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Ratification of the second commitment period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change

Proposal for a

COUNCIL DECISION

on the conclusion of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In December 2012, at the Doha Climate Change Conference, the 192 Parties to the Kyoto Protocol to the United Nations Framework Convention on Climate Change adopted an amendment to the Kyoto Protocol¹. This ‘Doha Amendment’ establishes a second commitment period under the Kyoto Protocol, starting on 1 January 2013 and ending on 31 December 2020, with legally binding emission reduction commitments for the Parties listed in its Annex B.

The agreement on the Doha Amendment came as part of a broader package. Apart from the 38 Parties covered under the second commitment period, more than 60 other countries, including the United States, China, India, South Africa and Brazil, have now pledged mitigation action under the United Nations Framework Convention on Climate Change (“the Convention”). This brings the total share of global emissions covered by international mitigation commitments under both the Kyoto Protocol and the Convention to more than 80%. A further essential element of this broader package is the consensus of Parties to the Convention, no later than 2015, to ‘adopt a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties’, which should come into effect and be implemented from 2020².

Article 4 of the Kyoto Protocol allows Parties to fulfil their commitments jointly. The European Union and the fifteen Parties that were Member States when the Kyoto Protocol was signed in 1997 chose to do so for the first commitment period (2008-12), and accordingly ratified the Protocol in 2002.³ The Doha Amendment and the statement of the European Union and its Member States upon its adoption⁴ state that the European Union and its Member States again intend to fulfil their reduction targets under the second commitment period jointly. Moreover, the European Union and its Member States also expressed their intention to fulfil their commitments in the second commitment period of the Kyoto Protocol jointly with Iceland. The integration of Iceland in this group of Parties fulfilling their respective commitments jointly follows a request to this effect from Iceland in June 2009. The Council, at its meeting on 15 December 2009, welcomed this request and invited the Commission to present a recommendation for the opening of the necessary negotiations with Iceland.⁵ The Commission presented its recommendation to the Council in June 2013.

Under the Doha Amendment, the European Union, its Member States and Iceland commit to limit their average annual greenhouse gas (GHG) emissions in the years 2013 to 2020 to 80% of their base year emissions (mostly 1990⁶). This commitment is based on the emission

¹ Decision 1/CMP.8, adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, FCCC/KP/CMP/2012/13/Add.1

² Decision 2/CP.18, adopted by the Conference of the Parties to the Convention, para. 4, in document UNFCCC/CP/2012/8/Add.1.

³ Council Decision 2002/358/CE 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, OJ L 130, 15.5.2002, p.1.

⁴ The full text of this statement is reflected in paragraph 45 of the Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its eighth session, held in Doha from 26 November to 8 December 2012 FCCC/KP/CMP/2012/13.

⁵ Council Conclusions of 15 December 2009 on Joint Fulfilment Agreement with Iceland with regard to a future international climate agreement, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/agricult/111941.pdf.

⁶ For the first commitment period, EU base years were as follows: for carbon dioxide (CO₂), methane (CH₄) and nitrous oxide (N₂O) all Member States use 1990 as base year except: Bulgaria - 1988;

reduction targets laid down in the climate and energy package adopted in 2009, in particular the EU's Emissions Trading System (EU ETS) and the Effort Sharing Decision⁷. The commitment was determined taking into account the differences in scope between European Union legislation and the Kyoto Protocol's second commitment period⁸. This approach is in line with the Council conclusions in March 2012, which stated that the joint commitment of the European Union, its Member States and Iceland should be based on the climate and energy package, but also that the emission reduction obligations of individual Member States in the second commitment period of the Kyoto Protocol 'shall not exceed their obligations agreed in European Union legislation'. This approach was followed in the submission by the European Union and its Member States on their commitment under a second commitment period in April 2012.⁹

European Union legislation to meet the 80% target by 2020 is already in place. Extended impact assessments on the economic implications for each Member State were presented at the time of its adoption and have also been updated to take into consideration the impact of the economic and financial crisis.¹⁰ Therefore, the European Union and its Member States agreed in Doha to the immediate implementation of their commitments and responsibilities related to the second commitment period of the Kyoto Protocol as of 1 January 2013. Moreover, the European Union is on track to meet its 2020 target. The latest GHG inventory shows that 2011 emissions in the 27 Member States were 18.4% below the level of 1990 (excluding land use, land-use change and forestry and use of flexible mechanisms)¹¹. Adjusted for the differences in scope and coverage of the Kyoto Protocol and assuming a 1990 base year for Cyprus and Malta, the actual reduction in emissions in 2011 compared to emissions in the Kyoto base year would be slightly more than the 20% reduction required during the second commitment period. Based on most recent Member States' projections of GHG emissions and assuming the implementation of policies and measures currently in place, the European Environment Agency has indicated a moderate further decrease in emissions by 2020, with a total reduction of approximately 19% below 1990 levels by 2020.¹² This

Hungary - average of 1985 to 1987; Slovenia - 1986; Poland - 1988; and Romania - 1989. For the fluorinated gases all Member States use 1995 as base year except: Austria, France, Italy and Slovakia - 1990; and Romania - 1989.

