

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

8260/24 + Add 1

COM(2024) 539 + 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 of the EU-UK Trade and Cooperation Agreement concerning the adoption of a Recommendation on electricity trading arrangements

Submitted by Department for Energy Security and Net Zero, 20th January 2025

## **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 'SCE') 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 SCE'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 SCE 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 SCE.

## **SCRUTINY HISTORY**

The Government submitted a previous EM on 13 December 2022 concerning an earlier Specialised Committee on Energy Recommendation (EM C(2022)651). That EM completed scrutiny by the House of Lords European Affairs Committee at the Chair's siff on 6 January 2023 without follow up.

## **MINISTERIAL RESPONSIBILITY**

Minister Kerry McCarthy MP, Minister for Climate

## **INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)**

Energy policy relating to the generation, transmission and distribution of electricity 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 all SCE meetings with the EU (alongside officials from the Welsh and Scottish governments), and officials in NI are involved in wider engagement between UK Government, UK Transmission System Operators (hereafter 'TSOs'), 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 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'. EU case law<sup>1</sup> has defined the concept of 'acts having legal effects' as including instruments that do not have binding effects under international law, but that are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'.

---

<sup>1</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12 ECLI:EU:C:2014:2258, paragraphs 61 to 64.

The Recommendation to be adopted by the SCE will not be binding under international law pursuant to Article 10 of the TCA. However, it is capable of decisively influencing the content and implementation of EU legislation on capacity allocation and congestion management, Regulation (EU) 2015/1222 of 24 July 2015, given that the development of efficient trading arrangements with the UK might require operational adjustments to the EU's single day ahead coupling algorithm.

i. Voting Procedure:

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

ii. Timetable for adoption and implementation:

The Council agreed the EU's proposed position on 17<sup>th</sup> December 2024 and the Specialised Committee adopted the Recommendation via written procedure on 18<sup>th</sup> December 2024. The Co-chairs of the SCE have separately sent letters to their respective TSOs informing them of the SCE's Recommendation and that the Parties have agreed to that Recommendation. The TSOs and regulatory authorities now have 12 months from the adoption of the Recommendation to complete the work requested.

## **POLICY AND LEGAL IMPLICATIONS**

The Council Decision concerns the development of efficient electricity trading arrangements between GB and the EU. Article 312 of the TCA requires that the SCE, as a matter of priority, take steps to ensure the development of efficient electricity trading arrangements based on the concept of multi-region loose volume coupling (hereafter 'MRLVC') as outlined in Annex 29.

A cost-benefit analysis in 2021 and further analysis in 2023 on operational design challenges showed that, in principle, MRLVC under the Common Order Book approach has the potential to deliver major benefits in comparison to the status quo. However, some key design challenges remain.

The [minutes](#) of the SCE meeting have been published including the [Recommendation](#). Both Parties reaffirmed their continued commitments to implementing electricity trading arrangements between the parties as prescribed in the TCA at the November 2024 meeting of the SCE. Both Parties also highlighted the importance of developing efficient trading to support the development of interconnectors and offshore hybrid assets (which combine offshore windfarms and cross-border interconnectors), and noted stakeholder concerns and emphasised the importance of moving through the TCA process at pace. Both Parties agreed to issue a Recommendation to their respective TSOs through written procedure, ideally by the end of the year, in order to move to a concept validation phase for MRLVC.

The Council Decision adopts the SCE Recommendation. The SCE Recommendation contains the following recommendations to the Parties: to acknowledge that the Preliminary Order Book approach is not a viable option for further development of MRLVC; to request UK and EU TSOs to jointly commence a concept-validation phase of MRLVC addressing the key design challenges in a report to the SCE; and to request UK and EU regulatory authorities to comment on the TSOs' report. A particular focus is given to the future-proofness of MRLVC and its compatibility with joint interconnection and offshore hybrid assets between GB and the EU.

The SCE has also published a Roadmap to oversee work on efficient electricity trading, as requested by the UK-EU Partnership Council in May 2024, as an annex to the minutes of its November 2024 meeting. It provides a high-level timeline and next steps for progressing development of UK-EU electricity trading arrangements. The Roadmap is a guiding document only and has no legal standing.

## **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. Following the adoption of the Recommendation by the SCE the UK government has requested the UK TSOs to jointly with EU TSOs produce the report about the technical viability of MRLVC within the specified timeframe. We will continue to work closely with TSOs and will seek to coordinate with the EU to resolve any issues which emerge.

## **FINANCIAL IMPLICATIONS**

There are no financial implications for the UK Government.

## **MINISTERIAL NAME AND SIGNATURE**

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

**Minister Kerry McCarthy MP**  
**Minister for Climate**

DEPARTMENT FOR ENERGY SECURITY AND NET ZERO