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European Union

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## LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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Subject: COUNCIL DECISION on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex IV (Energy) to the EEA Agreement (Third Energy Package)

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**COUNCIL DECISION (EU) 2017/...**

**of ...**

**on the position to be adopted, on behalf of the European Union,  
within the EEA Joint Committee concerning an amendment  
to Annex IV (Energy) to the EEA Agreement**

**(Third Energy Package)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53(1), 62 and 114 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area<sup>1</sup>, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

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<sup>1</sup> OJ L 305, 30.11.1994, p. 6.

Whereas:

- (1) The Agreement on the European Economic Area<sup>1</sup> ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex IV (Energy) to the EEA Agreement.
- (3) Regulation (EC) No 713/2009 of the European Parliament and of the Council<sup>2</sup> is to be incorporated into the EEA Agreement.
- (4) Regulation (EC) No 714/2009 of the European Parliament and of the Council<sup>3</sup> is to be incorporated into the EEA Agreement.
- (5) Regulation (EC) No 715/2009 of the European Parliament and of the Council<sup>4</sup> is to be incorporated into the EEA Agreement.

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<sup>1</sup> OJ L 1, 3.1.1994, p. 3.

<sup>2</sup> Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

<sup>3</sup> Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ L 211, 14.8.2009, p. 15).

<sup>4</sup> Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36 as corrected by OJ L 229, 1.9.2009, p. 29 and OJ L 309, 24.11.2009, p. 87).

- (6) Commission Regulation (EU) No 543/2013<sup>1</sup> is to be incorporated into the EEA Agreement.
- (7) Directive 2009/72/EC of the European Parliament and of the Council<sup>2</sup> is to be incorporated into the EEA Agreement.
- (8) Directive 2009/73/EC of the European Parliament and of the Council<sup>3</sup> is to be incorporated into the EEA Agreement.
- (9) Commission Decision 2010/685/EU<sup>4</sup> is to be incorporated into the EEA Agreement.
- (10) Commission Decision 2012/490/EU<sup>5</sup> is to be incorporated into the EEA Agreement.

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<sup>1</sup> Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council (OJ L 163, 15.6.2013, p. 1).

<sup>2</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

<sup>3</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

<sup>4</sup> Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks (OJ L 293, 11.11.2010, p. 67).

<sup>5</sup> Commission Decision 2012/490/EU of 24 August 2012 on amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks (OJ L 231, 28.8.2012, p. 16).

- (11) Regulation (EC) No 714/2009 repeals Regulation (EC) No 1228/2003 of the European Parliament and of the Council<sup>1</sup> which is incorporated into the Agreement and which is consequently to be repealed under the EEA Agreement.
- (12) Regulation (EC) No 715/2009 repeals Regulation (EC) No 1775/2005 of the European Parliament and of the Council<sup>2</sup> which is incorporated into the Agreement and which is consequently to be repealed under the EEA Agreement.
- (13) Directive 2009/72/EC repeals Directive 2003/54/EC of the European Parliament and of the Council<sup>3</sup> which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (14) Directive 2009/73/EC repeals Directive 2003/55/EC of the European Parliament and of the Council<sup>4</sup> which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.

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<sup>1</sup> Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (OJ L 176, 15.7.2003, p. 1).

<sup>2</sup> Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks (OJ L 289, 3.11.2005, p. 1).

<sup>3</sup> Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ L 176, 15.7.2003, p. 37).

<sup>4</sup> Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 176, 15.7.2003, p. 57).

- (15) Commission Decision 2011/280/EU<sup>1</sup> repeals Commission Decision 2003/796/EC<sup>2</sup> which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (16) Annex IV (Energy) to the EEA Agreement should therefore be amended accordingly.
- (17) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

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<sup>1</sup> Commission Decision 2011/280/EU of 16 May 2011 on repealing Decision 2003/796/EC on establishing the European Regulators Group for Electricity and Gas (OJ L 129, 17.5.2011, p. 14).

<sup>2</sup> Commission Decision 2003/796/EC of 11 November 2003 on establishing the European Regulators Group for Electricity and Gas (OJ L 296, 14.11.2003, p. 34).

