

**DECISION OF THE EEA JOINT COMMITTEE****No 146/2007****of 26 October 2007****amending Annex XX (Environment) to the EEA Agreement**

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex XX to the Agreement was amended by Decision of the EEA Joint Committee No 127/2007 of 28 September 2007 (¹).
- (2) 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 (²) is to be incorporated into the Agreement.
- (3) Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms (³) is to be incorporated into the Agreement.
- (4) Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (⁴) is to be incorporated into the Agreement.
- (5) Commission Decision 2004/156/EC of 29 January 2004 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council (⁵) is to be incorporated into the Agreement.
- (6) Commission Decision 2006/780/EC of 13 November 2006 on avoiding double counting of greenhouse gas emission reductions under the Community emissions trading scheme for project activities under the Kyoto Protocol pursuant to Directive 2003/87/EC of the European Parliament and of the Council (⁶) is to be incorporated into the Agreement.
- (7) Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (⁷), has not been incorporated into the Agreement.
- (8) Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (⁸) has not been incorporated into the Agreement and therefore the specific reporting requirements under Article 3 of the Decision, as re-iterated under Article 30(3) of Directive 2003/87/EC, do not apply to the EFTA States.

(¹) OJ L 47, 21.2.2008, p. 58.

(²) OJ L 275, 25.10.2003, p. 32.

(³) OJ L 338, 13.11.2004, p. 18.

(⁴) OJ L 386, 29.12.2004, p. 1.

(⁵) OJ L 59, 26.2.2004, p. 1.

(⁶) OJ L 316, 16.11.2006, p. 12.

(⁷) OJ L 130, 15.5.2002, p. 1.

(⁸) OJ L 49, 19.2.2004, p. 1.

(9) Norway established a scheme for greenhouse gas emission allowance trading as of 1 January 2005 through Act No 99 of 17 December 2004, with related regulations of 23 December 2004, as amended on 15 March 2005. Amendments to this law pertaining to the period 2008-2012 entered into force on 1 July 2007, and subsequent amendments of the domestic regulations were made on 14 September 2007. Under the Norwegian scheme, allowances will not be issued for the period beginning in 2008 in respect of allowances that are surplus in the initial three-year period beginning in 2005. Norway has announced that in the five-year period beginning in 2008, subject to applicable approval procedures, Norway would issue no more than 15 million tonnes of allowances, and the maximum amount of CERs and ERUs which may be used by operators would be no more than 20 % of the total quantity of allowances. No such scheme currently operates in Iceland or Liechtenstein. Measures are being taken to reduce the greenhouse gas emissions of installations in Iceland, which would fall within the scope of application of Directive 2003/87/EC, including the installations as listed in an Annex to this Decision, which justify their exemption from the scope of the Directive during the period that such measures apply.

(10) The different situation applicable in the different EFTA States has to be considered. Particular account needs to be taken of the commitments of Iceland under the Kyoto Protocol as Iceland has notified that it avails itself of the provisions of Decision 14/CP.7 of the Conference of the Parties to the Kyoto Protocol on the impact of single projects on emissions in the commitment period.

(11) The EFTA States may have installations with facilities for carbon capture and storage in the period 2008-2012 which will be unilaterally included into the EU emissions trading scheme in such a way that emissions which are captured and permanently stored will be discounted from the monitored level of emissions of an installation. This decision is without prejudice to any distribution of allowances to such installations.

(12) This Decision does not affect the autonomy of the Contracting Parties with respect to international negotiations on climate change, in particular in the context of the United Nations Framework Convention on Climate Change and the Kyoto Protocol, other than in respect of the instruments incorporated by this Decision into the EEA Agreement. However, the EFTA States shall take due account of the obligations they have undertaken in the EEA Agreement.

(13) Each EFTA State is responsible for implementing policies and measures to comply with its international commitments under the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

(14) The EFTA States shall continue to be given the opportunity to contribute to the work of the Climate Change Committee, which assists the Commission pursuant to Article 23 of Directive 2003/87/EC, and to present their national allocation plans for discussion in this Committee.

(15) The EFTA States may participate in international emissions trading as Parties to the Kyoto Protocol with any other Party included in Annex B thereto.

(16) The EFTA States shall be included into the Community independent transaction log. The Community independent transaction log's Central Administrator shall perform his tasks with regard to the EFTA States, and the EFTA Surveillance Authority shall be the competent body to give the necessary instructions to the Central Administrator in relation to provisions relating to the application of Regulation (EC) No 2216/2004 for the EFTA States.

(17) When an agreement pursuant to Article 25 of Directive 2003/87/EC is concluded, the EFTA States and their operators shall not be discriminated as compared to EC Member States and their operators.

