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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	27 September 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 438 final
Subject:	Proposal for a COUNCIL DECISION on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms [Extended Climate Cooperation EU – Iceland – Norway]

Delegations will find attached document COM(2019) 438 final.

Encl.: COM(2019) 438 final



EUROPEAN
COMMISSION

Brussels, 27.9.2019
COM(2019) 438 final

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Proposal for a

COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union,
within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA
Agreement, on cooperation in specific fields outside the four freedoms**

[Extended Climate Cooperation EU – Iceland – Norway]

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

In order to ensure the requisite of legal security and homogeneity of the Internal Market, the EEA Joint Committee is to integrate all the relevant EU legislation into the EEA Agreement as soon as possible after its adoption and also allow for the participation of the EEA EFTA States in EEA relevant EU actions or programmes.

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Protocol 31 to the EEA Agreement on “cooperation in specific fields outside the four freedoms” in order to allow the EEA EFTA States (in this case Norway and Iceland) to collaborate with the EU in order to fulfil their respective greenhouse gas emission reduction targets for 2030, and to do so within the EEA framework.

- **Consistency with existing policy provisions in the policy area**

The annexed draft Joint Committee Decision is fully consistent with the aim of the EEA Agreement to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties with equal conditions of competition, and the respect of the same rules, with a view to creating a homogeneous European Economic Area.

- **Consistency with other Union policies**

The Joint Committee Decision is also consistent with other Union policies, particularly through the aim to protect homogeneity of the EU Internal Market.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legislation to be incorporated into the EEA Agreement is based on Article 191 of the Treaty on the Functioning of the European Union in conjunction with Article 218(9) thereof.

Article 1(3) of Council Regulation (EC) No 2894/94¹ concerning arrangements for implementing the EEA Agreement provides that the Council establishes the position to be adopted on the Union’s behalf on such Decisions, on a proposal from the Commission.

- **Subsidiarity (for non-exclusive competence)**

The proposal complies with the subsidiarity principle for the following reason.

The objective of this proposal, namely to ensure the homogeneity of the Internal Market cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects, be better achieved at Union level.

¹ OJ L 305, 30.11.1994, p. 6–8

- **Proportionality**

In accordance with the principle of proportionality, this proposal does not go beyond what is necessary in order to achieve its objective.

- **Choice of the instrument**

In conformity with Article 98 of the EEA Agreement, the chosen instrument is the EEA Joint Committee decision. The EEA Joint Committee shall ensure the effective implementation and operation of the EEA Agreement. To this end, it shall take decisions in the cases provided for in the EEA Agreement.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Not applicable.

4. BUDGETARY IMPLICATIONS

It is proposed that Protocol 31 to the Agreement on the EEA be amended in order to allow EEA EFTA States to participate in the EU framework. There are no budgetary implications foreseen.

5. OTHER ELEMENTS

Detailed explanation of the specific provisions of the proposal

5.1. Inclusion in Protocol 31

Directive 2003/87/EC has been incorporated into Annex XX of the EEA Agreement and the amending Directive 2018/410/EU will be incorporated into the Annex in a separate Joint Committee Decision.

Regulations (EU) 2018/841 and 2018/842 establish each State's permitted emission levels. They also regulate their access to flexibility mechanisms with regard to compliance to their substantive obligations and determine how to account for emissions of greenhouse gases as well as removals from land use, land use change and forestry. They do not prescribe the means to achieve the targets set out therein, nor do they create any rights or obligations of economic actors.

Iceland and Norway intend to fulfil their respective greenhouse gas emission reduction targets for 2030 by applying and effectively implementing, within the framework of the EEA Agreement, Regulations (EU) 2018/841 and 2018/842 as well as Directive 2003/87. In accordance with Part VI of the EEA Agreement, including Article 78 of the EEA Agreement, Protocol 31 of the EEA Agreement provides the appropriate context for such cooperation between the Union and EEA countries outside the four freedoms.

Incorporation of Regulations (EU) 2018/841 and 2018/842 into the EEA acquis by means of amending Protocol 31 to the EEA Agreement creates the same type of legal obligations as the incorporation into an Annex to the EEA Agreement. Compliance with the acts and provisions included in Protocol 31 can be monitored and enforced by the EFTA Surveillance Authority and the EFTA Court to the same extent as if they were incorporated into an Annex, if the Contracting Parties so agree. It is therefore proposed to apply Part VII of the EEA Agreement, i.e. the ordinary procedures for surveillance and dispute settlement of the EEA Agreement.

