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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	12 November 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 706 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 Annex IV (Energy) to the EEA Agreement [32016R1719 - Guideline on forward capacity allocation "FCA"]

Delegations will find attached document COM(2020) 706 final.

Encl.: COM(2020) 706 final

EUROPEAN
COMMISSION

Brussels, 12.11.2020
COM(2020) 706 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 Annex IV (Energy) to the EEA Agreement

[32016R1719 - Guideline on forward capacity allocation "FCA"]

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Annex IV (Energy) to the EEA Agreement in order to incorporate Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation[1] into the EEA Agreement.

The electricity network codes and guidelines, as established with a basis in the 3rd Energy Package, set out technical rules to facilitate trade within the EU internal electricity market. A fully functioning and interconnected internal energy market is crucial to the objectives of security of supply, increasing competitiveness and ensuring that consumers can purchase energy at affordable prices. Significant electricity interconnections have been established between Norway, as an EEA EFTA State, and EU Member States. It is therefore imperative that the technical rules applicable to trade within the EU internal electricity market are extended to the EEA to ensure legal homogeneity as a basis for trade in electricity.

Commission Regulation (EU) 2016/1719 lays down detailed rules on the allocation of capacity across bidding zones in forward markets. It establishes a common methodology to determine long-term capacities across bidding zones and a single platform at European level to offer rights for the transmission of electricity, the possibility to return such rights and to transfer them between market participants. It applies to all transmission system operators, except for those on islands which are not connected to another system.

The adaptations appearing in the draft of the annexed Decision of the EEA Joint Committee go beyond what can be considered mere technical adaptations in the sense of the Council Regulation No 2894/94. The Union position shall therefore be established by the Council.

• Consistency with existing policy provisions in the policy area

The annexed draft EEA Joint Committee Decision extends the already existing EU policy to the EEA EFTA States (Norway, Iceland and Liechtenstein).

• Consistency with other Union policies

The extension of the EU acquis to the EEA EFTA States, through its incorporation into the EEA Agreement is conducted in conformity with the objectives and principles of that Agreement, aiming at establishing a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legislation to be incorporated into the EEA Agreement is based on Article 194 of the Treaty on the Functioning of the European Union.

[1] OJ L 259, 27.9.2016, p. 42.

Article 1(3) of Council Regulation (EC) No 2894/94[2] 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.

- **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

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications expected as a result of incorporation of the above mentioned Regulation into the EEA Agreement.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

Adaptation (a) – non applicability to Iceland and Lichtenstein

As the transmission system of Iceland is not connected with other transmission systems, therefore, Commission Regulation (EU) 2016/1719 should not apply to Iceland.

Commission Regulation (EU) 2016/1719 should not apply to Liechtenstein, as due to its small size and the limited number of electricity customers, Liechtenstein does not have an own transmission electricity network.

[2] OJ L 305, 30.11.1994, p. 6–8

Adaptation (b) and recital (6) – sensitive information about the electricity system

In Commission Regulation (EU) 2016/1719 there are provisions setting out obligations to provide information to the European Network of Transmission System Operators for Electricity (ENTSO-E) and Agency for the Cooperation of Energy Regulators (ACER). Adaptation (b) makes it possible that respective Transmission System Operators ("TSOs") and Regulators exchange such information and protect it.

Adaptation (c) and recital (7) – reference to the participation rights of the Norwegian TSO, Nominated Electricity Market Operator (NEMO) and National Regulatory Authority (NRA) in the development and approval of terms, conditions and methodologies

The adaptation and the recital referred to above adapt relevant provisions of Article 4 of Commission Regulation (EU) 2016/1719 concerning participation rights of relevant entities in the development and approval of terms, conditions and methodologies to include Norway.

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(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 194 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[3], and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on the European Economic Area[4] ('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 to the EEA Agreement.

(3) Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation[5] is to be incorporated into the EEA Agreement.

(4) Annex IV to the EEA Agreement should therefore be amended accordingly.

(5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

[3] OJ L 305, 30.11.1994, p. 6.
[4] OJ L 1, 3.1.1994, p. 3.
[5] OJ L 259, 27.9.2016, p. 42.

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 Annex IV (Energy) to the EEA Agreement, shall be based on the draft decisions 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