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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 May 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, 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 International Partnership for Energy Efficiency Cooperation (IPEEC) with regard to the extension of the Terms of Reference for the IPEEC for the period from 24 May until 31 December 2019

Delegations will find attached document COM(2019) 229 final.

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Partnership for Energy Efficiency Cooperation (IPEEC) with regard to the extension of the Terms of Reference for the IPEEC for the period from 24 May until 31 December 2019

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Policy Committee of the International Partnership for Energy Efficiency Cooperation (IPEEC) in connection with the envisaged adoption of the extension of the existing Terms of Reference of the International Partnership for Energy Efficiency Cooperation for the period from 24 May until 31 December 2019.

2. CONTEXT OF THE PROPOSAL

2.1. The International Partnership for Energy Efficiency Cooperation

At the initiative of the European Commission, in June 2008, members of the G8, China, India and South Korea and the Commission decided to establish an International Partnership for Energy Efficiency Cooperation (IPEEC), which is to facilitate those actions that yield high energy efficiency gains. The IPEEC provides a forum for discussion, consultation and exchange of information. It played an important role during the last years in ensuring overall coordination and supporting collaboration under the G20 Energy Efficiency programme. The IPEEC is open to other countries and intergovernmental organisations.

On 24 May 2009, the Terms of Reference for the International Partnership for Energy Efficiency Cooperation ("the Terms of Reference" or "ToR") were signed in Rome for a period of 10 years (until 24 May 2019) by 12 States, including four Member States of the European Union.

Article 4.2 of the Terms of Reference provides that IPEEC is open to intergovernmental organisations and that membership is contingent upon the signature of those ToR. Consequently, the Union signed and concluded them pursuant to Council Decision 2009/954/EC¹.

The Terms of Reference describe the cooperative activities of the IPEEC, establish its organisation, define the criteria for potential new members and contain general provisions regarding, including the funding of the Partnership and intellectual property rights.

Both the Union and its Member States have competence in the areas covered by the Terms of Reference. Consequently, coherent positions need to be taken in conformity with their respective competences and in particular with regard to environment and energy.

The IPEEC is managed by a Secretariat which organises meetings of its Policy Committee and its Executive Committee. The Secretariat also provides support to existing task groups, and maintains communication among the IPEEC Members and the broader energy policy community.

Pursuant to point 7.1 of the ToR, they are valid for a period of 10 years, until 24 May 2019, unless extended or discontinued by the Members.

The Secretariat is hosted by the International Energy Agency (IEA) in Paris, France. On 24 May and 22 June 2009, respectively, a Memorandum concerning the hosting by the

¹ Council Decision 2009/954/EC¹ of 30 November 2009 on the signing and conclusion of the Terms of Reference for the International Partnership for Energy Efficiency Cooperation (IPEEC) and the Memorandum concerning the hosting by the International Energy Agency of the Secretariat to the International Partnership for Energy Efficiency Cooperation by the European Community (OJ L 330, 16.12.2009, p. 37).

International Energy Agency of the Secretariat to the IPEEC ("the Memorandum") was signed in Rome by 12 States, including four Member States of the Union. The IEA signed the Memorandum on 18 June 2009, and the Union also signed and concluded the Memorandum pursuant to Council Decision 2009/954/EC².

The Memorandum describes the general principles regarding the organisation of the Secretariat, and contains provisions regarding the staffing of the Secretariat and recruitment, as well as regarding the issues of funding and budgetary procedures. The European Union pays a contribution to the IPEEC for its administrative expenses.

Pursuant to point 17 of the Memorandum, "*This Memorandum may be ended by the IEA or the Executive Committee [of IPEEC] at any time. They should endeavour to provide no less than twelve months' prior written notice to each other in this event*". It is inferred from this point that the Memorandum was concluded *sine die*.

2.2. The Policy Committee of the IPEEC

The Policy Committee (currently chaired by the European Commission) governs IPEEC's overall framework and policy initiatives, and evaluates the progress of IPEEC's work within the context of broad strategic priorities. The Policy Committee is composed of a high-level representative of each Member.

Next to the Policy Committee, there is an Executive Committee (currently chaired by Canada), composed of a mid-level representative of each Member, and which adopts the proposals of member countries and examines membership requests. It also develops proposals for task groups, monitors task group progress, approves the annual programme of work and the budget, and provides guidance to the IPEEC Secretariat.

