

EXPLANATORY MEMORANDUM ON A UK/EU TRADE AND COOPERATION AGREEMENT GOVERNANCE DOCUMENT

COM(2024) 44 final + 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, on the adoption of the guidance on frameworks for cooperation.

Submitted by the Department for Energy Security and Net Zero on February 2024

SUBJECT MATTER

This Council Decision establishes the position the EU will take in the EU-UK Specialised Committee on Energy (hereafter ‘Specialised Committee’) on the guidance to be given to UK and EU energy operators on the drafting of frameworks for cooperation between them. The Specialised Committee is the joint UK-EU governing body that oversees the implementation and functioning of the Energy Title of the UK-EU Trade and Cooperation Agreement (‘the TCA’).

The Council Decision proposes that the EU should support the adoption by the Specialised Committee of this guidance which relates to frameworks for cooperation between:

- (a) the UK transmission system operators for electricity and the European Network of Transmission System Operators for Electricity (ENTSO-E),
- (b) the UK transmission system operators for gas and the European Network of Transmission System Operators for Gas (ENTSO-G), and
- (c) the UK regulatory authorities (Ofgem and the Northern Ireland Utility Regulator) and the Agency for the Cooperation of Energy Regulators (ACER).

SCRUTINY HISTORY

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

MINISTERIAL RESPONSIBILITY

Claire Coutinho, Secretary of State for the Department for Energy Security and Net Zero.

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

Energy policy is devolved in Northern Ireland but not in Scotland or Wales. We engage regularly with Devolved Governments on energy matters affecting them to ensure their respective interests are taken into consideration. Devolved Governments have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

- i. **Legal Base:**

The legal basis of the proposed Council Decision is said to be Article 194(1) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(9) TFEU.

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

Article 218(9) 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 which the Specialised Committee is called upon to adopt constitutes an act having legal effects since Article 10 of the TCA provides that the Decisions adopted by the Specialised Committee "shall be binding on the Parties" and it discharges the obligations agreed upon by the Parties in Articles 317(1) and 318 of the TCA. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU and the Council must adopt a decision establishing the position to be taken by the EU.

i. Voting Procedure:

The Council shall act by a qualified majority throughout the procedure.

ii. Timetable for adoption and implementation:

The EU is expected to agree that the Specialised Committee should adopt the guidance. The Council Decision states (at 2.3) that "the Specialised Committee should adopt the envisaged act as soon as possible, either at its next meeting or by means of a written procedure set out in Annex I to the Agreement, whichever is sooner". It is our expectation that the Committee Co-Chairs will use written procedure to adopt the guidance shortly after this Council Decision is adopted.

POLICY AND LEGAL 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 the Specialised Committee to agree on guidance on working arrangements between UK and EU electricity and gas transmission system operators (TSOs) and UK and EU regulatory authorities. This guidance is to be given to the TSOs and regulators so that they can develop working arrangements to support the planning and operational tasks associated with meeting the objectives of the Energy Title.

The guidance states that the working arrangements should cover a wide range of areas including: security of electricity and gas supply; offshore energy; infrastructure planning; gas decarbonisation and gas quality. In addition, regulatory authorities should cooperate on the prevention of market abuse on wholesale electricity and gas markets. The arrangements should not, however, allow UK TSOs or regulatory authorities to be members of, or attend

meetings of, the equivalent EU bodies, ie ENTSO-E, ENTSO-G or ACER, as this is ruled out in the TCA.

This Decision is welcome as there have been no formal working arrangements between UK and EU TSOs and regulators since the UK left the EU. Informal guidance was given to TSOs and regulators soon after the TCA was adopted, before the Specialised Committee was established, and they developed their respective working arrangements. However, these were not formally adopted due to delays from the EU side. Fortunately, our TSOs and regulators have maintained sufficient informal relationships with their EU counterparts to enable cooperation to take place when it was needed, for example in times of energy supply shortages, particularly when Russia reduced gas flows to Europe in 2022. Some months ago the Commission started the formal procedure for adoption of the guidance by the Specialised Committee and this involved revision of the guidance originally given to TSOs and regulators to reflect the new formal procedure to be used. The UK Government and the Commission agreed to retain as a basis the text of the original working arrangements developed by TSOs and regulators, and to make only those changes needed to reflect the new formal procedure, update some of the legal references and amend contact names. The UK government and Commission are currently revising the text of each of these working arrangements and will then share them with TSOs and regulators for their comments. We therefore expect the new working arrangements to start applying very soon.

CONSULTATION

The UK Government has engaged with UK TSOs and regulatory authorities on the contents of the guidance.

FINANCIAL IMPLICATIONS

There are no financial implications for the UK Government.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in black ink, appearing to read 'Andrew Bowie', with a stylized flourish at the end.

Andrew Bowie MP

Parliamentary Under Secretary of State (Minister for Nuclear and Renewables)

Department for Energy Security and Net Zero

Date signed: 19.02.2024