⁷ Legislation adopted on 23 April 2009, including Directive 2009/29/EC of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community and Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, OJ L 140, 5.6. 2009.

⁸ This difference in scope is explained in detail in the Commission Staff Working Document "Preparing the EU's Quantified Emission Limitation or Reduction Objective (QELRO) based on the EU Climate and Energy Package", SWD(2012) 18 final of 13.2.2012.

⁹ Submission by Denmark and the European Commission on behalf of the European Union and its Member States of 19 April 2012 on "Information on the quantified emission limitation or reduction objectives (QELROs) for the second commitment period under the Kyoto Protocol", FCCC/KP/AWG/2012/MISC.1.

¹⁰ Commission Staff Working Document, 'Impact Assessment accompanying the Package of Implementation measures for the EU's objectives on climate change and renewable energy for 2020', SEC(2008) 85/3, 23.1.2008; and Commission Staff Working Document accompanying the Communication from the Commission (COM(2010) 265), 'Analysis of options to move beyond 20% greenhouse gas emission reductions and assessing the risk of carbon leakage Background information and analysis', Part I and II, SEC(2010) 650, 25.5. 2010.

¹¹ European Environment Agency, 'Annual European Union greenhouse gas inventory 1990–2011 and inventory report 2013' - Submission to the Convention Secretariat, May 2013.

¹² European Environment Agency, 'Greenhouse gas emission trends and projections in Europe 2012: Tracking progress towards Kyoto and 2020 targets', Copenhagen, 2012, p. 60.

confirms that the European Union is projected to meet its second commitment period target with policies and measures currently in place. The EU's offer to move to 30% does however remain on the table. In addition, discussions are ongoing about the most cost-effective trajectory for the European Union to reduce its greenhouse gas emissions by 80-95% in 2050, including the target for 2030.

The formal entry into force of the Doha Amendment is an important objective for the European Union. This requires 144 of the 192 Parties to the Kyoto Protocol, including the European Union and its Member States, to deposit their instruments of acceptance. This proposal for a Council Decision on the conclusion of the Doha Amendment will enable the European Union to do so. In addition to ratification by the European Union, Member States will also need to finalise their own ratification processes. In line with common practice, after their respective ratification procedures, the European Union and its Member States will simultaneously deposit their instruments of acceptance to enable simultaneous entry into force for all of them. This should take place well before the Paris Climate Change Conference at the end of 2015.

2. THE DOHA AMENDMENT

The Doha Amendment lays down mitigation commitments for the second commitment period of the Kyoto Protocol for countries listed in Annex B to the Protocol. In addition, it makes further amendments to the text of the Protocol to be implemented in the second commitment period. Most of these amendments simply enable the implementation of the new mitigation commitments, but there are also some provisions that entail changes in substantive obligations. These concern the inclusion of a new gas - nitrogen trifluoride (NF₃); two provisions related to the ambition of Parties' commitments for the second commitment period (the so-called 'ambition mechanism'); and a new Article 3(7ter).

Mitigation commitments for the second commitment period in Annex B

The Doha Amendment provides for an amended table in Annex B to the Kyoto Protocol which contains a third column setting out legally binding mitigation commitments for the second commitment period in the form of quantified economy-wide emission limitation or reduction commitments (QELRC). Thirty eight Parties to the Kyoto Protocol have listed a percentage of their base year or period emissions as their QELRC in the third column of the table in Annex B to the Kyoto Protocol. This includes four Parties that did not to date have a Kyoto target (Cyprus, Malta, Kazakhstan and Belarus). The United States was removed from Annex B, as it never ratified the Protocol. Canada is no longer a Party to the Kyoto Protocol following its withdrawal, which became effective on 12 December 2012. Japan, New Zealand and the Russian Federation remain Parties to the Kyoto Protocol, but did not assume a second commitment period target. They are now listed, together with Canada, in a separate section in Annex B.

The 80% target listed for the European Union and its Member States in Annex B is accompanied by a footnote that clarifies that these commitments are based on the understanding that they will be fulfilled jointly by the European Union and its Member States. The 80% targets of Croatia and Iceland are likewise accompanied by footnotes clarifying that they will fulfil their targets jointly with the European Union and its Member States.