Pursuant to point 3.4 of the ToR, the Policy Committee and the Executive Committee should make decisions on the basis of consensus, except as otherwise provided.

The position in the IPEEC Secretariat is that the Policy Committee has the authority to extend the IPEEC's ToR in its role as plenary body composed of high-level representatives of all the IPEEC Members.

2.3. The envisaged act of the Policy Committee

On 21 February 2019, during the 16th meeting of the Policy Committee, the IPEEC Members adopted a decision extending the duration of the IPEEC's ToR until 31 December 2019 without prejudice to the position of the Union still to be expressed following the procedure under Article 218(9) of the TFEU.

The short-term extension of the IPEEC's ToR was proposed by the IPEEC Secretariat in order to avoid an abrupt termination of IPEEC's activities on 24 May 2019 when the 10-year duration period provided for in the ToR will expire.

In 2017, in order 'to strengthen international collaboration on energy efficiency, avoid duplication of work streams among international organisations working on energy efficiency, and create opportunities for more efficient use of resources with greater impact of the collaboration', the German G20 Presidency proposed to explore setting up an Energy Efficiency HUB (the 'Hub'). Following intense negotiations, a proposal was tabled to set up such a Hub under the IEA, which would achieve synergies between the IPEEC and the IEA

² Council Decision 2009/954/EC² of 30 November 2009 (OJ L 330, 16.12.2009, p. 37–47).

and secure the continuation of IPEEC's work following the expiry of the IPEEC Terms of Reference on 24 May 2019.

On 20 February 2019, the IEA Governing Board approved the establishment of the Energy Efficiency Hub as a Special Activity under Article 65 of the Agreement on an International Energy Program, for an initial period of five years. The Governing Board further agreed that if the IPEEC Members decided to extend the IPEEC Terms of Reference, the IEA would continue hosting the IPEEC Secretariat until 31 December 2019, provided that adequate funding and commitments have been received before 23 May 2019 to cover the expenses of the extension period.

Against this background, an extension of the duration of the IPEEC ToR would provide the additional time to discuss and decide the transition of the IPEEC into the new Energy Efficiency HUB

Operationally, an extension until 31 December 2019 takes into account the continued delivery of IPEEC's programme of work and core services to the IPEEC Members. This includes, for instance, energy efficiency work under the G20, which this year will include events scheduled after the end of IPEEC's current mandate on 24 May. The availability of funds to cover activities during the extension period is also considered, as the IPEEC Secretariat is currently receiving contributions for the full 2019 calendar year.

The payment will be made for 2019 and the funds will be used for the functioning of the IPEEC secretariat until the end of the year 2019 and if there will be remaining funds, these would support the continuation of activities by its successor. If there is no international cooperation related to IPEEC or its successor, before the end of the year 2019, the funds would normally be returned along the procedures of the IEA.

The envisaged decision will become binding on the parties in accordance with point 7.1 of the Agreement.

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

In view of the reasons explained in the section above, the IPEEC Members, during the 16th meeting of the Policy Committee on 21 February decided on the following, without prejudice and subject to the position of the Union still to be expressed following the procedure under Article 218(9) TFEU:

- Approved the extension of the Terms of Reference of the International Partnership for Energy Efficiency Cooperation for the period from 24 May until 31 December 2019;
- Welcomed the IEA Governing Board decision to continue hosting the IPEEC Secretariat at the IEA until 31 December 2019 on the basis of the Memorandum;
- Instructed the IPEEC Secretariat to secure the administrative continuity of the IPEEC for the period of extension, including working with the IEA to extend staff contracts and preparing a revised 2019 Programme of Work and Budget for approval at the next ExCo meeting on 28-29 March 2019;
- Called on Members to do their best effort to provide their 2019 Voluntary Contribution (VC) and submit the VC letters at the latest by 22 May 2019. The intention of submitting such VCs should be communicated to the Secretariat by the time of the ExCo on 28-29 March;

- Welcomed the IEA Governing Board decision to host the Secretariat of the Energy Efficiency Hub at the IEA and acknowledged the related information note circulated to Policy Committee Members;
- Acknowledging that the Energy Efficiency Hub will not constitute a new entity or institution but transform the work of the IPEEC into a new and stronger vehicle for global energy efficiency collaboration, instructed the IPEEC Secretariat to work with the IEA and interested Members to establish and operationalise the Hub;
- Required the Policy Committee Chair and Vice-Chairs, together with the other interested countries, to work with the IPEEC and the IEA Secretariats with a view to conclude the process of establishing the Energy Efficiency Hub in the course of the year; and
- Endorsed the continued smooth administrative transition of the IPEEC into the Hub, in particular in relation to the transfer of Task Groups, funds and the IPEEC Secretariat staff.