It does, however, not create an obligation for incorporation of subsequent acts. This distinction is important to Iceland and Norway, since this decision to cooperate falls outside the areas that the Contracting Parties to the EEA Agreement are under an obligation to incorporate into the EEA acquis.

The acts and provisions included shall not apply to Liechtenstein.

5.2. Justifications and proposed solutions - Regulation 2018/841

Article 6(2) – conversion period:

Justification:

For Iceland, a 50-year conversion period has consistently been used for accounting for afforested land to the UNFCCC and duly justified and reviewed based on the IPCC Guidelines.

Article 8(7) - process and time-limits for National Forestry Accounting Plans (NFAP):

Justification:

As a consequence of the inclusion of Article 8(7)-(8) of the LULUCF Regulation and the general adaptations on the application of Part VII and Protocol 1 to the EEA Agreement, the EFTA States shall submit proposed reference levels and nominate experts to the EFTA Surveillance Authority, but only after the Joint Committee Decision enters into force. From this and the proposed general adaptation on expert consultations, it follows that the experts nominated shall be consulted by the European Commission and the EFTA Surveillance Authority in the same way as experts from the Member States of the European Union are consulted by the Commission.

The EFTA Surveillance Authority and the European Commission shall cooperate, exchange information and consult with each other in accordance with Article 109 and Protocol 1 of the EEA Agreement. Where necessary, based on the technical assessments and any technical recommendations resulting from this procedure, the EFTA States shall communicate their revised proposed forest reference levels to the EFTA Surveillance Authority. The forest reference levels of the EFTA States resulting from this procedure will be established by the EFTA Surveillance Authority and included into Protocol 31 to the EEA Agreement through a Joint Committee Decision as adaptations to the Commission delegated acts pursuant to Article 8(8) of the LULUCF Regulation. As this procedure will not formally start until this Joint Committee Decision enters into force, and as the procedure pursuant to Article 8(6)-(7) takes several months, the deadline in article 8(7) for revised proposed reference levels must be adapted to ensure sufficient time also for the EFTA States and the EFTA Surveillance Authority in close cooperation with the European Commission to finalize this procedure also with regard to the forest reference levels for the EFTA States.

The obligation of the EFTA Surveillance Authority to publish the proposed forest reference levels communicated by the EFTA States does not explicitly follow from the obligations pursuant to Article 109 and Protocol 1 to the EEA Agreement and is therefore explicitly stated in the proposed adaptation.

Article 13(2)(a) – reference to Regulation (EU) No 525/2013:

Justification:

Article 13(2)(a) of Regulation (EU) 2018/841 requires the EU Member States to include ongoing or planned specific measures to ensure conservation or enhancement, as appropriate, of forest sinks and reservoirs in their strategy submitted in accordance with Article 4 of Regulation (EU) No 525/2013, in order for them to participate in the managed forest land flexibility pursuant to the same Article. As the Joint Committee Decision only relates to the emission reduction targets for 2030, Article 4 of Regulation (EU) No 525/2013 will not apply for the EFTA-states. To ensure that the EFTA States participate in the managed forest land flexibility on equal terms as Member States, the proposed adaptation introduces a requirement for the EFTA States to submit specified strategies for their land use, land use change and forestry sector.

Article 15(2) - Information to the EFTA Surveillance Authority from the Central Administrator:

Justification:

The proposed adaptation clarifies the role of the EFTA Surveillance Authority in relation to the Central Administrator in accordance with the Union Registry Regulation (Commission Regulation (EU) No 389/2013) as incorporated and adapted for EEA purposes in point 21ana of Annex XX to the EEA Agreement. It follows from these adaptations that when accounts under the jurisdiction of an EFTA State are concerned, the EFTA Surveillance Authority shall be involved. The proposed adaptation is also in accordance with the role of the EFTA Surveillance Authority pursuant to the general adaptations in this Joint Committee Decision on the application of Part VII and Protocol 1 to the EEA Agreement.

Annexes II, III, IV and VII – tables:

Justification:

Relevant information about Iceland and Norway should be included in Annexes II, III and VII.