Addition of Nitrogen Trifluoride (NF₃)

The list of GHGs covered by the Kyoto Protocol, contained in its Annex, is extended with the addition of one gas: nitrogen trifluoride (NF₃). NF₃ is a potent GHG; its emissions are

currently only very small, but rising, and it has a global warming potential of 17200 (one tonne of NF₃ emitted into the atmosphere is equivalent to 17 200 tonnes of carbon dioxide).

Article 3(1quarter): ambition mechanism

The Doha Amendment provides for a simplified procedure, in a new Article 3(1quarter), which allows a Party to adjust its commitment by increasing its ambition during a commitment period. Previously, such an adjustment would be treated as an amendment to Annex B to the Protocol which requires consensus among all Parties to the Protocol for its adoption and ratification by three-fourths of the Parties for its entry into force. Following the Doha Amendment the process for increasing ambition has become much easier. An increase in ambition proposed by a Party in relation to its own target is considered adopted unless more than three-fourths of Parties object. Moreover, it no longer requires ratification for its entry into force.

Article 3(7ter): adjustment of assigned amounts

The Doha Amendment automatically cancels the assigned amount units of a Party if and to the extent that its assigned amount for the second commitment period exceeds its average emissions in the first three years of the preceding commitment period, multiplied by eight (the number of years in the second commitment period). This means that the Doha Amendment automatically adjusts a Party's target to prevent an increase in its emissions for the period 2013 to 2020 beyond its average emissions for the years 2008 to 2010.

3. THE PROPOSED COUNCIL DECISION

This proposal for a Council Decision provides the basis for the conclusion of the Doha Amendment by the European Union and sets out the terms of the joint fulfilment of the commitments by the European Union, its Member States and Iceland.

The draft decision

The proposal for the Decision confirms that the European Union and its Member States will fulfil their commitments jointly, including with Iceland (Article 2), and clarifies responsibilities for submitting reports to facilitate the calculation of assigned amounts by the Commission and the Member States (Article 3). In addition, it contains standard provisions on the responsibilities for depositing the instrument of acceptance of the Doha Amendment with the United Nations (Article 4), and on the joint deposition of the instruments of acceptance (Article 5(1)). Importantly, it requires Member States to take the necessary steps to complete their domestic ratification processes not later than 16 February 2015, as far as possible (Article 5(2)), and requires Member States to inform the Commission of the probable date of completion of the relevant procedures by 15 September 2014 (Article 5(3)).

The proposed Decision also contains two Annexes and an attachment. The attachment provides the full text of the Doha Amendment, as adopted in Doha and notified to Parties on 21 December 2012.¹³ An overview of key provisions in the Doha Amendment is provided in section 2 above. Annex I contains the 'Notification of the terms of the agreement to fulfil the commitments of the European Union, its Member States and Iceland under Article 3 of the Kyoto Protocol jointly', as required by Article 4(2) of the Protocol ('notification of the terms of joint fulfilment'). Annex II contains an updated declaration of competence by the European Union, to be made in accordance with Article 24(3) of the Kyoto Protocol.

¹³ Notification by the Secretary-General of the United Nations, acting in his capacity as depositary, C.N.718.2012.TREATIES-XXVII.7.c (Depositary Notification).

The notification of the terms of joint fulfilment (Annex I)

The notification of the terms of joint fulfilment in Annex I consists of three sections. The first section describes the members of the agreement as the European Union, its Member States and Iceland. The second section establishes how the members of the agreement will fulfil their commitments. The third section sets out the respective emission levels allocated to the Members of the agreement.

Joint fulfilment of the commitments under Article 3 of the Protocol

Article 4(2) of the Kyoto Protocol requires the Parties to a joint fulfilment agreement to notify the Convention secretariat of the terms of the agreement to fulfil jointly their commitments under Article 3. Section 2 of the joint fulfilment agreement describes in detail how these commitments under Article 3 of the Protocol, and any choices to be made thereunder, apply for the second commitment period. For all of the provisions that already applied during the first commitment period, the proposal continues the approach chosen by the European Union and the fifteen Member States that were part of the joint fulfilment agreement for the first commitment period. This includes the application of Article 3(3) and (4) of the Protocol at Member State level, the base year for the European Union being the sum of base year choices of the Member States, and the exclusion of international aviation (i.e. flights between Member States and flights between Member States and third countries) in line with the provisions of the Convention and the Protocol. The text in section 2 clarifies this. In addition, it also describes how Article 3(1quater) - the ambition mechanism - and Article 3(7ter) apply for the second commitment period.

Article 3(1quater): the ambition mechanism

The Doha Amendment provides for a simplified procedure, in a new Article 3(1quater) that allows a Party to adjust its commitment by increasing its ambition during a commitment period. Annex I to the draft ratification Decision clarifies that each Member State may individually decide to increase the level of ambition by cancelling relevant Kyoto units. A formal increase in ambition of the joint commitment of the European Union, its Member States and Iceland, and a resulting decrease in the joint assigned amount, can only be done jointly.

