Council of the European Union

Brussels, 28 November 2024
(OR. en)

8260/24

Interinstitutional File:
2024/0297(NLE)

UK 44
ENER 577

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	28 November 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 539 final
Subject:	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

Delegations will find attached document COM(2024) 539 final.

Encl.: COM(2024) 539 final

EUROPEAN
COMMISSION

Brussels, 28.11.2024
COM(2024) 539 final

2024/0297 (NLE)

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

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Council Decision establishing the position to be taken on the Union's behalf in the Specialised Committee on Energy ('the Specialised Committee') set up under Article 8(1)(l) of the EU-UK Trade and Cooperation Agreement ('the Agreement'). The position relates to adopting a recommendation on electricity trading arrangements.

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.

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')[1]. The Withdrawal Agreement entered into force on 1 February 2020 and provided for a transition period during which Union law[2] 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 ('The Agreement'), which was signed on 30 December 2020, applied provisionally since 1 January 2021 and has 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.

The Agreement aims to govern the relationship and promote trade and cooperation between the EU and the UK, including in the area of energy under Title VIII and Annex 29.

In particular, the Agreement provides for the development of a new procedure for the allocation of capacity on electricity interconnectors at the day-ahead market timeframe. This new procedure is to be based on the model of 'multi-region loose volume coupling' ('MRLVC').

The 2021 Cost benefit analysis identified two potential ways forward, a Preliminary Order Book design and a Common Order Book design solution, where the main difference is that the Preliminary Order Book design uses preliminary order book information as available 15 minutes before gate closure time of the EU single day-ahead coupling. The Preliminary Order Book solution was proposed as an alternative to Common Order Book in order to avoid the impact of MRLVC on single day-ahead coupling.

A first recommendation to develop MRLVC was adopted by the Specialised Committee on 7 February 2023. Each Party was to request its respective Transmission System Operators ('TSOs') to provide additional information within five months of the date of the request. As a result, both the EU and the UK TSOs and regulatory authorities have ruled out the

[1] OJ L 29, 31.1.2020, p. 7.

[2] As defined in Article 2 of the Withdrawal Agreement

Preliminary Order Book approach of MRLVC due to identified significant risks of market manipulation. Therefore, they turned to see if a number of fundamental design challenges of the alternative Common Order Book approach to MRLVC could be resolved. The Specialised Committee welcomed the above-mentioned contribution in November 2023. It also noted that development of the design must be consistent with the process set out in Article 312(1), 312(2) and 317 of the Agreement and requirements set out in Annex 29.

The information and tentative conclusions arising from the 2021 cost-benefit analysis and 2023 reply to the Recommendation found that the efficiency of MRLVC will depend on the accuracy of the bordering bidding zone net position forecaster. As a result, the two parties involved proposed to further analyse this point. In addition, the EU and UK TSOs identified in their report that future development of offshore hybrid projects will require electricity trading arrangements that support efficient pricing and capacity utilisation. As a result, the Specialised Committee also decided that further consideration needed to be given to ensuring that EU-UK electricity trading arrangements support their ambitions for the rapid development of renewable energy projects in the North Seas.

Hence, in light of the progress achieved to date by the TSOs, and the additional information provided in response to Recommendation No 1/2023 regarding the cost-benefit analysis and the outline proposals for technical procedures, the necessary step should be adopted to ensure that the TSOs commence a next phase of work which focuses on addressing the fundamental design issues, which have been highlighted, in order to satisfy the Specialised Committee's obligations under Article 312(1) and Article 317(2), read in conjunction with Article 312(1), of the Trade and Cooperation Agreement.

The Specialised Committee noted that the Parties expect a phased approach to the development of technical procedures for MRLVC, starting with an initial concept-validation phase in which fundamental design issues, identified in the 2021 cost benefit analysis and additional information provided to the Parties in 2023, are addressed and set out in the initial draft technical procedures with supporting analysis. This concept-validation phase should inform and support the development of a single set of draft technical procedures for MRLVC in line with Articles 312(1) and 317(2) of the Trade and Cooperation Agreement.

Any decision by the Specialised Committee on the implementation of technical procedures for an MRLVC solution following a Common Order Book Approach, pursuant to Article 317(4) of the Agreement, should be supported by a stakeholder consultation, robust periods of testing, and an updated cost benefit analysis.

2.2. The EU-UK Specialised Committee on Energy

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

Under Article 8(4) of the 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 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 this 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 this 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 Agreement.

2.3. The envisaged act of the Specialised Committee on Energy

The Specialised Committee on Energy is to adopt a Recommendation to the Parties regarding the development of the EU-UK electricity trading arrangements at the day-ahead timeframe, as provided for under the Agreement.

Given the prominent role provided for TSOs and regulators, it is required to ensure that they take ownership of further developments to implement MRLVC, including the need to address all the design challenges referred to the Common Order Book approach to MRLVC. Hence, the Recommendation is specifically addressed to the EU and UK TSOs, with the expectation that regulators will also provide a motivated opinion on the conclusions and reply provided.

As a result, the TSOs of both Parties shall request the opinion of ACER and the regulatory authority in the UK designated in accordance with Article 310. The Parties' respective TSOs shall submit those opinions together with their motivated conclusions replying to the Recommendation to the Specialised Committee on Energy. The latter shall review their conclusions and replies, taking into account the opinions of ACER and the regulatory authority in the UK designated in accordance with Article 310.