Point (g) of section A of Annex IV requires consistency between forest reference levels and projections reported under the Regulation (EU) No 525/2013. As Regulation (EU) No 525/2013 is not incorporated into the EEA Agreement, Iceland and Norway have not been obliged to report projections in accordance with Regulation (EU) No 525/2013. Projections have however been reported to the European Environment Agency on a voluntary basis, and, as regards Iceland, also in accordance with the bilateral Agreement between Iceland and the European Union and its Member States 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 Change². This is clarified in the proposed adaptation to the Annex.

²

OJ L 207, 4.8.2015, p. 1.

For the period 2026-2030, a similar adaptation is not needed, as Norway and Iceland will report projections according to Article 18 of Regulation (EU) 2018/1999.

5.3. Justifications and proposed solutions - Regulation 2018/842

Article 4(3) - determination of the 2005 base year to calculate the 2030 end point of the ESR trajectory in absolute emission allocations:

Justification:

The greenhouse gas (GHG) reduction for 2030 should be determined in relation to the level of its 2005 reviewed greenhouse gas emissions covered by Regulation 2018/842, excluding GHG from activities listed in Annex I of Directive 2003/87/EC (EU Emission Trading System, ETS), and verified emissions from installations that operated in 2005 and were only included in the EU ETS after 2005. According to ESR recital (18) the approach taken in Decision No. 406/2009/EC should be continued, which would require as one input the Annual Emission Allocation (AEA) for 2020. Norway and Iceland do not have this and therefore, their annual emission allocation (AEA) for 2030 cannot be calculated using the same methodology as for the EU Member States. Article 4(3) should therefore be adapted to clarify the methodology to be used to determine the 2005 base year emissions for Norway and Iceland, taking into account the ETS values already included in the Agreement. This will also simplify the incorporation of the implementing acts calculating and setting the AEAs for the years 2021-2030.

EEA Joint Committee Decision No 152/2012 on the EU ETS contains the EFTA States' values for 2005 stationary ETS emissions in the ETS scope as of 2013. These figures can be used to calculate the 2005 emissions from sectors covered by the ETS Directive in the scope relevant for the Effort Sharing Regulation.

In respect of the EFTA States, the 2005 ETS figures to be taken into account for the purpose of setting out the annual emission allocation for the year 2030 pursuant to Article 4(3) are set out in an Appendix which shall be added after Annex IV.

Article 6(1) – number of allowances to be cancelled for ESR compliance:

Justification:

Article 6(1) sets a maximum of cancellation of 100 million EU ETS allowances collectively to be taken into account for ESR compliance. The maximum figures for Iceland and Norway should be added, see proposed adaptation (vi).

Article 12(2) - Information to the EFTA Surveillance Authority from the Central Administrator:

Justification:

The proposed adaptation clarifies the role of the EFTA Surveillance Authority in relation to the Central Administrator in accordance with the Union Registry Regulation (Commission Regulation (EU) No 389/2013) as incorporated and adapted for EEA purposes in point 21ana of Annex XX to the EEA Agreement. It follows from these adaptations that when accounts under the jurisdiction of an EFTA State are concerned, the EFTA Surveillance Authority shall be involved. The proposed

adaptation is also in accordance with the role of the EFTA Surveillance Authority pursuant to the general adaptations in this Joint Committee Decision on the application of Part VII and Protocol 1 to the EEA Agreement.

Annexes I, II and III:

Justification:

Relevant information about Iceland and Norway should be included in Annexes I, II and III. This is based on the principle of equal treatment with EU Member States and consistent with the Commission reasoning set out in the ESR proposal (COM(2016) 482 final, p.3) and the underpinning impact assessment.

5.4. Justifications and proposed solutions - Regulation (EU) 2018/1999

Adaptations (i)-(ii) – Relevant Articles and their application:

Justification:

Regulation (EU) 2018/1999 establishes a Governance mechanism to ensure the achievement of the 2030 and long-term objectives and targets of the Energy Union in line with the Paris Agreement on climate change. Regulation (EU) 2018/1999 is part of the "Clean Energy for All Europeans" package. The EEA relevance of Regulation (EU) 2018/1999 will be assessed in accordance with standard EEA procedures. This will be done as part of the assessment of the whole Clean Energy for All Europeans package.

Regulation (EU) 2018/1999 includes planning and reporting requirements that cover the commitments in Regulation (EU) 2018/841 and Regulation (EU) 2018/842. These requirements replace amongst other Regulation (EU) No 525/2013, which has not been incorporated into the EEA Agreement.