Article 3(7ter): adjustment of assigned amounts

The new Article 3(7ter) requires a Party's commitment for the second commitment period to be at least at the level of its average emissions for the years 2008 to 2010, and automatically strengthens targets that would otherwise allow emissions to increase above that average. The European Union, its Member States, Croatia and Iceland declared upon the adoption of the Doha Amendment that 'Article 3(7ter) will be applied to the joint assigned amount pursuant to the agreement on joint fulfilment by the European Union, its Member States, Croatia and Iceland and will not be applied to the European Union, its Member States, Croatia or Iceland individually.'¹⁴

As the application of Article 3(7ter) to the European Union, its Member States and Iceland jointly is a fundamental assumption in the Union's decision to ratify, it forms an integral part of the definition and ambition of the Union's commitment. Annex I of the draft ratification Decision therefore explicitly states that, as part of application of commitments under Article 3 of the Kyoto Protocol to the European Union, the Member States and Iceland, the calculation pursuant to Article 3(7ter) of the Protocol applies to the joint assigned amount of the second

¹⁴ Footnote 4, above.

commitment period and the sum of the average annual emissions of the members for the years 2008 to 2010 multiplied by eight.

An indicative estimate of the joint assigned amount for the second commitment period, based on currently available base year data and still applying global warming potentials of the second Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), would translate into an average annual assigned amount of approximately 4632 million tonnes of carbon dioxide equivalent (CO₂-eq) GHG emissions. The most recently reported average annual emissions of the European Union, its Member States and Iceland for the years 2008 to 2010 are 4782 million tonnes. Article 3(7ter) of the Protocol is therefore not expected to result in the automatic cancellation of assigned amount units for the European Union, its Member States and Iceland (see table).

Table: Application of Article 3(7ter) in the European Union and Iceland*

Base year emissions**	GHG emissions 2008	GHG emissions 2009	GHG emissions 2010	Average GHG emissions 2008, 2009 and 2010	Estimated annual average assigned amount 2013-2020
5 790	4 989	4 623	4 734	4 782	4 632
<p>* Based on 2013 inventory data and global warming potentials of the IPCC's Second Assessment Report</p> <p>** Assuming 1990 as base year for Cyprus and Malta</p> <p>All figures in Mt CO₂-eq.</p>					

Respective emission levels allocated to the members to the agreement

A common emission level for the EU ETS

Section 3 of Annex I describes how the respective emission levels are allocated to the European Union, its Member States and Iceland. This reflects the approach taken in the climate and energy package:

- A common emission level is defined for emissions from sectors and gases listed in Annex A to the Kyoto Protocol that are also covered by the EU ETS (i.e. included in Annex I to the EU ETS Directive and taking into account the application of its Articles 24 and 27)
- Emissions from sectors and gases listed in Annex A to the Kyoto Protocol that are not covered by the EU ETS and removals from sources covered by the Kyoto Protocol will be covered by the emission levels from individual Member States and Iceland.

This approach is different from that chosen for the first commitment period, where individual commitments identified for each Member State covered the full extent of their economy-wide emissions. This is because of the changes agreed in the climate and energy package, as of 1 January 2013, under which the EU ETS no longer operates through individual Member State targets and national allocation plans. It is implemented through a single Union-wide quantity of allowances or 'cap' and a harmonised system for the allocation of emission allowances through auction and transitional free allocations. Under this system it is not possible *ex ante* to

assign accurately shares of the EU ETS to individual Member States in the joint fulfilment agreement. The shift to auctioning - to promote economic efficiency, avoid windfall profits and to promote solidarity and growth - as the default method for allocating emission allowances is the primary reason for this. Other reasons include the impossibility to determine *ex ante* the actual allocation of EU ETS allowances to new entrants, and possible changes to the list of sectors and subsectors deemed exposed to a significant risk of carbon leakage.

As indicated above, international aviation is not covered under the common emission level for the EU ETS as it is not included in Annex A to the Kyoto Protocol.

Emission levels for the Member States and Iceland

Emissions in sectors included in the Kyoto Protocol that are not covered by the EU ETS will continue to be covered by emission levels set for individual Member States and Iceland. The difference with the first commitment period is that these emission levels are no longer presented as a reduction percentage compared to base year emissions, but as an absolute figure. This absolute figure, expressed in tonnes of carbon dioxide equivalent (CO₂-eq) is listed for each Member State in table 1 of Annex I. The figure for Iceland will be included upon the conclusion of a bilateral agreement with Iceland on the joint fulfilment of its commitment with the European Union and its Member States. The figure for individual Member States are equal to the sum of each Member State's Annual Emissions Allocation (AEA) under the Effort Sharing Decision for the years 2013 to 2020. This is calculated on the basis of the global warming potential values from the IPCC's Fourth Assessment Report, as set out in Annex II to Commission Decision 2013/162/EU¹⁵ and adjusted by [AEA update Decision – C(2013)7183]. This is further adjusted by the results of the application of Article 3(7bis) of the Kyoto Protocol¹⁶.