3. POSITION TO BE TAKEN ON THE UNION'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 decision on a position to be taken on behalf of the Union in the Specialised Committee on Energy, as regards decisions having legal effect under public international law. The adoption of a recommendation by the Specialised Committee on Energy under the Trade and Cooperation Agreement, albeit non-binding, requires that such a Decision be adopted by the Council.

While acknowledging that the Preliminary Order Books approach is not a viable option for further development of MRLVC, the Specialised Committee on Energy recommends abandoning it. The Specialised Committee recommends, therefore, that each Party requests its respective TSOs to jointly commence an initial concept-validation phase to produce the single set of initial draft technical procedure for MRLVC in accordance with Annex 29 of the Agreement and with supporting analysis. The TSOs shall produce a joint report for the Specialised Committee investigating any barriers to the delivery of joint and hybrid offshore projects that may result from existing trading arrangements or MRLVC, and any specific changes needed to existing trading arrangements or specific requirements of the design of MRLVC needed to deliver efficient electricity trading that supports the delivery of joint and hybrid offshore projects. The report should investigate the impact of both existing trading arrangement and an MRLVC solution on joint and hybrid projects, over the medium term (2030-2035 horizon).

The development of the work mentioned above should involve regular oversight and input by the Parties. It could also involve the TSOs engaging with wider stakeholders that may include regulators, NEMOs/power exchanges, and academia.

The proposed position to be taken on behalf of the Union in the Specialised Committee is therefore to support the adoption by the Specialised Committee, pursuant to Article 312(1) of the Agreement, of a Recommendation to the Parties set out in the Annex to this Decision. Once adopted, each Party is expected to request its TSOs to develop the replies to questions set out in the Recommendation.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union ('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 binding effects under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[3].

4.1.2. Application to the present case

The Specialised Committee on Energy is a body established by an international agreement, namely the Agreement.

The envisaged recommendation to be adopted by that Committee will not be binding under international law pursuant to Article 10 of the Trade and Cooperation Agreement. However, it is capable of decisively influencing the content and implementation of EU legislation, namely the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guidance on capacity allocation and congestion management[4], given that the development of trading arrangements with the UK would require adjustments to the EU's price coupling algorithm which manages the allocation of capacity on the EU single day ahead coupling.

The envisaged act does not supplement or amend the institutional framework of the 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

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[3] 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.

[4] Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, OJ L 197, 25.7.2015, p. 24.

those aims or components is identifiable as the main one, whereas 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 act relate to the area of 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. PUBLICATION OF THE ENVISAGED ACT

As the purpose is for the Specialised Committee on Energy to adopt a Recommendation under the Trade and Cooperation Agreement, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

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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) 2021/689[5] on the conclusion of 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[6] (the 'Agreement'). The Agreement entered into force on 1 May 2021.

(2) Article 8(1)(l) of the Agreement established the Specialised Committee on Energy. Its competences are set out in Article 8(4) of the Agreement.

(3) Pursuant to Article 8(4), point (c), of the Agreement, the Specialised Committee on Energy (the 'Specialised Committee') may adopt decisions and recommendations in respect of all matters where the Agreement or any supplementing Agreement so provides or for which the Partnership Council has delegated powers to it, on issues related to its area of competence. Pursuant to Article 10(2) of the Agreement, a Committee shall adopt decisions and make recommendations by mutual consent.

(4) Regarding the EU-UK *electricity trading arrangements*, Article 312(1) of the Agreement requires that for capacity allocation and congestion management at the day ahead stage, the Specialised Committee take, as a matter of priority, the necessary steps in accordance with Article 317 to ensure that TSOs for electricity develop arrangements setting out technical procedures for the day ahead timeframe.

(5) In particular, the Trade and Cooperation Agreement provides for the development of a new procedure for the allocation of capacity on electricity interconnectors at the day-ahead market timeframe. This new procedure is to be based on the model of 'multi-region loose volume coupling' ('MRLVC').

(6) On 10 July 2023, the TSOs of the EU and the UK delivered a report, following on the Specialised Committee Recommendation No. 1/2023 of 7 February 2023, requesting

[5] 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, 30.4.2021, p.2).

[6] OJ L 149, 30.4.2021, p. 10.

the TSOs to address a number of questions as regards the implementation of the multi-regional loose volume coupling. This was supplemented by an informal opinion of ACER and the UK regulatory authorities.

(7) Considering the conclusions of the TSO report of 10 July 2023, supported by the informal opinion of ACER and of the UK regulatory authorities, it is appropriate for the Specialised Committee to recommend further action to the Parties.

(8) The Specialised Committee is to adopt the Recommendation either at a forthcoming meeting, or by written procedure, following the completion of domestic procedures by each Party.

(9) It is appropriate to establish the position to be taken on the Union's behalf in the Specialised Committee, as the Recommendation of the Specialised Committee will be 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,[7] while the Decision of the Specialised Committee on Energy will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Specialised Committee on Energy, established by Article 8(1)(l) of the Trade and Cooperation Agreement, is 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

[7] Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24).