

AGREEMENT

BETWEEN THE GOVERNMENT OF THE KINGDOM OF NORWAY

AND

THE GOVERNMENT OF THE KINGDOM OF SWEDEN

ON

A COMMON MARKET FOR ELECTRICITY CERTIFICATES

PREAMBLE

The Government of the Kingdom of Norway and the Government of the Kingdom of Sweden (hereafter the “parties”), have concluded this agreement pursuant to the memorandum of understanding of 27 June 2008 on the development of a market for electricity certificates, the agreement of 7 September 2009 between the Norwegian Minister of Petroleum and Energy and the Swedish Minister for Enterprise on the principles for the further development of a common market for electricity certificates, and the protocol of 8 December 2010 on work undertaken from the autumn of 2009 to December 2010.

The parties,

HAVING THE OPINION that a common electricity certificate market will benefit both parties in their efforts to promote renewable electricity production,

BEING DETERMINED to find solutions that prevent Norway’s accession from creating uncertainty in the existing Swedish electricity certificate market,

ACKNOWLEDGING that the framework for the system must be implemented in the national legislation of each party and that this will help to ensure predictability and confidence in the system,

CONSIDERING that the electricity certificate system is one of several factors that influence investments decisions, and that other framework conditions are important to ensure the proper functioning of the electricity certificate market based on market principles,

EMPHASISING that other public interests and natural and environmental conditions must be protected through the permit system for individual development projects,

TAKING INTO CONSIDERATION that any expansion of the market must not disrupt the existing electricity certificate market unnecessarily and that security of energy supply shall be an important factor in expansion assessments,

NOTING that a well-functioning grid is necessary to ensure that a common electricity certificate system promotes greater security of energy supply in the Nordic market, and noting the decisions made at the Nordic Council of Ministers for Energy meetings in Umeå in 2008 and Copenhagen in 2010 reflecting agreement to promote the continued development of strategic connections in the Nordic electricity grid,

BEING CONCERNED that the conditions applicable to market participants wishing to establish new production eligible for electricity certificates do not discriminate on the basis of nationality, without prejudice to national rules on the ownership of natural resources,

WISHING to establish a common system for promoting renewable electricity production through a common market for trade in electricity certificates,

BEING OPEN to the subsequent expansion of the electricity certificate market to include additional states,

SEEING THE NEED to regulate targets and obligations, the issue of electricity certificates, additional support, the design of the electricity certificate obligation, the exchange of information relating to the electricity certificate system, cooperation on the administration and development of the system, the coordination of information provided to the market, the use of progress reviews to discuss and agree material changes to the regulations governing electricity certificates, and the establishment of common institutions with responsibility for tasks connected to implementing and further developing the cooperation,

HAVE AGREED AS FOLLOWS:

PART I: INTRODUCTORY PROVISIONS

Article 1 Definitions

1. In this agreement, the following terms shall have the following meanings:
 - a) *electricity certificate*: a proof issued by a party confirming that one megawatt hour of electricity has been produced pursuant to national provisions in accordance with this agreement;
 - b) *Renewables Directive*: Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, as follows from the decision of the EEA Joint Committee regarding incorporation into the EEA Agreement;
 - c) *progress review*: the conduct of joint reviews and discussions between the parties concerning matters such as the need for amendment or adjustment of the regulations governing electricity certificates;
 - d) *annulment*: the cancellation of electricity certificates to comply with the electricity certificate obligation pursuant to Article 6 of this agreement.

**Article 2
Target and obligation**

1. The overall target for new renewable electricity production in the common electricity certificate market is 26.4 TWh by the year 2020.
2. The parties shall endeavour to annul electricity certificates corresponding to 13.2 TWh each by the year 2020. For the period from 1 January 2012 to 31 December 2035, each party shall endeavour to ensure the annulment of electricity certificates issued to plants approved pursuant to Article 4 following the entry into force of this agreement corresponding to 198 TWh.
3. If either party wishes to amend the target and obligation pursuant to paragraphs 1 and 2, this shall be done by agreement between the parties, and preferably in connection with a progress review pursuant to Article 8(1).
4. If either party wishes to introduce a new target specifying an increase in renewable electricity production after 2020 within the scope of the common electricity certificate market, the party shall consult the other party, and consideration shall be given to matters such as the effect on market participants and quota-setting. The party may then decide to introduce a new target, provided that the change does not have unreasonable consequences for the other party.

**Article 3
Common electricity certificate market**

1. The parties shall establish a common electricity certificate market as of the entry into force of this agreement. The common market shall require each party to ensure that electricity certificates issued in one country can be used to comply with the electricity certificate obligation in the other country.
2. Electricity certificates issued in Sweden prior to the entry into force of this agreement may be used to comply with the electricity certificate obligation in both countries after the entry into force of this agreement. The same shall apply to plants included in the Norwegian transitional system that are issued with electricity certificates after the entry into force of this agreement. Electricity certificates for plants approved after 2020 shall be tradeable in the common market, and may be used to comply with the electricity certificate obligation in both countries until 31 December 2035.
3. Pursuant to this agreement, each party shall adopt national provisions, including on the following:
 - a) the issue of electricity certificates for production eligible for electricity certificates taking place after the entry into force of this agreement and up to and including 31 December 2035;
 - b) the electricity certificate obligation that is complied with through the annulment of electricity certificates, with the final annulment taking place on the set annulment date in 2036.

