Council Decision (EU) 2019/466 of 18 March 2019 on the position to be taken on behalf of the European Union within the Association Council established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards the amendment of Annex XXVII to that Agreement

COUNCIL DECISION (EU) 2019/466

of 18 March 2019

on the position to be taken on behalf of the European Union within the Association Council established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards the amendment of Annex XXVII to that Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 194 and 217, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part[(1)] ('the Agreement') was concluded by the Union by means of Council Decisions (EU) 2017/1247[(2)] and (EU) 2017/1248[(3)] and entered into force on 1 September 2017.

(2) According to Article 273 of the Agreement, the Parties are to adapt their legislation, as referred to in Annex XXVII to the Agreement, in order to ensure that all conditions for the transport of electricity and gas are objective, reasonable, transparent and non-discriminatory, aiming to enhance the security of energy supply in the region.

(3) Furthermore, with a view to making progress towards market integration, including the development of energy interconnections, Article 337 of the Agreement provides that the Parties continue and intensify their cooperation on energy matters, including through gradual approximation in the energy sector.

(4) Article 341 of the Agreement sets out that gradual approximation in the energy sector is to proceed in accordance with the timetable set out in Annex XXVII to the Agreement.

(5) Article 474 of the Agreement provides for an obligation for Ukraine to carry out gradual approximation of its legislation to Union law, including in the energy sector.

(6) The Union *acquis* in the energy sector has substantially evolved since the conclusion of the negotiations of the Agreement.

(7) Pursuant to Article 463(1) and (3) of the Agreement, the Association Council has the power to take decisions for the purpose of attaining the objectives of the Agreement. In

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/466. (See end of Document for details)*

particular, it may update or amend the Annexes to the Agreement, taking into account the evolution of Union law and applicable standards set out in international instruments deemed relevant by the Parties.

(8) The Association Council is therefore to amend Annex XXVII to the Agreement in order to reflect the evolution of the Union *acquis*.

(9) Article 475 of the Agreement defines in general terms the monitoring of progress in the approximation of Ukrainian law to Union law, including aspects of implementation and enforcement. It provides that the reporting and assessment process will take into account specific modalities defined in the Agreement or decisions by the institutional bodies established under the Agreement.

(10) In order to ensure more effective implementation of reforms, it is necessary to strengthen the monitoring mechanism for energy sector reform.

(11) The Association Council is therefore to amend Annex XXVII to the Agreement in order to provide for more detailed rules for monitoring the approximation of Ukrainian law to Union law in the energy sector.

(12) It is necessary to establish the position to be taken on the Union's behalf within the Association Council, as regards the amendment of Annex XXVII to the Agreement.

(13) The position of the Union within the Association Council should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Association Council established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards the amendment of Annex XXVII to that Agreement, shall be based on the draft Decision of the Association Council attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 18 March 2019.

For the Council

The President

F. MOGHERINI

DRAFT

DECISION No …/2019 OF THE EU-UKRAINE ASSOCIATION COUNCIL

of … 2019

as regards the amendment of Annex XXVII to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part

THE EU-UKRAINE ASSOCIATION COUNCIL,

Having regard to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, and in particular Article 463 thereof,

Whereas:

(1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ('the Agreement') was signed on 21 March and 27 June 2014 and entered into force on 1 September 2017.

(2) The Preamble to the Agreement recognises the Parties' desire to move the reform and approximation process forward in Ukraine, thus contributing to the gradual economic integration and deepening of political association as well as to achieving economic integration through extensive regulatory approximation. The Preamble also refers to the Parties' commitment to enhancing energy security by inter alia increasing market integration and regulatory approximation towards key elements of the EU *acquis*.

(3) Furthermore, the bilateral Memorandum of Understanding on a Strategic Energy Partnership between the European Union and Ukraine of 24 November 2016 recognises that the goal of intensified cooperation in the energy field and of energy sector reform is full integration of the energy markets of the Union and Ukraine.

(4) Article 1 of the Agreement refers to the objective of supporting Ukraine's efforts to complete the transition to a functioning market economy by means of, inter alia, the progressive approximation of its legislation to that of the Union.

(5) According to Article 273 of the Agreement, the Parties are to adapt their legislation, as referred to in Annex XXVII to the Agreement, in order to ensure that all conditions for transport of electricity and gas are objective, reasonable, transparent and non-discriminatory.

(6) Furthermore, with a view to making progress towards market integration, Article 337 of the Agreement provides that the Parties continue and intensify their cooperation on energy matters, including through gradual approximation in the energy sector.