*Article 1*

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Annex IV (Energy) to the EEA Agreement, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

*Article 2*

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

Done at Brussels,

*For the Council*

*The President*

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DRAFT

**DECISION OF THE EEA JOINT COMMITTEE No ...**

**of ...**

**amending Annex IV (Energy) to the EEA Agreement**

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,



Whereas:

- (1) Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators<sup>1</sup> is to be incorporated into the EEA Agreement.
- (2) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003<sup>2</sup> is to be incorporated into the EEA Agreement.
- (3) Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005<sup>3</sup>, as corrected by OJ L 229, 1.9.2009, p. 29 and OJ L 309, 24.11.2009, p. 87, is to be incorporated into the EEA Agreement.
- (4) Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council<sup>4</sup> is to be incorporated into the EEA Agreement.

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<sup>1</sup> OJ L 211, 14.8.2009, p. 1.  
<sup>2</sup> OJ L 211, 14.8.2009, p. 15.  
<sup>3</sup> OJ L 211, 14.8.2009, p. 36.  
<sup>4</sup> OJ L 163, 15.6.2013, p. 1.

- (5) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC<sup>1</sup> is to be incorporated into the EEA Agreement.
- (6) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC<sup>2</sup> is to be incorporated into the EEA Agreement.
- (7) Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks<sup>3</sup> is to be incorporated into the EEA Agreement.
- (8) Commission Decision 2012/490/EU of 24 August 2012 on amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks<sup>4</sup> is to be incorporated into the EEA Agreement.
- (9) Regulation (EC) No 714/2009 repeals Regulation (EC) No 1228/2003 of the European Parliament and of the Council<sup>5</sup> which is incorporated into the Agreement and which is consequently to be repealed under the EEA Agreement.

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<sup>1</sup> OJ L 211, 14.8.2009, p. 55.  
<sup>2</sup> OJ L 211, 14.8.2009, p. 94.  
<sup>3</sup> OJ L 293, 11.11.2010, p. 67.  
<sup>4</sup> OJ L 231, 28.8.2012, p. 16.  
<sup>5</sup> OJ L 176, 15.7.2003, p. 1.

- (10) Regulation (EC) No 715/2009 repeals Regulation (EC) No 1775/2005 of the European Parliament and of the Council<sup>1</sup> which is incorporated into the Agreement and which is consequently to be repealed under the EEA Agreement.
- (11) Directive 2009/72/EC repeals Directive 2003/54/EC of the European Parliament and of the Council<sup>2</sup> which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (12) Directive 2009/73/EC repeals Directive 2003/55/EC of the European Parliament and of the Council<sup>3</sup> which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (13) Commission Decision 2011/280/EU<sup>4</sup> repeals Commission Decision 2003/796/EC<sup>5</sup> which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (14) The transmission system operators of the EFTA States should not be considered as third country operators for the purpose of ENTSO for Electricity and ENTSO for Gas.
- (15) Annex IV to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

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<sup>1</sup> OJ L 289, 3.11.2005, p. 1.  
<sup>2</sup> OJ L 176, 15.7.2003, p. 37.  
<sup>3</sup> OJ L 176, 15.7.2003, p. 57.  
<sup>4</sup> OJ L 129, 17.5.2011, p. 14.  
<sup>5</sup> OJ L 296, 14.11.2003, p. 34.

## Article 1

Annex IV to the EEA Agreement shall be amended as follows:

1. The text of point 20 (Regulation (EC) No 1228/2003 of the European Parliament and of the Council) is replaced by the following:

**‘32009 R 0714:** Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ L 211, 14.8.2009, p. 15), as amended by:

- **32013 R 0543:** Commission Regulation (EU) No 543/2013 of 14 June 2013 (OJ L 163, 15.6.2013, p. 1).

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) In Article 3(3) and 15(6), the word “Commission” shall, for the EFTA States, be read as “EFTA Surveillance Authority”.