The scope of the Joint Committee Decision is limited to the legislation relevant for the implementation of the respective 2030 emission reduction targets of Iceland and Norway. Regulation (EU) 2018/1999 includes provisions relating to *integrated national energy and climate plans* and *integrated energy and climate progress reports*. These provisions go beyond the scope of the Joint Committee Decision as they also include planning and reporting of the energy targets and other objectives in the five dimensions of the Energy Union. These provisions are therefore not included in the Joint Committee Decision.

However, Iceland and Norway voluntarily commit to develop national plans to set out the policies and measures to meet the obligations set out in Regulation (EU) 2018/841 and Regulation (EU) 2018/842 and included in Protocol 31 through the Joint Committee Decision. The plans will be shared with EU Member States, the Commission and the EFTA Surveillance Authority by 31.12.2019. This is stated in the *declaration on national plans related to Decision on the EEA Joint Committee No [this decision]* by Iceland and Norway.

To establish a system for transparent and consistent monitoring, reporting and compliance with the obligations undertaken through the Joint Committee Decision, it is proposed to include the provisions from Regulation (EU) 2018/1999 that are essential for the implementation of Regulations (EU) 2018/841 and 2018/842. This inclusion is

without prejudice to the assessment of EEA relevance of Regulation (EU) 2018/1999. The essential provisions from Regulation (EU) 2018/1999 need to be included in an understandable and legally correct manner. It is proposed to do so in a manner similar to the one used for inclusion into Protocol 47 of the Agreement of provisions concerning trade in wine from EU Acts on a common organisation of the markets in agricultural products. This means listing those Articles from Regulation (EU) 2018/1999 that shall apply. Some provisions will need a few adaptations to fit the scope of the Joint Committee Decision while others will be included without any adaptations.

The articles included will ensure complete reporting on greenhouse gas inventories, greenhouse gas policies and measures and on projections.

In addition, essential articles to carry out comprehensive reviews in accordance with Regulations (EU) 2018/841 and 2018/842 are included to ensure compliance.

Article 2 includes a list of the definitions that shall apply for Regulation (EU) 2018/1999. The definitions included are those that are relevant for the implementation of Regulations (EU) 2018/841 and 2018/842. Some of the included definitions also refer to subjects that fall outside the scope of the decision. The adaptation restricts the application of the definitions to the scope of this Joint Committee Decision.

Article 26(4) – greenhouse gas inventory data:

Justification:

Article 26(4) establishes an obligation for Member States to submit a national inventory report to the UNFCCC. Submission of such reports are an obligation under the UNFCCC. Iceland and Norway are independent parties to the UNFCCC. Iceland and Norway will, in accordance with their respective commitments under the UNFCCC, submit national inventory reports.

As the final greenhouse gas inventory data reported to the UNFCCC by 15 April each year is essential for the compliance of Regulations (EU) 2018/841 and 2018/842, the adaptation ensures that Iceland and Norway provide a copy of the reported data to the EFTA Surveillance Authority on the same date as the Member States.

Article 41 – cooperation Member States – European Union:

Justification:

Article 41 regulates cooperation between Member States and the Union in relation to the full scope of the obligations covered by Regulation (EU) 2018/1999. The adaptation ensures that this cooperation is limited to the scope of the Joint Committee Decision.

Article 42 – assistance by the European Environment Agency:

Justification:

Article 42 provides that the European Environment Agency shall assist the Commission in its work as regards Articles 15-21, 26, 28-29, 37-39 and 41. The adaptation ensures that this assistance is limited to the scope of the Joint Committee Decision.

5.5. Justifications and proposed solutions - Regulation (EU) No 525/2013

Article 7 and Articles 19(1) and (3) – inventory data and comprehensive review:

Justification:

To carry out the comprehensive review according to Article 4(3) of Regulation (EU) 2018/842 in 2020, there is a need to include parts of two articles from Regulation (EU) No 525/2013. Regulation (EU) 2018/1999 will repeal Regulation (EU) No 525/2013 from 1 January 2021, hence the reporting obligations according to Regulation (EU) 2018/1999 will not apply for Iceland and Norway before 2021. It is therefore necessary to include parts of two articles from Regulation (EU) No 525/2013 in order to establish an obligation to provide necessary inventory data and to undergo the comprehensive review in 2020.

