Council of the
European Union

Brussels, 24 February 2022
(OR. en)

5911/22

Interinstitutional File:
2022/0022 (NLE)

AELE 5
EEE 5
N 4
ISL 4
FL 4
MI 76
ENER 40

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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

COUNCIL DECISION (EU) 2022/…

of …

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

(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(2), 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[1], and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

[1] OJ L 305, 30.11.1994, p. 6.

Whereas:

(1) The Agreement on the European Economic Area[1] ('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, which contains provisions on energy.

(3) Directive 2010/31/EU of the European Parliament and of the Council[2] is to be incorporated into the EEA Agreement.

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

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

HAS ADOPTED THIS DECISION:

[1] OJ L 1, 3.1.1994, p. 3.

[2] Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13).

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

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) Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings[1] ('the EPBD') is to be incorporated into the EEA Agreement.

(2) Due to the specificities of Iceland's relatively recent and uniform building stock, a temporary and conditional exemption from applying Directive 2010/31/EU on the energy performance of buildings is agreed. That exemption should apply to Directive 2010/31/EU as in force before the amendment by Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018. The exemption should be strictly limited in time and should apply only until an agreement is reached concerning the incorporation of Directive 2010/31/EU as amended by Directive (EU) 2018/844 into the EEA Agreement.

(3) In line with the very small size of the building stock in Liechtenstein and its climatic and building typology, Liechtenstein is exempted from the obligation under Article 5 of the EPBD to carry out its own calculations for the establishment of cost-optimal levels of minimum energy performance requirements for buildings.

[1] OJ L 153, 18.6.2010, p. 13.

(4) Pursuant to the conditions of adaptation (c), Norway and Liechtenstein may stipulate regulations on minimum energy performance requirements using a different system boundary than primary energy use which is the one required under the EPBD, provided that the conditions stipulated in adaptation (c)are met.

(5) Adaptation (d) ensures that the user-operated energy performance certification system in Norway produces equivalent results to certificates issued by independent experts as required by Article 17 of the EPBD.

(6) Annex IV to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The text of point 17 (Directive (EC) No 2002/91 of the European Parliament and of the Council of 16 December 2002) of Annex IV of the EEA Agreement is replaced by the following:

‘**32010 L 0031**: Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (“the EPBD”) (OJ L 153, 18.6.2010, p. 13).

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

(a) The Directive shall not apply to Iceland.

(b) The following shall be added to Article 5(2):

“For the purpose of establishing the cost-optimal levels of minimum energy performance requirements, Liechtenstein may use the calculations of another Contracting Party having comparative parameters.”.

(c) For the purpose of Article 9(3)(a) and Annex I of the EPBD, Liechtenstein and Norway may base their requirements for energy use on net energy, provided that the following conditions and safeguards are fulfilled:

(i) The minimum energy performance requirements are set in line with the requirements of Article 5 of the EPBD, following the basic principles of the methodology framework, which has been established for the calculation of cost-optimal levels of minimum energy performance requirements.[1]

(ii) A numeric indicator of primary energy use corresponding to the energy performance requirements set in the building code is published.

(iii) The Commission reserves the right to revisit this specific adaptation in the context of the future negotiations on the EPBD as amended by Directive (EU) 2018/844.

[1] Commission Delegated Regulation (EU) No 244/2012 of 16 January 2012 supplementing Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings by establishing a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements.

(d) The following shall be added to Article 17:

"EFTA States may establish a simplified user-operated energy performance certification system for residential buildings that can be used as an alternative to the use of experts if the following conditions are met:

(i) There is a thorough knowledge and good quality data available on the entire residential building stock, including all the building typologies and age bands, and the characteristics of the building envelope and technical building systems in use per typology, which enables the calculation of the energy performance of individual buildings and building units with a high degree of certainty on the basis of user inputs,

(ii) Detailed information is available on cost-optimal or cost-effective improvements for each building typology,

(iii) Measures are in place to support the users to operate the system for the purpose of the system issuing building certificates. These measures may include a helpline or advisory services that will enable contact between the users on the one hand, and independent experts and system experts on the other,

(iv) To ensure negligible risk of manipulation of results, the user-operated certification system includes quality control and verification mechanism(s) to check users' input data and that the users' input data are transparent,

(v) Independent control systems are in place to ensure that the user-operated energy performance certification produces equivalent results to certificates issued by experts, in terms of quality and reliability,

(vi) The user-operated system issues recommendations which can advise the users of cost-optimal or cost-effective improvements specific for their buildings and building units.”.’.

Article 2

The text of Directive 2010/31/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 […], provided that all the notifications under Article 103(1) of the EEA Agreement have been made*.

* [No constitutional requirements indicated.] [Constitutional requirements indicated.]

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