(b) The provisions concerning binding decisions of the Agency, as referred to in Article 17(5), shall be replaced by the following provisions in cases involving an EFTA State:

- “(i) In cases involving one or more EFTA States the EFTA Surveillance Authority shall adopt a decision addressed to the national regulatory authorities of the concerned EFTA State(s).
- (ii) The Agency shall have the right to participate fully in the work of the EFTA Surveillance Authority and its preparatory bodies, when the EFTA Surveillance Authority carries out, as regards the EFTA States, the functions of the Agency as provided for in this Agreement, but shall not have the right to vote.
- (iii) The EFTA Surveillance Authority shall have the right to participate fully in the work of the Agency and its preparatory bodies, but shall not have the right to vote.
- (iv) The Agency and the EFTA Surveillance Authority shall cooperate closely when adopting decisions, opinions and recommendations.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Agency at its own initiative or at the request of the EFTA Surveillance Authority.

When preparing a draft for the EFTA Surveillance Authority in accordance with this Regulation, the Agency shall inform the EFTA Surveillance Authority. The latter shall set a time limit within which the national regulatory authorities of the EFTA States shall be allowed to express their views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.

National regulatory authorities of the EFTA States may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Agency. In that case the Agency shall consider preparing a new draft for the EFTA Surveillance Authority and reply without undue delay.

Where the Agency amends, suspends or withdraws any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Agency shall, without undue delay, prepare a draft to the same effect for the EFTA Surveillance Authority.

- (v) In case of disagreement between the Agency and the EFTA Surveillance Authority with regard to the administration of these provisions, the Director of the Agency and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Director of the Agency or the College of the EFTA Surveillance Authority may request the Contracting Parties to refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee<sup>1</sup>, a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement.
- (vi) Proceedings may be brought before the EFTA Court by the EFTA States or any natural or legal person in accordance with Articles 36 and 37 of the Surveillance and Court Agreement against the EFTA Surveillance Authority.”.

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<sup>1</sup> OJ L 85, 30.3.1994, p. 60.

(c) The following shall be added to Article 20:

“A request from the Commission regarding the information mentioned in Article 20(2) and 20(5) shall, for the EFTA States, be made by the EFTA Surveillance Authority to the undertaking concerned.”.

(d) The following shall be added to Article 22(2):

“The tasks in Article 22(2) shall for undertakings concerned in the EFTA States be carried out by the EFTA Surveillance Authority.”.

(e) The following shall be added to article 23:

“The representatives of the EFTA States shall participate fully in the work of the Committee referred to in Article 23, but shall not have the right to vote.”.

2. The text of point 22 (Directive 2003/54/EC of the European Parliament and of the Council) is replaced by the following:

‘**32009 L 0072**: Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).



The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) References to provisions of the Treaty shall be construed as references to the corresponding provisions of the Agreement.
- (b) The Directive shall not apply to electricity cables and related facilities from an onshore connection point to facilities for petroleum production.
- (c) Article 7(2)(j) shall not apply to the EFTA States.
- (d) Article 9(1) shall apply to the EFTA States from one year after the entry into force of the Decision of the EEA Joint Committee No [this Decision] of [date].
- (e) In Article 10(7) the word “Commission” shall, for the EFTA States, be read as “EFTA Surveillance Authority”.
- (f) Article 11(3)(b), 11(5)(b) and 11(7) shall not apply to the EFTA States.
- (g) In Article 37(1)(d) the words “the Agency” shall be replaced with the words “the EFTA Surveillance Authority”.
- (h) Article 37(1)(s) shall not apply to EFTA States.
- (i) In Article 40(1) the word “Commission” shall, for the EFTA States, be read as “EFTA Surveillance Authority”.

(j) Article 44(2) shall be replaced by the following:

“Article 9 shall not apply to Cyprus, Luxembourg, Malta, Liechtenstein and/or Iceland. In addition, Articles 26, 32 and 33 shall not apply to Malta.

If Iceland can demonstrate, after this Decision has entered into force, that there are substantial problems for the operation of its systems, Iceland may apply for derogations from Articles 26, 32 and 33, which may be granted to it by the EFTA Surveillance Authority. The EFTA Surveillance Authority shall inform the EFTA States and the Commission of those applications before taking a decision, taking into account respect for confidentiality. That decision shall be published in the EEA Supplement to the Official Journal of the European Union.”.

(k) The representatives of the EFTA States shall participate fully in the work of the Committee established by Article 46, but shall not have the right to vote.’.