(18) The EFTA Surveillance Authority shall coordinate closely with the Commission whenever it is called to undertake tasks relating to the EFTA States for which the Commission is responsible with respect to the EC Member States pursuant to Directive 2003/87/EC, Regulation (EC) No 2216/2004, Decision 2004/156/EC and Decision 2006/780/EC. These tasks include *inter alia* the assessment of a national allocation plan under Article 9(3) for each period referred to in Article 11(2) and any application for the unilateral inclusion of additional activities and gases under Article 24 of Directive 2003/87/EC.

(19) The Standing Committee of the EFTA States aims at adopting a decision establishing an EFTA Advisory Committee to assist the EFTA Surveillance Authority in the fulfilment of these tasks. The Commission representative shall participate as an observer in the Committee. The assessment of the EFTA States' compliance with the provisions stemming from the Directive, in particular with regard to the total quantity of allowances, shall address the aspects of climate change policies and measures which are relevant to this Agreement. However, the EFTA Surveillance Authority shall not elaborate on the individual EFTA States' achievement of their international commitments on the reduction of greenhouse gas emissions themselves. The decision on a national allocation plan should be consistent with the criteria of Annex III to Directive 2003/87/EC, in particular with the relevant provisions of the methodology pursuant to the Commission's guidance documents COM(2003) 830 final, COM(2005) 703 final and COM(2006) 725 final for the assessment of a national allocation plan under Article 9(3) of the Directive 2003/87/EC and the Commission's Decisions on national allocation plans,

HAS DECIDED AS FOLLOWS:

*Article 1*

Annex XX to the Agreement shall be amended as follows:

1. The following indent shall be added in point 1f (Council Directive 96/61/EC):
  - ‘— **32003 L 0087**: Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 (OJ L 275, 25.10.2003, p. 32).’
2. The following points shall be inserted after point 21ak (Directive 2004/107/EC of the European Parliament and of the Council):
  - ‘21al. **32003 L 0087**: 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), as amended by:
    - **32004 L 0101**: Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 (OJ L 338, 13.11.2004, p. 18).

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

- (a) Without prejudice to future development by the EEA Joint Committee, it should be noted that the following Community acts are not incorporated into the EEA Agreement:
  - (i) Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder,
  - (ii) Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol.
- (b) The EFTA States shall be exempted from the provisions of the Directive relating to the three-year period beginning 1 January 2005, referred to in Article 11(1).
- (c) The following shall be added in Article 9(1), second subparagraph:

“With regard to the five-year period beginning 1 January 2008, the plan of an EFTA State shall be published and notified at the latest immediately after the entry into force of the Decision of the EEA Joint Committee incorporating this Directive into the Agreement.”

- (d) In Article 9(3), the words “within three months” shall read “within two months or as soon as practicable thereafter” in so far as the five-year period starting on 1 January 2008 is concerned.

(e) For the periods referred to in Article 11(2) and for the total quantity of allowances to be allocated for each period under Article 11(2), each EFTA State may allocate a greater percentage of its allowances against payment than any limitation established under Article 10.

(f) The following shall be added in Article 11(2):

“With regard to the five-year period beginning 1 January 2008 and as far as an EFTA State is concerned, this decision shall be taken at least two months before the beginning of that period or as soon as practicable thereafter.”

(g) In Article 11(3), the words “Treaty, in particular Articles 87 and 88 thereof” shall read “the Agreement, in particular Articles 61 and 62 thereof”.

(h) The first sentence in Article 11a(1) shall be replaced by the following:

“Subject to paragraph 3, during each period referred to in Article 11(2), EFTA States may allow operators to use CERs and ERUs from project activities in the Community scheme as a percentage of the total quantity of allowances.”

(i) The second sentence in Article 16(3) shall be replaced by the following:

“The EFTA States shall provide for excess emissions penalties that are equivalent to those in the EC Member States.”

(j) The following shall be added in Article 19(1):

“The Liechtenstein registry may be hosted by Switzerland.”

(k) The following paragraph shall be added to Article 20:

“4. The issue, transfer and cancellation of allowances concerning the EFTA States and their operators shall be registered in the independent transaction log referred to in paragraph 1. The Central Administrator shall be competent to perform the tasks referred to in paragraphs 1 to 3 when the EFTA States or their operators are concerned.”

(l) The following paragraph shall be added to Article 25:

“3. Allowances of the Community system include allowances issued or traded by the EFTA States or their operators under the Community system. Upon conclusion by the Community of an agreement referred to in paragraph 1, no distinction shall be made between such allowances.

The Commission shall keep the EFTA States informed regarding the negotiation and conclusion of agreements according to this Article at an early stage.”

(m) The EFTA States participating in the EU Emission Trading Scheme will provide information according to the relevant requirements in the first subparagraph of Article 30(3), while the reporting requirements under the second subparagraph shall not apply to them.