The necessary articles are included in the Joint Committee Decision through a list that states which Articles shall apply. Only the parts of the articles that relate to the implementation of Regulation (EU) 2018/842 will apply. Iceland and Norway will have an obligation to provide the relevant data for the comprehensive review referred to in Article 4(3) of Regulation (EU) 2018/842 for the year 2020. In addition, the inclusion of Article 19(1) and (3) will ensure that the comprehensive review will be carried out in accordance with the procedures stated in those paragraphs.

The provisions shall only apply to the extent they relate to the implementation of Regulation (EU) 2018/842.

5.6. Justifications and proposed solutions - Implementing Regulation 749/2014

Articles 3-5, 7-10, 12-14, 16, 29, 32-34, 36-37 and annexes I-VIII, Table 2 of Annex XVI:

Justification:

As Articles 7 and 19 (1) and (3) from Regulation (EU) No 525/2013 are included to carry out the comprehensive review in accordance with Article 4(3) of Regulation (EU) 2018/842, there is also a need to include the implementing articles from Implementing Regulation 749/2014 on structure, format, submission process and review of information reported by Member States pursuant to Regulation (EU) No 525/2013.

The provisions shall only apply to the extent they relate to the implementation of Regulation (EU) 2018/842.

5.7. Justification and proposed solutions - General adaptations (application of Part VII and Protocol 1 to the EEA Agreement, references to EU Acts, Committee participation, expert consultation, assistance by the European Environment Agency and non-application for Liechtenstein)

Justification:

As it follows from Article 79(3) that Part VII Institutional Provisions of the EEA Agreement only applies to Part VI and Protocol 31 of the EEA Agreement when specifically provided for, and as it is only the application of the decision making provisions that is specifically provided for (conf. Article 98), an adaptation (b) is proposed to ensure the application of Part VII and thus ensure monitoring and enforcement by the EFTA Surveillance Authority and the EFTA Court as explained above with regard to inclusion in Protocol 31.

As Protocol 1 on Horizontal Adaptations to the EEA Agreement at the outset only applies to the provisions of the Acts referred to in the Annexes to the EEA Agreement, an adaptation (c) is proposed to make it applicable also to the provisions of the Acts referred to in Protocol 31 by their inclusion through the Joint Committee Decision.

Provisions of the Acts included in Protocol 31 through the Joint Committee Decision also refer to European or Union legislation, acts, rules, policies and measures that are not part of the EEA Agreement. An adaptation (d) is proposed to make it clear that they only apply to the extent and in the form that they are incorporated into the Agreement.

Participation of the EFTA States in the Climate Change Committee and consultation of experts from the EFTA States on the same basis as experts from the EU Member States is necessary to make the cooperation provided for in the Joint Committee Decision work. For instance, as explained above with regard to the proposed adaptation to Article 8(7) of Regulation (EU) No. 2018/841 (LULUCF) as concerns the establishment of national forestry accounting plans and forest reference levels, consultation of experts from EFTA States is necessary to ensure necessary input, consultations and cooperation and by that uniform implementation and application of the provisions of the Acts included into Protocol 31 by this Joint Committee Decision. Proposed adaptations (e) and (f) ensure such participation and consultation also in this regard.

As the provisions of Part VII of the EEA Agreement will apply, the EFTA Surveillance Authority will monitor the fulfilment of Iceland and Norway of their obligations pursuant to the Joint Committee Decision. Proposed adaptation (g) ensures that the European Environment Agency shall assist the EFTA Surveillance Authority in its work to comply with the obligations pursuant to the decision, such as conducting the comprehensive review and performing quality assurance on the information reported by Iceland and Norway.

As only Iceland and Norway will participate in the extended cooperation provided for through the Joint Committee Decision, proposed adaptation (h) provides that it shall not apply to Liechtenstein.

Proposal for a

COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union,
within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA
Agreement, on cooperation in specific fields outside the four freedoms**

[Extended Climate Cooperation EU – Iceland – Norway]

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 191 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 , and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area³ ('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, Protocol 31 to the EEA Agreement.
- (3) Protocol 31 to the EEA Agreement contains specific provisions on cooperation in specific fields outside the four freedoms.
- (4) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement in Union actions to include Regulation (EU) 2018/841 and Regulation (EU) 2018/842 and related provisions from Regulation (EU) 2018/1999, Regulation (EU) 525/2013 and Implementing Regulation (EU) 794/2014.
- (5) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation.

³ OJ L 1, 3.1.1994, p. 3.

- (6) The position of the Union in the EEA Joint Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms, 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*