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Subject: COUNCIL DECISION on the conclusion, on behalf of the European Union, of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder

COUNCIL DECISION No .../2014/EU

of ...

**on the conclusion, on behalf of the European Union,
of the Doha Amendment to the Kyoto Protocol
to the United Nations Framework Convention on Climate Change
and the joint fulfilment of commitments thereunder**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with point (a) of second subparagraph of Article 218(6), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

¹ OJ L ... (not yet published in the OJ).

Whereas:

- (1) At the Doha Climate Change Conference in December 2012, parties to the Kyoto Protocol to the United Nations Framework Convention on Climate Change ('the Kyoto Protocol') adopted the Doha Amendment, establishing a second commitment period of the Kyoto Protocol, starting on 1 January 2013 and ending on 31 December 2020 ('the Doha Amendment'). The Doha Amendment amends Annex B to the Kyoto Protocol, setting out further legally-binding mitigation commitments for parties listed in that Annex for the second commitment period, and amending and further laying down provisions on the implementation of parties' mitigation commitments during the second commitment period.
- (2) The Union and its Member States agreed to the Doha Amendment as part of a package whereby parties to the United Nations Framework Convention on Climate Change ('the Convention') agreed to adopt, by the end of 2015, a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all parties, which should come into effect and be implemented from 2020. Negotiations on this legally-binding instrument are ongoing under the *Ad Hoc* Working Group on the Durban Platform for Enhanced Action.
- (3) The Doha Amendment is subject to acceptance by the parties to the Kyoto Protocol, and will enter into force for those parties having accepted it on the ninetieth day after the date of receipt by the Convention Depository of an instrument of acceptance by at least three fourths of the parties to the Kyoto Protocol. A total of 144 instruments of acceptance are required for the entry into force of the Doha Amendment.

- (4) The Council agreed, in its conclusions of 9 March 2012, to propose a joint quantified emission reduction commitment of 20 % for the second commitment period of the Kyoto Protocol for the Union and its Member States. That commitment was determined on the basis of the total greenhouse gas emissions allowed during the period 2013-2020 under the climate and energy package.¹
- (5) The Council further agreed, in line with this approach, that the emission reduction obligations of individual Member States are not to exceed the obligations agreed in Union legislation, and that the commitment is to be based on the sum of base year emissions of the Member States in accordance with the Kyoto Protocol. Accordingly, the Union and its Member States agreed at the Doha Climate Change Conference to a quantified emission reduction commitment that limits their average annual emissions of greenhouse gases during the second commitment period to 80 % of the sum of their base year emissions. This is reflected in the Doha Amendment.
- (6) In line with the Council's conclusions of 9 March 2012, the Union and its Member States have also offered to move to a 30 % reduction by 2020 compared to 1990 levels, as part of a global and comprehensive agreement for the period beyond 2012, provided that other developed countries commit themselves to comparable emission reductions, and that developing countries contribute adequately according to their responsibilities and respective capabilities. This offer is also reflected in the Doha Amendment.

¹ Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6. 2009, p. 63) and Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6. 2009, p. 136).

- (7) The targets for the Union and its Member States are listed in the Doha Amendment with a footnote stating that those targets are based on the understanding that they will be fulfilled jointly by the European Union and its Member States, in accordance with Article 4 of the Kyoto Protocol. The Union, its Member States, Croatia and Iceland also issued a joint declaration upon the adoption of the Doha Amendment, expressing their intention to fulfil jointly their commitments for the second commitment period. This declaration is reflected in the Report of the Conference and was reiterated in the Council's conclusions of 17 December 2012.
- (8) In deciding to fulfil their commitments jointly in accordance with Article 4 of the Kyoto Protocol, the Union and its Member States are jointly responsible, under paragraph 6 of that Article and in accordance with Article 24(2) of the Kyoto Protocol, for the fulfilment of their quantified emission reduction commitments under Article 3(1bis) of the Kyoto Protocol. Consequently, and in accordance with Article 4(3) of the Treaty on European Union, Member States individually and collectively have the obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations resulting from action taken by the institutions of the Union, to facilitate the achievement of that commitment and to abstain from any measure that could jeopardise its attainment.