(n) The following shall be added at the beginning of Annex III(1):

“International obligations of the EFTA States outside the scope of this Agreement shall not be subject to review by the EFTA Surveillance Authority.”

(o) In Annex III(2), the words “assessments of actual and projected progress” shall be replaced by “verified emissions data reported by installations under the Directive, National Inventories and National Communications submitted to the UNFCCC Secretariat” with regard to the EFTA States.

- (p) In Annex III(4), the words "Community legislative and policy instruments" shall be replaced by "legislative instruments incorporated into the Agreement".
- (q) In Annex III(5), the words "the Treaty, in particular Articles 87 and 88 thereof" shall read "the Agreement, in particular Articles 61 and 62 thereof".
- (r) Annex III(12) shall be replaced by the following:

"The plan shall specify the maximum amount of CERs and ERUs which may be used by the operators in the Emissions Trading Scheme as a percentage of the total quantity of allowances."

- (s) The EFTA States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2007.
- (t) Combustion installations in Iceland with a rated thermal input exceeding 20 MW (except hazardous or municipal waste installations), but which have reported emissions to the competent authority of less than 25 000 tonnes of carbon dioxide equivalent (excluding emissions from biomass) in each of the three years preceding the date for submission of a national allocation plan for a period, shall be exempted from the scope of this Directive for the period for which that plan would apply, provided that the respective competent authority shows to the satisfaction of the EFTA Surveillance Authority that it is undertaking other policies and measures achieving the same results as Directive 2003/87/EC. As a consequence as long as no installations or activity pursuant to Annex I of Directive 2003/87/EC would be covered by the national allocation plan, the requirement under Article 9(1) to submit a plan shall not apply.
- (u) The EFTA Surveillance Authority shall apply the relevant provisions of the methodology as set out in the Commission's guidance documents COM(2003) 830 final, COM(2005) 703 final and COM(2006) 725 final for the assessment of a national allocation plan under Article 9(3) of Directive 2003/87/EC as applied in the Commission's Decisions on national allocation plans.

21am. **32004 D 0156:** Commission Decision 2004/156/EC of 29 January 2004 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 26.2.2004, p. 1).

21an. **32004 R 2216:** Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (OJ L 386, 29.12.2004, p. 1).

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

- (a) Adaptation (k) to Directive 2003/87/EC shall apply *mutatis mutandis* to the Regulation.
- (b) The following sub-paragraph shall be added to Article 6(3):

"If registries in the EFTA States are concerned, the Central Administrator shall be instructed by the EFTA Surveillance Authority."

- (c) In Article 8(4), the words "and the EFTA Surveillance Authority" shall be inserted after the word "Commission".
- (d) In Article 44(1), the words "1 January 2007" shall read "15 December 2007".
- (e) The following paragraph shall be added to Article 44:

"4. If national allocation plan tables of the EFTA States are concerned, the Central Administrator shall be instructed by the EFTA Surveillance Authority."

21ao. **32006 D 0780:** Commission Decision 2006/780/EC of 13 November 2006 on avoiding double counting of greenhouse gas emission reductions under the Community emissions trading scheme for project activities under the Kyoto Protocol pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 316, 16.11.2006, p. 12).'

#### *Article 2*

The texts of Directives 2003/87/EC and 2004/101/EC, Regulation (EC) No 2216/2004 and Decisions 2004/156/EC and 2006/780/EC 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 27 October 2007 or on the day following the last notification to the EEA Joint Committee under Article 103(1) of the Agreement, whichever is the later (\*).

#### *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, 26 October 2007.

*For the EEA Joint Committee*

*The President*

Stefán Haukur JÓHANNESSON

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(\*) Constitutional requirements indicated.

## ANNEX

Combustion installations in Iceland with a rated thermal input exceeding 20 MW:

Fishmeal and oil factory, Síldarvinnslan á Siglufirði;

Fishmeal and oil factory, Síldarvinnslan á Seyðisfirði;

Fishmeal and oil factory, Eskja á Eskifirði;

Fishmeal and oil factory, Síldarvinnslan á Neskaupstað;

Fishmeal and oil factory, HB Granda á Akranesi;

Fishmeal and oil factory, Ísfélag Vestmannaeyja;

Fishmeal and oil factory, Skeggey Höfn;

Fishmeal and oil factory, Síldarvinnslan í Helguvík;

Fishmeal and oil factory, Loðnuvinnslan á Fáskrúðsfirði;

Fishmeal and oil factory, Vinnslustöðin í Vestmannaeyjum;

Emergency back-up power plant for Alcan aluminium plant;

Emergency back-up power plant Reykjavík Energy.

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