UK, it is capable of decisively influencing the content of or the way in which the Union *acquis* is to be implemented, in particular Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management.

The envisaged act (being the Committee Recommendation) does not supplement or amend the institutional framework of the Trade and Cooperation Agreement and is thus not within the exception to Article 218(9).

ii. **Voting Procedure:** The Council shall act by a qualified majority throughout the procedure.

iii. **Timetable for adoption and implementation:** A formal Council Decision will be taken by the Council which is expected to establish the Union's position that the Committee should proceed with the adoption of the drafted Recommendation on electricity trading.

The Council Decision states that the Committee "is to adopt the Recommendation either during its next meeting, or by written procedure, whichever is sooner, following the completion of domestic procedures by each Party." It is our expectation that the Committee Co-Chairs will use written procedure to adopt the Recommendation shortly after this Council Decision is adopted.

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POLICY IMPLICATIONS

This Council Decision concerns the UK and EU's obligations under the TCA. The Energy Title of the TCA provides, amongst other things, for a new form of efficient cross-border electricity trade between the Parties to be developed in accordance with a design, process and timeline set out in the treaty for the day-ahead trading timeframe.

The TCA sets out principles for UK and EU Transmission System Operators to commence work on the design and implementation of new cross-border electricity trading arrangements at the day-ahead market timeframe to replace the previous market coupling. The new arrangements will be based on the concept of 'multi-region loose volume coupling' (MRLVC), where cross-border transmission capacity on an interconnector and electricity are auctioned together, allowing for more efficient trade which will deliver economic, decarbonisation and security of supply benefits to Great Britain, whilst maintaining Great Britain's energy market independence.

Both Parties re-affirmed their commitment to the development of these new arrangements at the September 2022 meeting of the Committee, while the UK also noted its continued concern about delays to the implementation of new electricity trading arrangements.

The cost-benefit analysis (CBA) completed by UK and EU Transmission System Operators (TSOs) in April 2021 showed significant benefits for both Parties, including 36-74 million EUR every year out to 2025 in GB consumer welfare benefits, 1-2 megatonnes CO2 emissions reductions every year out to 2025 across both GB and the EU, increased renewable output of around 500GWh, and decreased fossil fuel generation of between 3,000 and 5,000 GWh every year across GB and EU. The arrangements will also be important for deploying and maximising the benefits of Multi-Purpose Interconnectors (MPIs). MPIs combine the connection of offshore wind with links to other markets, reducing the overall amount of infrastructure required and making more efficient use of offshore wind. Whilst these benefits have been acknowledged by both UK and EU parties, the CBA also presented challenges that would benefit from further substantiation, in particular for EU implementation.

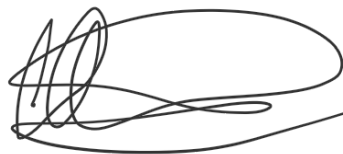
Therefore, the Recommendation of the Committee has been jointly drafted by the Parties to assist the Committee on two specific issues, linked to the development of more efficient trading arrangements. First, it is to confirm the preliminary recommendation provided on 22 January 2021 by the Directorate-General for Energy and the UK Government's Department for Business, Energy and Industrial Strategy to the EU and UK TSOs for electricity. That preliminary recommendation was issued prior to the commencement of work by the Committee and invited the TSOs to start preparing technical procedures for the efficient use of electricity interconnectors. Second, the Recommendation, while recognising the work already undertaken by the TSOs for example through the CBA, sets out a request for *additional* information to be provided by TSOs regarding the costs and benefits of more efficient trading arrangements, in particular exploring how the challenges identified in the initial cost-benefits analysis can be mitigated. This additional information will assist the Committee in discharging its obligations under Article 312(1) and Article 317(2) of the Trade and Cooperation Agreement, in particular it will help deciding on the manner in which the electricity trading arrangements could be developed in the optimal way.

CONSULTATION

The UK Government has engaged with UK TSOs on the purpose and expectations of the Recommendation. The TCA acknowledges that the Parties must work with TSOs, and gives the Committee the responsibility to ensure that TSOs are able to implement the new trading arrangements. We will continue to work closely with TSOs following the adoption of the Recommendation by the Committee and will seek to coordinate with the EU to resolve any issues which emerge.

FINANCIAL IMPLICATIONS

There are no direct financial implications for the UK Government.

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The Rt Hon Graham Stuart MP
Minister of State for Energy and Climate
Department for Business, Energy and Industrial Strategy

13 December 2022