(7) Article 341 of the Agreement sets out that gradual approximation in the energy sector shall proceed in accordance with a timetable as set out in Annex XXVII to the Agreement.

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/466. (See end of Document for details)*

(8) Article 474 of the Agreement reiterates the general commitment of Ukraine to carry out gradual approximation of its legislation to Union law, including in the energy sector.

(9) The EU *acquis* in the energy sector has substantially evolved since the conclusion of negotiation of the Agreement, as have Ukraine's obligations arising from the implementation of the Agreement and its membership of the Energy Community Treaty. This evolution needs to be reflected in Annex XXVII to the Agreement which should therefore be updated.

(10) Article 475 of the Agreement defines in general terms the monitoring of progress in the approximation of Ukrainian law to Union law, including aspects of implementation and enforcement. It provides that the reporting and assessment process will take into account specific modalities defined in the Agreement or decisions by the institutional bodies established under the Agreement.

(11) In order to ensure more effective implementation of reforms by Ukraine, it is necessary to strengthen the monitoring mechanism for energy sector reform so that the reforms achieved have an irreversible character and contribute thereby in a lasting way to the modernisation of the energy sector.

(12) Pursuant to Article 463(1) and (3) of the Agreement, the Association Council has the power to take decisions for the purpose of attaining the objectives of the Agreement. In particular, it may update or amend the Annexes to the Agreement, taking into account the evolution of Union law and applicable standards set out in international instruments deemed relevant by the Parties.

(13) The Association Council is therefore to amend Annex XXVII to the Agreement in order to provide for more detailed rules for monitoring the approximation of Ukrainian law to Union law in the energy sector. To that end, appropriate provisions strengthening the monitoring process should be included in Annex XXVII to the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

Annex XXVII to the Agreement is replaced by the Annex to this Decision.

Article 2

This Decision shall be published in the *Official Journal of the European Union* and in the Official Journal of Ukraine.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at …,

For the Association Council

The Chair

***Changes to legislation:** There are currently no known outstanding effects for the Council Decision (EU) 2019/466. (See end of Document for details)*

ANNEX

ANNEX XXVII TO CHAPTER 1

ENERGY COOPERATION, INCLUDING NUCLEAR ISSUES

ANNEX XXVII-A

MONITORING OF APPROXIMATION IN ENERGY SECTOR

With the aim of strengthening the monitoring of approximation of EU energy sector *acquis* in Ukraine's domestic law and achieving a lasting modernisation of Ukraine's energy sector, the Parties shall apply the following additional measures, in line with Article 475(2) of the Agreement. These measures shall not affect the rights and obligations of either Party arising from their membership of the Energy Community Treaty.

Effective implementation of EU *acquis*

1. The European Commission shall promptly inform Ukraine about any European Commission proposals to adopt or amend, and about any EU act altering, EU *acquis* listed in this Annex.

2. Ukraine shall ensure the effective implementation of the approximated domestic acts and undertake any action necessary to reflect the developments in Union law in its domestic law in the energy sector, as listed in Annex XXVII-B. In particular, any act corresponding to:

(a) an EU Regulation or Decision shall be made part of the internal legal order of Ukraine;

(b) an EU Directive shall leave to the authorities of Ukraine the choice of form and method of implementation;

(c) a European Commission Regulation regarding a network code in electricity or gas sectors shall be made part of the internal legal order of Ukraine without changes to the structure and text of the Regulation other than translation, unless such changes are indicated as necessary by the European Commission.

3. Ukraine shall refrain from any action that would undermine the objective or the outcome of approximation of its domestic law to the EU *acquis* in the energy sector, as listed in Annex XXVII-B.

4. Ukraine shall repeal provisions of its domestic law or discontinue domestic practices that are inconsistent with Union law or with its domestic law approximated to Union law in the energy sector, as listed in Annex XXVII-B.

Consultations

5. Ukraine shall consult the European Commission, as regards the compatibility with the EU *acquis* of any legislative proposal in the areas to be approximated to the EU legal acts listed in Annex XXVII-B, prior to its entry into force. The consultation obligation includes the proposals for a modification to the already approximated domestic legislative act, regardless of the legal form of the proposal.

6. The Government of Ukraine may consult the European Commission as regards the compatibility with the EU *acquis* of any proposal for an act implementing the legislation in the energy sector, which has been or is to be approximated to the EU *acquis* listed in Annex XXVII-