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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 II (Technical regulations, standards, testing and certification) and Annex IV (Energy) to the EEA Agreement

(EED)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be adopted on the Union's behalf in the EEA Joint Committee in connection with the envisaged adoption of the Joint Committee Decision concerning an amendment of Annex II (Technical regulations, standards, testing and certification) and Annex IV (Energy) to the EEA Agreement

2. CONTEXT OF THE PROPOSAL

2.1. The EEA Agreement

The Agreement on the European Economic Area (*'the EEA Agreement'*) guarantees equal rights and obligations within the Internal Market for citizens and economic operators in the EEA. It provides for the inclusion of EU legislation covering the four freedoms throughout the 30 EEA States comprising of EU Member States, Norway, Iceland and Liechtenstein. In addition, the EEA Agreement covers cooperation in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture, collectively known as "*flanking and horizontal*" policies. The EEA Agreement entered into force on 1 January 1994. The Union together with its Member States is a party to the EEA Agreement.

2.2. The EEA Joint Committee

The EEA Joint Committee is responsible for the management of the EEA Agreement. It is a forum for exchanging views linked to the functioning of the EEA Agreement. Its decisions are taken by consensus and are binding on the Parties. The responsibility for coordinating EEA matters on the EU side is with the Secretariat General of the European Commission.

2.3. The envisaged act of the EEA Joint Committee

The EEA Joint Committee is expected to adopt the EEA Joint Committee Decision (*'the envisaged act'*) regarding the amendment of Annex II (Technical regulations, standards, testing and certification) and Annex IV (Energy) to the EEA Agreement.

The purpose of the envisaged act is to incorporate into the EEA Agreement Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC¹ and Directive (EU) 2018/2002 amending Directive 2012/27/EU on energy efficiency².

The envisaged act will become binding on the parties in accordance with Articles 103 and 104 of the EEA Agreement.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The Commission submits the annexed draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The position, once adopted, should be presented in the EEA Joint Committee at the earliest possible opportunity.

¹ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC, OJ L 315, 14.11.2012, p. 1.

² Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency, OJ L 328, 21.12.2018, p. 210.

The annexed draft Decision of the EEA Joint Committee includes adaptations for the EEA EFTA States as outlined in the recitals and adaptations text in the annexed draft Joint Committee Decision, which go beyond what can be considered mere technical adaptations in the sense of Council Regulation (EC) No 2894/94³. The Union position shall therefore be established by the Council.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

The concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *‘capable of decisively influencing the content of the legislation adopted by the EU legislature’*⁴.

4.1.2. Application to the present case

The EEA Joint Committee is a body set up by an agreement, namely the EEA Agreement. The act, which the EEA Joint Committee is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Articles 103 and 104 of the EEA Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU in conjunction with Article 1(3) of Council Regulation (EC) No 2894/94.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU in conjunction with Article 1(3) of Council Regulation (EC) No 2894/94 depends primarily on the substantive legal basis of the EU legal act to be incorporated into the EEA Agreement.

If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

Since the Joint Committee Decision incorporates into the EEA Agreement Directive 2012/27/EU and Directive (EU) 2018/2002, it is appropriate to base this Council decision on the same substantive legal base as the act that is incorporated. Therefore, the substantive legal basis of the proposed decision is Article 194(2) of the TFEU.

³ Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area, OJ L 305, 30.11.1994, p. 6.

⁴ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

4.3. Conclusion

The legal basis of the proposed decision should be Article 194(2) TFEU, in conjunction with Article 218(9) TFEU and Article 1(3) of Council Regulation (EC) No 2894/94.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EEA Joint Committee will amend Annex II (Technical regulations, standards, testing and certification) and Annex IV (Energy) to the EEA Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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(EED)

(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 Area⁵, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area⁶ ('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 II (Technical regulations, standards, testing and certification) and Annex IV (Energy) to the EEA Agreement.
- (3) Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC⁷ and Directive (EU) 2018/2002 amending Directive 2012/27/EU on energy efficiency⁸ should be incorporated into the EEA Agreement.
- (4) Several provisions of Directive 2012/27/EU as amended by Directive (EU) 2018/2002 require substantive adaptations that reflect the specificities of the EEA Agreement and of the EFTA States.

⁵ OJ L 305, 30.11.1994, p. 6.

⁶ OJ L 1, 3.1.1994, p. 3.

⁷ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

⁸ Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency (OJ L 328, 21.12.2018, p. 210).

- (5) Since the Union's energy efficiency headline targets for 2020 and 2030 do not apply to the EFTA States, Articles 3(1)(a) and 3(5) of Directive 2012/27/EU and Article 1(1) of Directive 2012/27/EU as amended by Directive (EU) 2018/2002 should not apply to the EFTA States. However, the EFTA States set out in a voluntary manner their national indicative targets for energy efficiency, as set out in the Declaration of EFTA States attached to the EEA Joint Committee Decision.
- (6) Article 5 of Directive 2012/27/EU as amended by Directive (EU) 2018/2002 refers to the minimum energy performance requirements to be complied with based on Article 4 of Directive 2010/31/EU on the energy performance of buildings. It is appropriate to allow Iceland to fulfil its obligations on the minimum energy performance requirements in central government's buildings based on its national legislation, given that Iceland has a derogation from incorporating Directive 2010/31/EU.
- (7) It is also appropriate to adapt Article 20(5) of Directive 2012/27/EU as amended by Directive (EU) 2018/2002 accordingly, notably replacing the reference to Article 5(1) with a more general reference to Article 5 with a view to reflect the adaptations made under the latter provisions..
- (8) New energy savings to be achieved by Iceland pursuant to Article 7(1) should be set at a level that reflects the specificities of Iceland's energy market and energy mix.
- (9) Given that the Icelandic energy system is isolated, near fossil-free, with high levels of security of supply and energy independence, and extensively relies on renewable geothermal energy with special characteristics, it is appropriate to allow a derogation for Iceland from certain requirements as regards metering set out in Articles 9a, 9b and 9c.
- (10) Given that Iceland has no natural gas infrastructure and is exempt from Directive 2009/73/EC on the internal market for natural gas, Articles 9 and 10 as regards metering for natural gas and billing information should not apply to Iceland.
- (11) Given that Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market does not apply to geothermal cogeneration in Iceland, Articles 14 and 15 of Directive 2012/27/EU as amended by Directive (EU) 2018/2002 which correlate to Directive 2004/8/EC should not apply to Iceland.
- (12) Annex II (Technical regulations, standards, testing and certification) and Annex IV (Energy) to the EEA Agreement should therefore be amended accordingly.
- (13) The position of the Union within 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 of Annex II (Technical regulations, standards, testing and certification) and 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*