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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject:	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

Delegations will find attached document COM(2024) 439 final.

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Brussels, 4.10.2024
COM(2024) 439 final

2024/0241 (NLE)

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

EXPLANATORY MEMORANDUM

1. SUBJECT OF THE PROPOSAL

The proposal concerns the Council decision establishing the position to be taken on the Union's behalf in the Specialised Committee on Energy ('Committee') established under Article 8(1)(l) of 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 part¹ ('Trade and Cooperation Agreement'). This position relates to the Decision of the Committee establishing a Working Group on Security of Supply.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-UK Trade and Cooperation Agreement

On 1 February 2020, the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') withdrew from the European Union and from the European Atomic Energy Community ('Euratom').

The arrangements for the withdrawal are set out in the Agreement on the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community (the 'Withdrawal Agreement')². The Withdrawal Agreement entered into force on 1 February 2020 and provided for a transition period during which Union law³ applied to and in the United Kingdom in accordance with that Agreement. This period ended on 31 December 2020.

During this transition period, the European Union, Euratom and the United Kingdom agreed on a Trade and Cooperation Agreement, which was concluded by the Union in Council Decision (EU) 2021/689⁴ and entered into force on 1 May 2021.

Since the end of the transition period, the European Union and the United Kingdom have run separate policies related to energy. Cooperation in this area has taken place in the Specialised Committee on Energy established under Article 8(1)(l) of the Trade and Cooperation Agreement. Following Russia's invasion of Ukraine in 2022, this cooperation has intensified, inter alia, on security of supply. This cooperation has proven to be beneficial for the European Union.

On 16 May 2024, in the third meeting of the Partnership Council under the Trade and Cooperation Agreement, the United Kingdom proposed to establish a Working Group on Security of Supply to further strengthen cooperation in this area. The European Commission expressed openness to this proposal.

¹ OJ L 149, 30.4.2021, p. 10.

² OJ L 29, 31.1.2020, p. 7.

³ As defined in Article 2 of the Withdrawal Agreement

⁴ Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information, OJ L 149, 30.04.2021, p.2.

2.2. The Specialised Committee on Energy

Article 8(1)(l) of the Trade and Cooperation Agreement establishes the Specialised Committee on Energy.

Under Article 8(4) of the Trade and Cooperation Agreement, the Specialised Committee on Energy, in its area of competence, has the power to:

- monitor and review the implementation and ensure the proper functioning of the Trade and Cooperation Agreement or any supplementing agreement;
- assist the Partnership Council in the performance of its tasks and, in particular, report to the Partnership Council and carry out any task assigned to it by the Partnership Council;
- adopt decisions, including amendments, and recommendations on all matters where the Trade and Cooperation Agreement or any supplementing agreement so provides or for which the Partnership Council has delegated its powers to a Specialised Committee in accordance with point (f) of Article 7(4) of the Trade and Cooperation Agreement;
- discuss technical issues arising from the implementation of the Trade and Cooperation Agreement or any supplementing agreement;
- provide a forum for the Parties to exchange information, discuss best practices and share implementation experience;
- establish, supervise, coordinate and dissolve working groups; and
- provide a forum for consultation in line with Article 738(7) of the Trade and Cooperation Agreement.

2.3. The envisaged act of the Specialised Committee on Energy

During its upcoming meeting, the Committee is to adopt a decision regarding the establishment of a Working Group on Security of Supply.

The Working Group on Security of Supply should serve as a forum for cooperation, exchange of information, technical discussions and mutual consultation on security of supply. The Working Group on Security of Supply is not intended to adopt acts or measures having legal effects.

3. POSITION TO BE TAKEN ON THE EU'S BEHALF

Pursuant to Article 218(9) of the Treaty on the Functioning of the European Union ('TFEU'), the Council shall adopt, on a proposal from the Commission, the position to be taken on behalf of the Union in the Committee, as regards decisions having legal effect under public international law. Establishment of a new Working Group on Security of Supply by the Committee under the Trade and Cooperation Agreement requires that the Council establishes a position to be taken by the Union concerning the adoption of the Decision by the Committee.

The Working Group on Security of Supply, once established, will set its rules of procedure as set out in Council Decision (EU) 2023/2193.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the TFEU provides for decisions 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 concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’⁵.

4.1.2. Application to the present case

The Specialised Committee on Energy is a body set up by an international agreement, namely the EU-UK Trade and Cooperation Agreement.

The act which the Committee is called upon to adopt constitutes an act having legal effects. The envisaged decision will be binding under international law in accordance with Article 10 of the Trade and Cooperation Agreement.

The envisaged decision does not supplement or amend the institutional framework of the Trade and Cooperation Agreement.

Therefore, the procedural legal basis for the proposed Decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components, and if one of those aims or components can be identified as the main one, meaning that the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components that are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

The main objective and content of the envisaged decision relates to energy. Therefore, the substantive legal basis of the proposed Decision is Article 194(1) TFEU.

4.3. Conclusion

The legal basis of the proposed Decision should be Article 194(1) TFEU, in conjunction with Article 218(9) TFEU.

⁵ 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.

5. Publication of the envisaged act

As the purpose of the decision of the Specialised Committee on Energy is to establish a Working Group on Security of Supply under the Trade and Cooperation Agreement, it is appropriate to publish the decision of the Specialised Committee on Energy in the *Official Journal of the European Union* after its adoption.

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 29 April 2021, the Council adopted Decision (EU) 2021/689⁶ on the conclusion of 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 part⁷ (the ‘Trade and Cooperation Agreement’). The Trade Cooperation Agreement entered into force on 1 May 2021.
- (2) Article 8(1)(l) of the Trade and Cooperation Agreement established the Specialised Committee on Energy. Its competences are set out in Article 8(4) of the Trade and Cooperation Agreement.
- (3) Article 8(4)(f) of the Trade and Cooperation Agreement empowers the Specialised Committee on Energy to establish, supervise, coordinate and dissolve Working Groups. Pursuant to Article 9(2) of the Trade and Cooperation Agreement, any established Working Group shall, under the supervision of a Committee, assist that Committee in the performance of its tasks and, in particular, prepare the work of that Committee and carry out any task assigned to the Working Group by that Committee. Article 9(4) of the Trade and Cooperation Agreement provides that any established Working Group shall set its own rules of procedure, meeting schedule and agenda by mutual consent.
- (4) It is appropriate that the Specialised Committee on Energy establishes, pursuant to Article 8(4)(f) of the Trade and Cooperation Agreement, a Working Group on Security of Supply, to operate under its supervision. The Working Group on Security of Supply should set its rules of procedure as set out in Council Decision (EU) 2023/2193 and should report regularly on its activities to the Specialised Committee on Energy.
- (5) The Working Group on Security of Supply should enhance cooperation between the European Union and the United Kingdom in the area of security of supply. It should

⁶ OJ L 149, 30.4.2021, p. 2.

⁷ OJ L 149, 30.4.2021, p. 10.

serve as a forum for cooperation, exchange of information, technical discussions and mutual consultation. With the exception of setting its own rules of procedure, the Working Group on Security of Supply is not intended to adopt acts or measures having legal effect.

- (6) It is appropriate to establish the position to be taken on the Union's behalf in the Specialised Committee on Energy, as the decision will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the meeting of the Specialised Committee on Energy, established by Article 8(1)(1) of the Trade and Cooperation Agreement, shall be to approve the draft Decision of the Specialised Committee on Energy on the establishment of a Working Group on Security of Supply, as set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*