Nitrogen Trifluoride (NF₃)

The Doha Amendment includes NF₃ in the scope of the Kyoto Protocol. This inclusion was anticipated in the Monitoring Mechanism Regulation¹⁷, which requires the monitoring and reporting of NF₃ emissions. NF₃ emissions are however not covered under the EU ETS or the Effort Sharing Decision, and so they are not part of Member State targets under European Union legislation. As aggregate emissions of NF₃ in the Union are insignificant, the April 2012 submission of the European Union and its Member States to the Convention on its Kyoto Protocol commitment assumed these to be zero.¹⁸ This proposal for a Council Decision requires Member States to account for those emissions against the assigned amount of the Member State in which those emissions take place.

Land use, land-use change and forestry (LULUCF)

Article 3(3) and (4) of the Kyoto Protocol include emissions from land use, land-use change and forestry (LULUCF) in the Kyoto Protocol. The implementing rules agreed under the Kyoto Protocol, revised at the Durban Climate Change conference, require Parties with a

¹⁵ Commission Decision 2013/162/EU of 26 March 2013 on determining Member States' annual emission allocations for the period 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council, OJ L 90/106, 28.3.2013.

¹⁶ Article 3(7bis) of the Kyoto Protocol requires those Parties included in Annex B for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 to include in their 1990 emissions base year or period the aggregate anthropogenic CO₂-eq emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.

¹⁷ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change, OJ L 165, 18.6.2013, p. 13–40.

¹⁸ Footnotes 8 and 9 above.

commitment to account for emissions and removals from afforestation, reforestation and deforestation, as well as from forest management, as part of their commitment in the second commitment period. In addition, Parties may choose to account for emissions from cropland and grazing land management. While Parties are required to account for LULUCF emissions towards their commitments under the Kyoto Protocol, this is not the case in the European Union, where emissions from the LULUCF sector are included neither in the EU ETS nor in the Effort Sharing Decision. However, in May 2013, the European Parliament and Council did adopt Decision 529/2013/EU which establishes accounting rules on GHG emissions and removals resulting from activities relating to LULUCF and on information concerning actions related to those activities.¹⁹ This legislation brings the European Union LULUCF reporting into line with the Kyoto Protocol requirements.

Although emissions from individual Member States in the LULUCF sector are hard to project, estimates have shown that the LULUCF sector for the Union as a whole is likely to provide net LULUCF credits of around 1% of European Union base year emissions²⁰. The April 2012 submission of the European Union and its Member States to the Convention on its Kyoto Protocol commitment therefore assumed LULUCF emissions for the Union as a whole to be zero.²¹

In line with Member States' responsibility for forestry policy and given the absence of European Union targets for the LULUCF sector, Member States will need to account for LULUCF emissions and removals, to the extent that these are covered under the Protocol, against their individual emission levels. The inclusion of the LULUCF sector in the emission levels of Member States and Iceland is based on the assumption that no net emissions or removals occur in that sector. Any such emissions can, however, be compensated through over-performance in other sectors not covered under the EU ETS: through use of the Kyoto Protocol's flexible mechanisms and through the use of surplus emission rights carried over from the first commitment period held in that Member State's previous period surplus reserve (PPSR).

The Commission will closely monitor emissions and removals from the LULUCF sector in Member States. Should it become apparent that individual Member States face unexpected significant LULUCF emissions, even when implementing robust policies to limit them, the Commission will consider proposing a mechanism to assist those Member States affected.

The Council, in its March 2012 conclusions, acknowledged the particularities of richly-forested countries, especially as regards the limited possibilities to cover emissions from afforestation, reforestation and deforestation with growing forest management sinks.²² The Commission will continue to explore options with a view to finding a satisfactory solution that ensures environmental integrity.

Determining emission levels and assigned amounts

The Kyoto Protocol requires commitments to be translated into an assigned amount, which reflects the authorised amount of emissions, in tonnes of CO₂-eq, during a commitment period. This proposal for a Council Decision provides that the assigned amounts of the

¹⁹ Decision No 529/2013/EU of the European Parliament and of the Council of 21 May 2013 on accounting rules on greenhouse gas emissions and removals resulting from activities relating to land use, land-use change and forestry and on information concerning actions relating to those activities, OJ L 165/80 of 18.6.2013.

²⁰ Footnote 8, above.

²¹ Footnote 9, above.

²² Paragraph 9 of the Council conclusions of 9 March 2012 on the follow-up to the Durban climate conference.

