

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

COM2024 (439) + Annex:

Proposal for a Council Decision on the position to be taken on behalf of the European Union in the 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 establishment of the Working Group on Security of Supply.

SUBJECT MATTER

This proposal for a Council Decision established the position the parties mutually agreed to take in the EU-UK Specialised Committee on Energy (hereafter 'Specialised Committee') on the establishment of a Security of Supply Working Group between the EU and UK on Thursday 7th November 2024.

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 proposal for a Council Decision states that the EU should approve the draft Decision of the Specialised Committee on Energy on the establishment of a Working Group on Security of Supply.

SCRUTINY HISTORY

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

MINISTERIAL RESPONSIBILITY

Minister Kerry McCarthy, Minister for Climate, 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 relating to implementation of the TCA to ensure their respective interests are taken into consideration. Devolved Governments are aware of the establishment of the Security of Supply Working Group.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base:

The legal basis of the proposed Council Decision is 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 energy 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'

The act which the Specialised Committee was called upon to adopt, being the proposed Council Decision, 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 the decision discharges the obligations agreed upon by the Parties in Articles 315 (7) and 316 of the TCA. Establishment of the Security of Supply Working Group required that the Council established a position to be taken by the EU concerning the adoption of the proposed Decision by the Specialised Committee.

i. Voting Procedure:

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

ii. Timetable for adoption and implementation:

The EU has agreed that the Specialised Committee should adopt the decision.

The Council Decision states (at 2.3) that "During its upcoming meeting, the Committee is to adopt a decision regarding the establishment of a Working Group on Security of Supply". The decision was agreed at the meeting held on Thursday 7th November 2024.

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 give effect to our shared security of supply obligations under Article 315 and 316 of the TCA and we believe these commitments are best met through the establishment of a Working Group on security of supply.

The Working Group will formalise cooperation between the UK and EU on security of supply by providing a forum for discussion on technical matters including the sharing of winter and summer security of supply outlooks, risk preparedness plans and emergency plans, to which technical experts such as our respective transmission system operators may be invited. The Working Group will also be able to convene meetings at short notice in the event of risks to security of supply or supply disruptions such as unexpected reductions in gas flows, as happened in 2022.

This Decision is welcome as there has been no formal cooperation between the UK and EU on security of supply since the UK left the EU. Informal cooperation has been maintained in this period in various ways, including through ad hoc invitations to the UK to attend part of the EU's gas and electricity coordination group meetings where the UK and EU winter outlooks were shared, and through long-established contacts between UK and EU transmission system operators.

CONSULTATION

The UK Government has engaged with Other Government Departments and Devolved Governments ahead of the Decision to establish the Working Group.

FINANCIAL IMPLICATIONS

There are no financial implications for the UK Government.

A handwritten signature in black ink that reads "Kerry McCarthy". The signature is written in a cursive, flowing style.

KERRY MCCARTHY MP

Minister for Climate

Submitted by DESNZ, 20 November 2024