3. The text of point 23 (Directive 2003/55/EC of the European Parliament and of the Council) is replaced by the following:

‘**32009 L 0073**: Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

(a) References to provisions of the Treaty shall be construed as references to the corresponding provisions of the Agreement.

(b) The Directive shall not apply to Iceland.

(c) The following shall be added to Article 2(11):

“‘LNG facility’ shall not comprise facilities for the liquefaction of natural gas which takes place as part of an offshore oil or gas production project, such as the Melkøya facility.”.

(d) The following shall be added to Article 2(12):

“‘LNG system operator’ shall not comprise operators of facilities for the liquefaction of natural gas which takes place as part of an offshore oil or gas production project, such as the Melkøya facility.”.

(e) Article 6 shall not apply to the EFTA States.

(f) In Article 10(7) the word “Commission” shall, for the EFTA States, be read as “EFTA Surveillance Authority”.

(g) Article 11(3)(b), 11(5)(b) and 11(7) shall not apply to the EFTA States.

- (h) The provisions concerning binding decisions of the Agency, as referred to in Article 36(4) third subparagraph, shall be replaced by the following provisions in cases involving an EFTA State:
- “(i) In cases involving one or more EFTA States the EFTA Surveillance Authority shall adopt a decision addressed to the national regulatory authorities of the concerned EFTA State(s).
  - (ii) The Agency shall have the right to participate fully in the work of the EFTA Surveillance Authority and its preparatory bodies, when the EFTA Surveillance Authority carries out, as regards the EFTA States, the functions of the Agency as provided for in this Agreement, but shall not have the right to vote.
  - (iii) The EFTA Surveillance Authority shall have the right to participate fully in the work of the Agency and its preparatory bodies, but shall not have the right to vote.
  - (iv) The Agency and the EFTA Surveillance Authority shall cooperate closely when adopting decisions, opinions and recommendations.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Agency at its own initiative or at the request of the EFTA Surveillance Authority.

When preparing a draft for the EFTA Surveillance Authority in accordance with this Directive, the Agency shall inform the EFTA Surveillance Authority. The latter shall set a time limit within which the national regulatory authorities of the EFTA States shall be allowed to express their views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.

National regulatory authorities of the EFTA States may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Agency. In that case the Agency shall consider preparing a new draft for the EFTA Surveillance Authority and reply without undue delay.

Where the Agency amends, suspends or withdraws any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Agency shall, without undue delay, prepare a draft to the same effect for the EFTA Surveillance Authority.

- (v) In case of disagreement between the Agency and the EFTA Surveillance Authority with regard to the administration of these provisions, the Director of the Agency and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Director of the Agency or the College of the EFTA Surveillance Authority may request the Contracting Parties to refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee<sup>1</sup>, a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement.
- (vi) Proceedings may be brought before the EFTA Court by the EFTA States or any natural or legal person in accordance with Articles 36 and 37 of the Surveillance and Court Agreement against the EFTA Surveillance Authority.”.
- (i) In Article 36(8) and (9) the word “Commission” shall, for the EFTA States, be read as “EFTA Surveillance Authority”.

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<sup>1</sup> OJ L 85, 30.3.1994, p. 60.

- (j) In Article 41(1)(d) the words “the Agency” shall be replaced with the words “the EFTA Surveillance Authority”.
- (k) In Article 44(1) and Article 49(4) and (5) the word “Commission” shall, for the EFTA States, be read as “EFTA Surveillance Authority”.
- (l) The following shall be added to Article 49(5):

“The following geographically limited areas in Norway shall be exempt from Articles 24, 31 and 32 for a maximum of 20 years after the entry into force of the Decision of the EEA Joint Committee No [this Decision] of [date]:

- (i) Jæren and Ryfylke,
- (ii) Hordaland.

The need for continued derogation shall be decided by the Norwegian Regulatory Authority every five years after the entry into force of the Decision of the EEA Joint Committee No [this Decision] of [date] taking into account the criteria of this Article. The Norwegian Regulatory Authority shall notify the EEA Joint Committee and the EFTA Surveillance Authority of its decision and the assessment it is based upon. Within a period of two months from the day following the receipt of the decision, the EFTA Surveillance Authority may adopt a decision requiring the Norwegian Regulatory Authority to amend or withdraw its decision. This period may be extended with the consent of both the EFTA Surveillance Authority and the Norwegian Regulatory Authority. The Norwegian Regulatory Authority shall comply with the EFTA Surveillance Authority's decision within a period of one month and shall inform the EEA Joint Committee and the EFTA Surveillance Authority accordingly.”.