European Union, its Member States and Iceland are equal to the respective emission levels that are defined in section 3 of its Annex I.

This proposal also provides for a joint assigned amount of the European Union, its Member States and Iceland, which reflects the joint quantified emission reduction commitment of 80 % of base year emissions. As determined by the relevant provisions of the Kyoto Protocol, the joint assigned amount will be calculated by multiplying the sum of base year emissions of the Member States and Iceland by 80 % (the joint commitment) and eight (the duration of the commitment period in years).

The joint assigned amount provides the basis for determining the individual assigned amounts of the European Union, its Member States and Iceland as follows:

- The respective assigned amount of each Member State and Iceland is the sum of the respective emission level as listed in table 1 of Annex I to the proposed Council Decision and the application of Article 3(7bis) of the Kyoto Protocol for that Member State or Iceland.
- The assigned amount of the European Union is the difference between the joint assigned amount, and the sum of the emission levels of the Member States and Iceland. The figure will be finalised in the light of the European Union's report to facilitate the calculation of the joint assigned amount.

The implementation of reporting obligations

The Kyoto implementing rules require Parties by 14 April 2015 to submit a report to facilitate the calculation of the assigned amount and to demonstrate the capacity to account for its emissions and assigned amount. Article 3 of this proposal for a Council Decision requires the Commission to prepare and submit the report to facilitate the calculation of the joint assigned amount of the European Union, its Member States and Iceland, as well as the assigned amount of the European Union (corresponding to the emissions covered under the EU ETS). The Member States and Iceland are each required to submit a report to facilitate the calculation of their respective assigned amounts, covering non-EU ETS emissions. These reports will be subject to a review, after which the assigned amounts are to be finalised and recorded in the compilation and accounting database. The reports to facilitate the calculation of the assigned amounts of the Member States and Iceland will express the assigned amount as equal to the emission level of that Member State or Iceland, both in tonnes of CO₂-eq and as a percentage of that Member State's or Iceland's base year emissions.

Further reporting obligations, including annual inventory reports, will continue to be fulfilled by the Commission (on behalf of the European Union) and the Member States. These are required by internationally agreed reporting requirements under the Kyoto Protocol and are implemented through the Monitoring Mechanism Regulation. The approach to joint fulfilment set out in this proposal for a Council Decision will require Member States also to report separately their emissions from sources and removals by sinks covered under the Kyoto Protocol from sectors not included in the EU ETS. Article 7 of the The Monitoring Mechanism Regulation already requires Member States to report annually on their EU ETS emissions, and the ratio of those emissions to the total reported emissions. The source of this data is provided by the EU Transaction Log (EUTL), which checks and records all transactions taking place within the EU ETS. Using data from the EUTL, the European Environment Agency (EEA) publishes aggregated data on the verified emissions, allowances and surrendered units broken down by Member State, sector, size and year in its EU ETS data viewer.²³ This same data is used for analyses of GHG emissions in various official reports,

²³ <http://www.eea.europa.eu/data-and-maps/data/data-viewers/emissions-trading-viewer>.

including the European Commission's annual report on progress towards European Union and international commitments, published pursuant to Article 21 of the Monitoring Mechanism Regulation,²⁴ and the EEA's annual reports on GHG emission trends and projections in Europe. Moreover, the data is also used in the European Union's annual GHG inventory report, adjusted for differences in coverage between the Kyoto Protocol and the EU ETS (excluding international aviation).

Declaration of competence (Annex II)

Annex II to the proposed Decision updates the declaration of competence made upon ratification of the Kyoto Protocol in 2002. It now lists all 28 Member States of the European Union, and reflects the entry into force of the Lisbon Treaty.

²⁴ Previous reports were issued under Article 5 of Decision 280/2004/EC, which was replaced by the Monitoring Mechanism Regulation.

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on the conclusion of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 192(1), in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) At the Doha Climate Change Conference in December 2012, Parties to the Kyoto Protocol ('the Kyoto Protocol') to the United Nations Framework Convention on Climate Change ('the Convention') adopted the Doha Amendment, establishing a second commitment period of the Kyoto Protocol, starting on 1 January 2013 and ending on 31 December 2020. The Doha Amendment amends Annex B to the Kyoto Protocol, setting out further legally-binding mitigation commitments for Parties listed in that Annex for the second commitment period, and amending and further stipulating provisions on the implementation of Parties' mitigation commitments during the second commitment period.
- (2) The Union and its Member States agreed to the Doha Amendment as part of a package that contains mitigation pledges under the Convention and the Kyoto Protocol by a broad range of countries and brings the share of global emissions covered by mitigation commitments for the period after 2012, both under the Convention and the Kyoto Protocol, to more than 80%.
- (3) A further essential element of that package is the consensus of the Parties to the Convention to adopt, by the end of 2015, a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, which should come into effect and be implemented from 2020. Negotiations on this legally binding instrument are on-going under the *Ad Hoc* Working Group on the Durban Platform for Enhanced Action.
- (4) The Doha Amendment is subject to acceptance by the Parties to the Kyoto Protocol, and will enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Convention Depository of an instrument of acceptance by at least three fourths of the Parties to the Kyoto Protocol. A total of 144 instruments of acceptance are required for the entry into force of the Doha Amendment.
- (5) The Council agreed, in its conclusions of 9 March 2012, to propose a joint quantified emission reduction commitment of 20% for the second commitment period of the Kyoto Protocol for the Union. That commitment was determined on the basis of the

