

## **EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION OR POLICY**

COM(2025)408 + Annex

Recommendation for a COUNCIL DECISION authorising the opening of negotiations between the European Union and the United Kingdom of Great Britain and Northern Ireland on a common sanitary and phytosanitary area between the European Union and the United Kingdom in respect of Great Britain and to link the United Kingdom and the Union's greenhouse emissions trading systems.

Submitted by the Cabinet Office on 28 August 2025.

### **SUBJECT MATTER**

On 16 July 2025, the European Commission published a recommendation authorising the opening of negotiations between the United Kingdom (UK) and the European Union (EU) on a Sanitary and Phytosanitary (SPS) agreement and to link the UK and EU's emissions trading systems (ETSs).

The recommendation follows the conclusion of exploratory discussions and the commitments made as part of the UK-EU Common Understanding on 19 May 2025. The document sets out the European Union's draft parameters to authorise negotiations with the UK in these areas.

This recommendation has not yet been adopted by the European Union and will need to be agreed by the European Council, subject to procedures set out below.

#### *SPS Agreement*

Since 1 January 2021, the UK and EU have operated separate sanitary and phytosanitary areas following the implementation of the Trade and Cooperation Agreement. Bespoke arrangements are in place for Northern Ireland as a result of the Windsor Framework, in order for Northern Ireland to retain its unique dual market access to both the UK Internal and the EU's Single Market.

In line with the Common Understanding text, the UK and EU will seek to negotiate an SPS Agreement. The recommendation sets out the European Commission's proposed parameters for negotiation to establish a common sanitary and phytosanitary area, but this proposal will need to be agreed by the Council of the EU.

#### *ETS Linking Agreement*

The UK was part of the EU ETS until 1st January 2021, when it was replaced by the UK ETS for in scope sectors excluding electricity generators in Northern Ireland which remain in scope of the EU ETS in order to preserve the joint arrangements for the Single Electricity Market between Northern Ireland and the Republic of Ireland.

In line with the Common Understanding, the UK and EU will work towards a UK-EU ETS linking agreement. The recommendation sets out the European Commission's proposed parameters for negotiations to link the UK ETS and the EU ETS.

## **SCRUTINY HISTORY**

This will be the first time this issue will have been the subject of an Explanatory Memorandum.

## **MINISTERIAL RESPONSIBILITY**

The Minister for the Constitution and European Union Relations will have the primary responsibility for negotiations on the SPS and ETS agreements with the EU, working with other Ministers as appropriate.

### *SPS Agreement*

The Secretary of State for the Environment, Food & Rural Affairs will have the primary responsibility for implementation of the SPS Agreement, working with other Ministers, including in the Devolved Governments, as appropriate.

### *ETS Linking Agreement*

The Secretary of State for Energy Security and Net Zero will be responsible for implementation of linking the UK and EU's Emissions Trading Systems.

## **INTERESTS AND RESPONSIBILITIES OF THE DEVOLVED GOVERNMENTS (DGs)**

### *SPS Agreement*

The SPS Agreement, as announced in the Common Understanding, will cover the United Kingdom in respect of Great Britain. Alongside the continued operation of the Windsor Framework in Northern Ireland, this will mean that the same rules apply in both Great Britain and Northern Ireland. The majority of policy areas within scope of the SPS Agreement relate to devolved matters. In accordance with the Concordat on International Relations, the UK government is consulting the devolved governments regarding the formulation of the UK's position for international negotiations with the European Union to the extent that these negotiations touch on devolved matters (including non-devolved matters which impact on devolved matters).

While the UK government is responsible for international relations under the devolution settlements and it alone has the power to enter into treaties or other international agreements binding on the UK in international law, under the devolution settlements, the devolved governments are responsible for observing and implementing international obligations that relate to devolved matters.

## *ETS Linking Agreement*

The governance and operation of the UK ETS is overseen by the UK ETS Authority, which respects devolved competence in areas of climate policy and comprises the UK, Scottish and Welsh Governments and the Northern Ireland Department of Agriculture, Environment and Rural Affairs. The European Commission remains the overseeing authority for the EU ETS which continues to apply to the electricity generation sector in Northern Ireland in order to maintain the Single Electricity Market on the Island of Ireland, in line with the Windsor Framework.

Following the conclusion of an ETS linking agreement, the UK ETS Authority, comprised of the UK and Devolved Governments, will implement the agreement.

Devolved Governments have been consulted on the preparation of this explanatory memorandum.

## **LEGAL AND PROCEDURAL ISSUES**

- i.* **Legal Base:** Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4) and Article 192(1) in conjunction with Article 218(3) and (4) thereof.
- ii.* **Voting Procedure:** The Council will adopt the decision under the Qualified Majority Voting procedure.
- iii.* **Timetable for adoption and implementation:** The Council decision will be adopted in due course.

## **POLICY AND LEGAL IMPLICATIONS**

On 19 May, the Prime Minister and the President of the European Commission held the first UK-EU Summit, which saw the publication of a joint Common Understanding setting out a roadmap for our bilateral relationship following a period of exploratory discussions. This included announcing a joint intention to work towards negotiating an SPS Agreement and linking our respective ETSSs.

The recommendation for a Council Decision broadly reflects commitments made in the Common Understanding.