- (9) In the same declaration, the Union, its Member States, Croatia and Iceland also stated, in line with Article 4(1) of the Kyoto Protocol which allows parties to fulfil their commitments under Article 3 of the Kyoto Protocol jointly, that Article 3(7ter) of the Kyoto Protocol will be applied to the joint assigned amount pursuant to the agreement on joint fulfilment by the Union, its Member States, Croatia and Iceland and will not be applied to any Member State, Croatia or Iceland individually. The Council, at its meeting on 15 December 2009, welcomed a request by Iceland to fulfil its commitments under a second commitment period jointly with the Union and its Member States and invited the Commission to present a recommendation for the opening of the necessary negotiations on an agreement with Iceland that is in line with the principles and criteria set out in the Union's climate and energy package. The Agreement between the European Union and its Member States, of the one part, and Iceland, of the other part, concerning Iceland's participation in the joint fulfilment of the commitments of the European Union, its Member States and Iceland for the second commitment period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the 'Agreement with Iceland')* sets out the terms of that participation.
- (10) Article 4 of the Kyoto Protocol requires parties that agree to fulfil their commitments under Article 3 of the Kyoto Protocol jointly to set out in the relevant joint fulfilment agreement the respective emission level allocated to each of the parties. The Kyoto Protocol requires the parties to a joint fulfilment agreement to notify the Convention Secretariat of the terms of that agreement on the date of deposit of their instruments of ratification or approval.

* OJ: please insert the publication details for the 10941/14.

- (11) Under the Convention and the Kyoto Protocol Member States are primarily responsible for their emissions. In order to facilitate accounting and compliance under the second commitment period, they have resolved to entrust the Union with the management of part of their assigned amount units by creating an assigned amount for the Union.
- (12) In line with existing Union legislation, the respective emission level allocated to the Union covers the emissions of greenhouse gases under the Directive 2003/87/EC of the European Parliament and of the Council¹, to the extent that those greenhouse gas emissions are covered by Annex A to the Kyoto Protocol.
- (13) The respective emission levels of the Member States and Iceland cover the greenhouse gas emissions by sources and removals by sinks on their territories where those sources and sinks are not covered by Directive 2003/87/EC but are covered by the Kyoto Protocol. That includes all emissions by sources and removals by sinks from human-induced land use, land-use change and forestry (LULUCF) activities covered by Article 3(3) and (4) of the Kyoto Protocol, which are accounted by the respective Member States and Iceland, as well as all nitrogen trifluoride (NF₃) emissions.

¹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

- (14) Any net emissions from LULUCF and NF₃ in a Member State can be compensated by that Member State's overperformance in other sectors not covered under the Union Emission Trading Scheme or by use of the Kyoto Protocol's flexible mechanisms. A Member State may also use surplus emission rights carried over from the first commitment period held in its Previous Period Surplus Reserve (PPSR) to cover emissions from LULUCF and NF₃, to the extent that its emissions exceed its assigned amount. Should it become apparent that a Member State still faces significant unexpected net emissions from LULUCF and NF₃, despite implementing robust policies to limit them, the Commission should consider further options to assist such a Member State.
- (15) In line with the Council's conclusions of 9 March 2012 and the offer of the Union and its Member States to take on an 80 % target under the second commitment period, the emission levels of the Member States are equal to the sum of the annual emission allocations for the period 2013 - 2020 determined pursuant to Decision No 406/2009/EC of the European Parliament and of the Council¹. That amount, based on global warming potential values from the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, was determined under Annex II to Commission Decision 2013/162/EU² and adjusted by Commission Implementing Decision 2013/634/EU³. The emission level for Iceland was determined in the Agreement with Iceland.

¹ Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

² Commission Decision 2013/162/EU of 26 March 2013 on determining Member States' annual emission allocations for the period 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council (OJ L 90, 28.3.2013, p. 106).

³ Commission Implementing Decision 2013/634/EU of 31 October 2013 on the adjustments to Member States' annual emission allocations for the period from 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council (OJ L 292, 1.11.2013, p. 19).

- (16) In line with recital 11, assigned amount units available in the Union registry at the end of the second commitment period should be returned to the Member States' registries after the Union has complied with its obligation laid down in Article 11(3) of Regulation (EU) No 525/2013 of the European Parliament and of the Council¹ and without prejudice to Article 10(7) of that Regulation. The allocation of the returned assigned amount units addresses the unique circumstances of the ratification of the Doha Amendment, and is not applicable to and does not prejudice any distribution of efforts among Member States in other contexts, either at international or Union level.
- (17) Pursuant to Regulation (EU) No 525/2013, Member States are required to report the actual or estimated allocation of verified emissions reported by installations and operators under Directive 2003/87/EC to the source categories of the national greenhouse gas inventory, where possible, and the ratio of those verified emissions to the total reported greenhouse gas emissions in the source categories. That enables Member States to report separately on the emissions covered by their own emission levels. The section on the Union assigned amount in the Union report should identify the amount of emissions covered by the Union's assigned amount that occurred in each Member State.