Union's total greenhouse gas emissions allowed during the period 2013-20 under its climate and energy package.¹

- (6) The Council further agreed, in line with this approach, that the emission reduction obligations of individual Member States will not exceed the obligations agreed in Union legislation, and that the commitment will be based on the sum of base year emissions of Member States in accordance with the Kyoto Protocol. Accordingly, the Union and its Member States agreed at the Doha Climate Change Conference to a quantified emission reduction commitment that limits their average annual emissions of greenhouse gases during the second commitment period to 80% of the sum of their base year emissions. This is reflected in the Doha Amendment.
- (7) In line with the Council's conclusions of 9 March 2012, the Union has also offered to move to a 30% reduction by 2020 compared to 1990 levels, as part of a global and comprehensive agreement for the period beyond 2012, provided that other developed countries commit themselves to comparable emission reductions and developing countries contribute adequately according to their responsibilities and respective capabilities. This offer is reflected in the Doha Amendment.
- (8) The targets for the Union and its Member States are listed in the Doha Amendment with a footnote stating that those targets are based on the understanding that they will be fulfilled jointly by the European Union and its Member States, in accordance with Article 4 of the Kyoto Protocol. The Union, its Member States, Croatia and Iceland also issued a joint declaration upon the adoption of the Doha Amendment, expressing their intention to fulfil their commitments in the second commitment period jointly. This declaration is reflected in the Report of the Conference and was reiterated in the Council's conclusions of 17 December 2012.
- (9) In deciding to fulfil their commitments jointly in accordance with Article 4 of the Protocol, the Union and its Member States are jointly responsible, under paragraph 6 of that Article and in accordance with Article 24(2) of the Protocol, for the fulfilment of their quantified emission reduction commitments under Article 3(1bis) of the Kyoto Protocol. Consequently, and in accordance with Article 4(3) of the Treaty on European Union, Member States individually and collectively have the obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations resulting from action taken by the institutions of the Union, to facilitate the achievement of this commitment and to abstain from any measure that could jeopardise its attainment.
- (10) In the same declaration, the Union, its Member States, Croatia and Iceland also stated, in line with Article 4(1) of the Kyoto Protocol, which allows Parties to fulfil their commitments under Article 3 of the Kyoto Protocol jointly, that Article 3(7ter) of the Kyoto Protocol will be applied to the joint assigned amount pursuant to the agreement on joint fulfilment by the European Union, its Member States, Croatia and Iceland and will not be applied to Member States, Croatia or Iceland individually. The Council, at its meeting on 15 December 2009, welcomed a request by Iceland to fulfil its commitments under a second commitment period jointly with

¹ Legislation adopted on 23 April 2009, including Directive 2009/29/EC of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community and Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, OJ L 140, 5.6. 2009.

the Union and its Member States and invited the Commission to present a recommendation for the opening of the necessary negotiations on an agreement with Iceland that is in line with the principles and criteria set out in the Union's climate and energy package. The agreement with Iceland, concerning Iceland's participation in the joint fulfilment of the commitments of the Union, its Member States and Iceland in the second commitment period of the Kyoto Protocol sets out the terms of that participation.²

- (11) The Kyoto Protocol requires Parties that agree to fulfil their commitments under Article 3 of the Protocol jointly to set out in that agreement the respective emission level allocated to each of the Parties. The Kyoto Protocol requires the Parties to a joint fulfilment agreement to notify the Convention Secretariat of the terms of that agreement on the date of deposit of their instruments of ratification or approval.
- (12) In line with existing Union legislation, the respective emission level allocated to the Union covers the emissions of greenhouse gases under the Directive 2003/87/EC of the European Parliament and of the Council³, to the extent that those greenhouse gas emissions are covered by Annex A to the Kyoto Protocol.
- (13) The respective emission levels of the Member States and Iceland cover the remaining greenhouse gas emissions by sources and removals by sinks on their territories, where those sources and sinks are not covered under Directive 2003/87/EC but covered by the Kyoto Protocol. This includes all emissions from sources and removals by sinks from human-induced land use, land-use change and forestry activities covered by Article 3(3) and (4) of the Kyoto Protocol as well as all nitrogen trifluoride (NF₃) emissions.
- (14) The Commission should continue to explore options with a view to finding a satisfactory solution to address the particularities of richly-forested countries, especially as regards the limited possibilities to cover emissions from afforestation, reforestation and deforestation with growing forest management sinks, and which ensures environmental integrity.
- (15) In line with the Council conclusions of 9 March 2012 and the offer of the Union and its Member States to take on an 80 % target under the second commitment period, the emission levels of the Member States are equal to the sum of the annual emission allocations for 2013 to 2020 determined pursuant to Decision No. 406/2009/EC of the European Parliament and of the Council⁴. This amount, based on global warming potential values from the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, was determined under Annex II to Commission Decision 2013/162/EU⁵ and adjusted by [AEA update Decision – C(2013)7183]. The emission level for Iceland was determined in the agreement with Iceland.