## *SPS Agreement*

The Common Understanding included a commitment to establish a Common SPS Area to address issues faced by businesses when trading agri-food products between the UK and the EU. In line with the Common Understanding, the draft EU mandate sets out the the SPS Agreement is intended to cover the UK in respect of Great Britain and the European Union but that same benefits of the SPS Agreement will be extended to movements between Great Britain and Northern Ireland through the interplay with the Windsor Framework and the SPS Agreement. Whilst not mentioned in the the draft EU mandate, the Common Understanding

also notes that in line with Article 520(5) of the Trade and Cooperation Agreement, the territorial scope of the SPS Agreement could be extended to cover the territories referred to in Article 774(2) of the Trade and Cooperation Agreement, including the Crown Dependencies.

The draft EU mandate sets out that the SPS Agreement will cover sanitary, phytosanitary, food safety and general consumer protection rules applicable to the production, distribution and consumption of agrifood products, the regulation of live animals, animal products, plants and plant products and pesticides, the rules on organics as well as marketing standards. Within this scope, the Agreement is intended to ensure the application of the same rules by providing for timely dynamic alignment of the rules in scope within Great Britain, giving due regard to the United Kingdom's constitutional and parliamentary procedures. The draft EU mandate also includes reference to the need for immediate application of rules in Great Britain, in specific circumstances, such as emergency measures. The UK will have the ability to put forward its views at an early stage in the decision-making process for EU legal acts which will impact the SPS agreement.

In line with the Common Understanding, the draft EU mandate confirms that the UK should be able to take targeted action to protect its biosecurity and public health, in the same way as EU Member States, and that the Agreement should also include a short list of limited exceptions from dynamic alignment.

The draft EU mandate suggests that the agreement will build on the institutional framework in the TCA, particularly with respect to the Partnership Council. It also sets out that the SPS Agreement should include a dispute resolution mechanism with an independent arbitration tribunal based on the Trade and Cooperation Agreement. This panel will have the ultimate authority for final decisions, with the Court of Justice of the European Union being consulted on matters of interpretation of EU law. This is similar to the relevant provisions in the existing Withdrawal Agreement. Alongside this, the mandate recognises that the UK should have appropriate access to the relevant agencies, systems and databases for areas in scope of the SPS Agreement. The details of all of these areas will be subject to negotiation.

### *ETS Linking Agreement*

In line with the Common Understanding, the UK and EU will work towards establishing a link between our respective carbon markets by way of an EU-UK agreement linking the UK ETS and the EU ETS. A linking agreement would give effect to Article 392(6) of the Trade and Cooperation Agreement which calls on the parties to explore such an agreement.

The draft EU negotiating directives reflect the scope of the agreement that was clearly defined in the Common Understanding text in order to avoid risks of carbon leakage and competitive distortions. Among others, this scope should include the sectors of electricity generation, industrial heat generation (excluding the individual heating of houses), industry, domestic and international maritime transport and domestic and international aviation.

The draft EU mandate goes beyond what was agreed in the Common Understanding in relation to dynamic alignment of the UK with the provisions of the EU's financial regulatory and supervisory framework applicable to the trade of EU ETS allowances and derivatives.

Noting this context, we will discuss in detailed negotiations with the EU how to ensure the agreement avoids competitive distortions.

In line with this scope, the agreement will include dynamic alignment by the UK with certain EU rules necessary for the functioning of the ETS link, giving due regard to the United Kingdom's constitutional and parliamentary procedures. Regarding its territorial scope, the agreement will apply to the whole of the UK and EU. The Windsor Framework will continue to apply in respect of Northern Ireland for wholesale electricity markets.

In line with the Common Understanding, the draft EU mandate reiterates that agreement will provide for a procedure to further expand the list of sectors to be covered by the linking agreement. The UK will also have the ability to put forward its views at an early stage in the decision-making process for EU legal acts which will impact the linking agreement. This agreement should include a dispute resolution mechanism with an independent arbitration tribunal based on the Trade and Cooperation Agreement. This panel will have the ultimate authority for final decisions, with the Court of Justice of the European Union being consulted on matters of interpretation of EU law. This is similar to the relevant provisions in the existing Withdrawal Agreement.

In line with the Common Understanding, the draft EU mandate reiterates that the agreement to link the UK ETS and EU ETS should create the conditions for goods originating in each jurisdiction to benefit from mutual exemptions from the respective EU and UK Carbon Border Adjustment Mechanisms (CBAMs) subject to compliance with the relevant provisions of EU and UK legislation.

## **CONSULTATION**

The Government will continue to consult stakeholders as appropriate throughout the negotiation and implementation process.

## **FINANCIAL IMPLICATIONS**

The UK has agreed that the SPS Agreement and the ETS linking Agreement will require the UK to provide an appropriate financial contribution to the costs of relevant European Union agencies, systems and databases within these policy areas. The UK Government will continually consider the financial implications throughout the negotiation and implementation process and will in due course provide an update to Parliament.

A handwritten signature in black ink, appearing to read 'N. Thomas-Symonds', with a long horizontal flourish underneath.

**The Rt Hon Nick Thomas-Symonds MP**  
**Minister for the Cabinet Office (Minister for the Constitution and European**  
**Union Relations)**