¹ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

- (18) The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol has decided that each party with a commitment listed for the second commitment period should, by 15 April 2015, submit to the Convention Secretariat a report to facilitate the calculation of its assigned amount. The Commission should prepare a report to facilitate the calculation of the assigned amount of the Union, and a report to facilitate the calculation of the joint assigned amount of the Union, its Member States and Iceland. The Commission, Member States and Iceland should submit their reports by 15 April 2015, which will determine their assigned amounts as equal to their emission levels as listed in Annex I to this Decision.
- (19) In order to underline the commitment of the Union and its Member States to a timely entry into force of the Doha Amendment, the Union, its Member States and Iceland should endeavour to ratify it not later than the third quarter of 2015.
- (20) The Doha Amendment should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change agreed on 8 December 2012 in Doha is hereby approved on behalf of the Union.

The text of the Doha Amendment is attached to this Decision.

Article 2

The Union and its Member States shall fulfil their commitments under Article 3 of the Kyoto Protocol and the Doha Amendment in accordance with the notification of the terms of the agreement to fulfil jointly the commitments of the European Union, its Member States and Iceland under Article 3 of the Kyoto Protocol in accordance with Article 4 of the Kyoto Protocol ('the Notification'), set out in Annex I to this Decision.

Article 3

1. The assigned amounts of the Member States and Iceland shall be equal to the emission levels set out in the Notification. By 15 April 2015, each Member State shall submit to the Convention Secretariat a report to facilitate the calculation of its assigned amount, in accordance with the requirements of the Kyoto Protocol, the Doha Amendment and decisions adopted thereunder.

2. The Commission shall prepare a report to facilitate the calculation of the assigned amount of the Union, and a report to facilitate the calculation of the joint assigned amount of the Union, its Member States and Iceland ('the joint assigned amount'), in accordance with the requirements of the Kyoto Protocol, the Doha Amendment and decisions adopted thereunder. The Commission shall submit these reports to the Convention Secretariat by 15 April 2015.

Article 4

1. All assigned amount units issued for the second commitment period available in the Union registry after the Union has complied with its obligation laid down in Article 11(3) of Regulation (EU) No 525/2013 and after any transfer of assigned amount units pursuant to implementing acts adopted on the basis of Article 10(7) of Regulation (EU) No 525/2013 has been carried out ('Union surplus') shall be returned to the Member States at the end of the second commitment period.
2. The Union surplus shall be allocated to the Member States as follows:
 - (a) one sixth of the Union surplus to Member States that reduced their total average annual emissions by more than 20 % relative to their individual base year or period under the Kyoto Protocol by the end of the second commitment period proportionally to their overachievement in tonnes;
 - (b) one third of the Union surplus to Member States that receive a transfer under point (a) and that have a GDP per capita (GDP in 2013 in euro at market prices) below 60 % of the Union average proportionally to their overachievement in tonnes;

- (c) one third of the Union surplus to all Member States proportionally to their total emission levels as set out in Table 1 in Annex I to this Decision;
- (d) one sixth of the Union surplus to Member States that have a GDP per capita (GDP in 2013 in euro at market prices) below 90 % of the Union average proportionally to their total emission levels as set out in Table 1 in Annex I to this Decision.

Article 5

1. The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union, the instrument of acceptance with the Secretary-General of the United Nations in accordance with Articles 20(4) and 21(7) of the Kyoto Protocol, together with the declaration of competence set out in Annex II to this Decision, in accordance with Article 24(3) of the Kyoto Protocol.
2. The President of the Council shall also designate the person(s) empowered to notify, on behalf of the Union, the Notification to the Convention Secretariat in accordance with Article 4(2) of the Kyoto Protocol.

Article 6

1. Member States shall endeavour to take the necessary steps with a view to depositing their instruments of acceptance simultaneously with the instrument of acceptance of the Union, and to the extent possible in the third quarter of 2015. When depositing their instruments of acceptance, Member States shall notify, on their own behalf, the Notification to the Convention Secretariat in accordance with Article 4(2) of the Kyoto Protocol.

2. Member States shall inform the Commission in advance of the third session of the *Ad Hoc* Working Group on the Durban Platform for Enhanced Action to be held from 8 to 13 February 2015, of their decisions to accept the Doha Amendment or, according to the circumstances, of the probable date of completion of the necessary procedures for such acceptance. The Commission shall, in cooperation with the Member States, arrange a date for simultaneously depositing the instruments of approval or acceptance.

Article 7

This Decision is addressed to the Member States.

Article 8

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President