- (m) Article 49(6) shall be replaced by the following:

“Article 9 shall not apply to Cyprus, Luxembourg, Malta and/or Liechtenstein.”.

- (n) The representatives of the EFTA States shall participate fully in the work of the Committee established by Article 51, but shall not have the right to vote.’.



4. The text of point 27 (Regulation (EC) No 1775/2005 of the European Parliament and of the Council) is replaced by the following:

**‘32009 R 0715:** Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36), as corrected by OJ L 229, 1.9.2009, p. 29 and OJ L 309, 24.11.2009, p. 87, as amended by:

- **32010 D 0685:** Commission Decision 2010/685/EU of 10 November 2010 (OJ L 293, 11.11.2010, p. 67),
- **32012 D 0490:** Commission Decision 2012/490/EU of 24 August 2012 (OJ L 231, 28.8.2012, p. 16).

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) The Regulation shall not apply to Iceland.
- (b) In Article 3(3) and Article 20 the word “Commission” shall, for the EFTA States, be read as “EFTA Surveillance Authority”.
- (c) The representatives of the EFTA States shall participate fully in the work of the Committee referred to in Article 28, but shall not have the right to vote.
- (d) In Article 30 the word “Commission” shall, for the EFTA States, be read as “EFTA Surveillance Authority”.

5. The following point is inserted after point 45 (Commission Decision 2011/13/EU):

‘46. **32009 R 0713**: Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) The national regulatory authorities of the EFTA States shall participate fully in the work of the Agency for the Cooperation of Energy Regulators, hereinafter referred to as “the Agency”, and all preparatory bodies, including working groups, committees and task forces of the Agency, the Administrative Board and the Board of Regulators, without the right to vote.
- (b) Notwithstanding the provisions of Protocol 1 to the Agreement, the term “Member State(s)” contained in the Regulation shall be understood to include, in addition to its meaning in the Regulation, the EFTA States.
- (c) As regards the EFTA States, the Agency shall, as and when appropriate, assist the EFTA Surveillance Authority or the Standing Committee, as the case may be, in the performance of their respective tasks.

(d) The provisions concerning binding decisions of the Agency, as referred to in Articles 7, 8 and 9, shall be replaced by the following provisions in cases involving an EFTA State:

- “(i) In cases involving one or more EFTA States the EFTA Surveillance Authority shall adopt a decision addressed to the national regulatory authorities of the concerned EFTA State(s).
- (ii) The Agency shall have the right to participate fully in the work of the EFTA Surveillance Authority and its preparatory bodies, when the EFTA Surveillance Authority carries out, as regards the EFTA States, the functions of the Agency as provided for in this Agreement, but shall not have the right to vote.
- (iii) The EFTA Surveillance Authority shall have the right to participate fully in the work of the Agency and its preparatory bodies, but shall not have the right to vote.
- (iv) The Agency and the EFTA Surveillance Authority shall cooperate closely when adopting decisions, opinions and recommendations.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Agency at its own initiative or at the request of the EFTA Surveillance Authority.

When preparing a draft for the EFTA Surveillance Authority in accordance with this Regulation, the Agency shall inform the EFTA Surveillance Authority. The latter shall set a time limit within which the national regulatory authorities of the EFTA States shall be allowed to express their views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.

National regulatory authorities of the EFTA States may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Agency. In that case the Agency shall consider preparing a new draft for the EFTA Surveillance Authority and reply without undue delay.

Where the Agency amends, suspends or withdraws any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Agency shall, without undue delay, prepare a draft to the same effect for the EFTA Surveillance Authority.