It is proposed that the Union agrees with this decision.

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 a binding effect 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 IPEEC is a body set up by an agreement, namely the Terms of Reference for the International Partnership for Energy Efficiency Cooperation ("the Terms of Reference" or "ToR").

The act which the IPEEC is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with point 7.1 of the Terms of Reference because it extends in time the commitments undertaken by the Members of the IPEEC when concluding the original ToR.

The envisaged act does not supplement or amend the institutional framework of the Agreement; the institutional framework created by the ToR remains intact.

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

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.

4.2. 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 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.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the promotion of energy efficiency within the field of energy.

Therefore, the substantive legal basis of the proposed decision is Article 194(2) TFEU. [*Please use abbreviations consistently throughout the text*]

4.3. Conclusion

The legal basis of the proposed decision should be Article 194(2), in conjunction with Article 218(9) TFEU.

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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(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Terms of Reference for the International Partnership for Energy Efficiency Cooperation (IPEEC) ('the Agreement') commenced on 24 May 2009 and were concluded by the Union by Council Decision 2009/954/EC⁴.
- (2) Pursuant to point 7.1 of the Agreement, the Members of the IPEEC may decide to extend its duration. The Policy Committee, being IPEEC's plenary body composed of high-level representatives of all its Members, and being entrusted to govern the overall framework and policies of the IPEEC, is the appropriate body within which the IPEEC Members can decide on an extension of the Agreement.
- (3) The IPEEC Members, except for the Union, approved the extension of the IPEEC Terms of Reference for the period from 24 May until 31 December 2019 at the Policy Committee meeting on 21 February 2019.
- (4) It is appropriate to establish the position on the extension of the IPEEC terms of reference to be taken on the Union's behalf, as the extension of the Terms of Reference would be binding on the Union.
- (5) The IPEEC Members are considering the possibility to combine the current activities of IPEEC and the energy efficiency activities of the International Energy Agency (IEA) into an energy efficiency hub in order to achieve synergies in this area. The short-term extension of the IPEEC Terms of Reference aims to allow for the necessary time, as an interim measure, to set up the energy efficiency hub while ensuring that IPEEC's activities continue and are transferred without interruption to the new energy efficiency hub.

⁴ Council Decision 2009/954/EC of 30 November 2009 on the signing and conclusion of the Terms of Reference for the International Partnership for Energy Efficiency Cooperation (IPEEC) and the Memorandum concerning the hosting by the International Energy Agency of the Secretariat to the International Partnership for Energy Efficiency Cooperation by the European Community (OJ L 330, 16.12.2009, p. 37).

- (6) Operationally, an extension until 31 December 2019 takes into account the continued implementation of IPEEC's work programme and core services to the IPEEC Members. This includes energy efficiency work under the G20, which this year will include events scheduled after the end of IPEEC's current mandate on 24 May 2019. The availability of funds to cover activities during the extension period is also considered, as the IPEEC Secretariat is currently receiving contributions for the full 2019 calendar year and activities, remaining staff and possible resources could be transferred into the new energy efficiency hub.
- (7) A short-term extension of the IPEEC Terms of Reference is therefore important to avoid an abrupt termination of IPEEC's activities on 24 May 2019. In accordance with point 3.4 of the IPEEC Terms of Reference, the final decision on the extension has to be adopted by consensus of the IPEEC Members, , and following the Policy Committee meeting of 21 February 2019, the position Council Decision is pending,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf shall be the following:

- (1) to approve the extension of the Terms of Reference of the IPEEC for the period from 24 May until 31 December 2019;
- (2) to agree with the International Energy Agency (IEA) Governing Board decision to continue hosting the IPEEC Secretariat at the IEA until 31 December 2019 on the basis of the Memorandum concerning the Hosting by the IEA of the Secretariat to the IPEEC;
- (3) to endorse the administrative transition of the IPEEC into a new energy efficiency hub, in particular in relation to the transfer of Task Groups, funds and the IPEEC Secretariat staff.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*