² [reference to bilateral agreement with Iceland]

³ 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).

⁴ Decision No. 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

⁵ Commission Decision 2013/162/EU of 26 March 2013 on determining Member States' annual emission allocations for the period 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council, OJ L 90/106, 28.3.2013.

- (16) Pursuant to Regulation (EU) No 525/2013 of the European Parliament and of the Council⁶, Member States are required to report the actual or estimated allocation of verified emissions reported by installations and operators under Directive 2003/87/EC to the source categories of the national greenhouse gas inventory, where possible, and the ratio of those verified emissions to the total reported greenhouse gas emissions in the source categories. This enables Member States to report separately on the emissions covered by their own emission levels. The section on the Union assigned amount in the Union report should identify the amount of the emissions covered under the Union's assigned amount that occurred in each Member State.
- (17) The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol has decided that each Party with a commitment listed for the second commitment period should, by 15 April 2015, submit to the Convention Secretariat a report to facilitate the calculation of its assigned amount. The Commission should prepare the report to facilitate the calculation of the joint assigned amount of the Union, its Member States and Iceland. This report will also determine the assigned amount of the Union. The Member States and Iceland should submit their reports by 15 April 2015, which will determine their assigned amounts as equal to their emission levels as listed in Annex II to this Decision.
- (18) In order to underline the commitment of the Union and its Member States to a timely entry into force of the Doha Amendment, the Union, its Member States and Iceland should ratify it not later than 16 February 2015.
- (19) The Doha Amendment should be approved on behalf of the European Union,

⁶ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

HAS ADOPTED THIS DECISION:

Article 1

The Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change ('the Convention') agreed on 8 December 2012 in Doha is hereby approved on behalf of the European Union.

The text of the Doha Amendment is attached to this Decision.

Article 2

The Union and its Member States shall fulfil their commitments under Article 3 of the Kyoto Protocol and the Doha Amendment in accordance with the notification of the terms of the agreement to fulfil jointly the commitments of the European Union, its Member States and Iceland under Article 3 of the Kyoto Protocol ("the Notification"), set out in Annex I.

Article 3

1. The Commission shall prepare the report to facilitate the calculation of the joint assigned amount of the Union, its Member States and Iceland, and consequently the assigned amount of the Union, in accordance with the requirements of the Kyoto Protocol, the Doha Amendment and decisions adopted thereunder. The Commission shall submit this report to the Convention Secretariat by 15 April 2015.

2. The assigned amounts of the Member States and Iceland shall be equal to the emission levels set out in the Notification in Annex I. By 15 April 2015, Member States shall submit to the Convention Secretariat reports to facilitate the calculation of their assigned amounts, in accordance with the requirements of the Kyoto Protocol, the Doha Amendment and decisions adopted thereunder.

Article 4

1. The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union, the instrument of acceptance with the Secretary-General of the United Nations in accordance with Article 20(4) and Article 21(7) of the Kyoto Protocol, together with the updated declaration of competence set out in Annex II, in accordance with Article 24(3) of the Kyoto Protocol.

2. The President of the Council shall also designate the person(s) empowered to notify, on behalf of the Union, the Notification in Annex I to the Convention Secretariat in accordance with Article 4(2) of the Kyoto Protocol.

Article 5

1. Member States shall take the necessary steps with a view to depositing their instruments of acceptance simultaneously with the Union, and as far as possible not later than 16 February 2015. When depositing their instruments of acceptance of the Amendment, Member States shall notify, on their own behalf, the Notification in Annex I to the Convention Secretariat in accordance with Article 4(2) of the Kyoto Protocol.

2. Member States shall inform the Commission not later than 15 September 2014 of their decisions to accept the Amendment or, according to the circumstances, of the probable date of completion of the necessary procedures. The Commission shall, in cooperation with the

Member States, choose a date for simultaneously depositing the instruments of approval or acceptance.

Article 6

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President