- (v) In case of disagreement between the Agency and the EFTA Surveillance Authority with regard to the administration of these provisions, the Director of the Agency and the College of the EFTA Surveillance Authority shall, taking into account the urgency of the matter, without undue delay convene a meeting to find consensus. Where such consensus is not found, the Director of the Agency or the College of the EFTA Surveillance Authority may request the Contracting Parties to refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111 of this Agreement which shall apply *mutatis mutandis*. In accordance with Article 2 of Decision of the EEA Joint Committee No 1/94 of 8 February 1994 adopting the Rules of Procedure of the EEA Joint Committee<sup>1</sup>, a Contracting Party may request immediate organisation of meetings in urgent circumstances. Notwithstanding this paragraph, a Contracting Party may at any time refer the matter to the EEA Joint Committee at its own initiative in accordance with Articles 5 or 111 of this Agreement.
- (vi) Proceedings may be brought before the EFTA Court by the EFTA States or any natural or legal person in accordance with Articles 36 and 37 of the Surveillance and Court Agreement against the EFTA Surveillance Authority.”.

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<sup>1</sup> OJ L 85, 30.3.1994, p. 60.

- (e) The following shall be added to Article 12:

“The national regulatory authorities of the EFTA States shall participate fully in the Administrative Board, but shall not have the right to vote. The internal rules of procedure of the Administrative Board shall give full effect to the participation of the national regulatory authorities of the EFTA States.”.

- (f) The following shall be added to Article 14:

“The national regulatory authorities of the EFTA States shall participate fully in the Board of Regulators and all preparatory bodies of the Agency. They shall not have the right to vote in the Board of Regulators. The internal rules of procedure of the Board of Regulators shall give full effect to the participation of the national regulatory authorities of the EFTA States.”.

- (g) The provisions of Article 19 shall be replaced by the following:

“If the appeal concerns a decision of the Agency in a case where the disagreement also involves the national regulatory authorities of one or more EFTA States, the Board of Appeal shall invite the national regulatory authorities of the EFTA State(s) involved to file observations on communications from parties affected by the appeal proceedings, within specified time limits. The national regulatory authorities of the EFTA State(s) involved shall be entitled to make oral presentations. Where the Board of Appeal amends, suspends or withdraws any decision parallel to the decision adopted by the EFTA Surveillance Authority, the Agency shall without undue delay prepare a draft decision to the same effect for the EFTA Surveillance Authority.”.

- (h) The provisions of Article 20 shall not apply in cases involving one or more EFTA States.
- (i) The following shall be added to Article 21:

“The EFTA States shall participate in the financing of the Agency. For this purpose the procedures laid down in Article 82(1)(a) and Protocol 32 of the Agreement shall apply.”.

- (j) The following shall be added to Article 27:

“The EFTA States shall grant privileges and immunities to the Agency equivalent to those contained in the Protocol on Privileges and Immunities of the European Union.”.

- (k) The following shall be added to Article 28:

“By way of derogation from Article 12(2)(a) and 82(3)(a) of the Conditions of employment of other servants of the European Union, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Director of the Agency.

By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants, the languages referred to in Article 129(1) of the EEA Agreement shall be considered by the Agency, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.”.

- (l) The following shall be added to Article 30(1):

“Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall, for the application of this Regulation, apply to any documents of the Agency regarding the EFTA States as well.”.



(m) The following shall be added to Article 32:

“The representatives of the EFTA States shall participate fully in the work of the Committee established by Article 32, but shall not have the right to vote.”.

6. The following point is inserted after point 46 (Regulation (EC) No 713/2009 of the European Parliament and of the Council):

‘47. **32013 R 0543**: Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council (OJ L 163, 15.6.2013, p. 1).’.

7. The text of point 21 (Commission Decision 2003/796/EC) is deleted.

#### *Article 2*

The texts of Regulations (EC) No 713/2009, (EC) No 714/2009, (EC) No 715/2009 as corrected by OJ L 229, 1.9.2009, p. 29 and OJ L 309, 24.11.2009, p. 87 and (EU) No 543/2013, Directives 2009/72/EC and 2009/73/EC and Decisions 2010/685/EU and 2012/490/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

*Article 3*

This Decision shall enter into force on [...], or on the day following the last notification to the EEA Joint Committee under Article 103(1) of the EEA Agreement, whichever is the later<sup>1</sup>.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

*For the EEA Joint Committee  
The President*

*The Secretaries  
to the EEA Joint Committee*

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<sup>1</sup> [No constitutional requirements indicated.] [Constitutional requirements indicated.]