PART II: FACILITATING A COMMON ELECTRICITY CERTIFICATE MARKET

Article 4
Entitlement to electricity certificates

1. The criteria for entitlement to electricity certificates shall be based on the principle of technology neutrality. Electricity certificates shall be issued for the production of electricity based on energy from renewable sources, and the starting point for defining energy from renewable sources shall be the definition used in the Renewables Directive. The owner of an approved plant shall be issued with one electricity certificate per megawatt hour of produced electricity.
2. A party may nevertheless decide that electricity certificates may be issued for the production of electricity from peat at plants located within the territory of that party, and such certificates shall be tradeable in the common electricity certificate market.
3. A plant must be approved by the country in which it is located before electricity certificates may be issued to the owner. Each party shall be free to decide that plants may be approved after 31 December 2020.
4. The owner of a plant that produces electricity based on energy from renewable sources and that starts production after the launch of the common electricity certificate market shall be entitled to the issue of electricity certificates for 15 years, but not beyond for the year 2035.
5. The owner of a plant that produces electricity based on energy from renewable sources shall be entitled to the issue of electricity certificates for 15 years, but not beyond for the year 2035, corresponding to the increased production following upgrades and expansions of the plant.
6. The owner of a plant which is included in Sweden's electricity certificate market upon the entry into force of this agreement shall be entitled to the issue of electricity certificates for up to 15 years after the start of the issue period in accordance with the rules applicable upon the entry into force of this agreement. Plants that are participating in Norway's transitional system shall be entitled to the issue of electricity certificates for up to 15 years after the start of the issue period.
7. Electricity certificates shall not be issued to plants other than those mentioned in paragraphs 4 to 6. However, rules on the approval of plants for the issue of electricity certificates that apply within the territory of a party upon the entry into force of this agreement, or that are adopted in connection with the entry into force of this agreement, may be retained, but shall be applied strictly.
8. Following the entry into force of this agreement, each party shall only be permitted to adopt new or amended criteria in the areas mentioned in paragraphs 5 and 7 after informing the contact point specified in Article 10 about the proposal. After receiving information, the other party shall be entitled, within three months, to give notice that the case is to be discussed by the council with the aim of agreeing a solution that is mutually acceptable to the parties. In such cases, the amendment shall not be implemented until the discussions have been completed and the parties have found an acceptable solution.
9. If a party is of the opinion that the application of the rules set out in paragraphs 5 and 7 is developing in an undesirable manner, the question shall be discussed by the committee pursuant to Article 12.

Article 5
Additional support

1. The basic principle shall be that electricity certificates shall constitute sufficient support for the promotion of investment in plants that produce renewable electricity. Accordingly, plants should not receive support in addition to electricity certificates. Nevertheless, electricity certificates may be combined with support from EU institutions.
2. Existing schemes that provide plants issued with electricity certificates with investment or operational support for electricity production, and that apply within the territory of a party upon the entry into force of this agreement, may be retained. Within six months of the entry into force of this agreement, the parties shall inform the contact point of the other party of any support systems that will be retained and that have been notified or reported pursuant to the state aid provisions of the EEA Agreement or EU law.
3. Following consultation, each party shall be permitted to decide to provide investment or operational support for electricity production at plants issued with electricity certificates. The consultation shall cover matters such as the consequences of the support, and its aim shall be to facilitate agreement between the parties on a mutually acceptable solution. If either party wishes to support a specific technology on an independent basis, this technology should not also be covered by the electricity certificate system.
4. However, the provisions in this article shall not be applied to existing or potential future investment or operational support that the parties provide through the tax system. If a party requests information on such support through the tax system, the other party shall provide this information. Each party should give due consideration to the other party's interests and should not, with regard to potential future investment or operational support, depart from the basic principle in paragraph 1 in a manner that materially alters the competition conditions for production eligible for electricity certificates in the two countries.

Article 6
Electricity certificate obligation and setting of quotas

1. Each party shall decide independently to whom the electricity certificate obligation shall apply, and what electricity consumption is to be included in the setting of quotas. Quotas for individual years shall be based on a linear escalation in the period to 2020.
2. The electricity certificate obligation shall generally be complied with by annulling electricity certificates on 1 April of each year. An issued electricity certificate shall remain valid until it is annulled. If electricity certificates are not annulled, the parties shall attach a fee to the electricity certificate obligation. Each party shall seek to set fees based on a fee structure that is identical in both countries.
3. Each party shall establish the electricity certificate obligation and electricity certificate quotas by law to achieve the target and obligation in Article 2. Adjustments or amendments of a party's legislation relating to the electricity certificate obligation and electricity certificate quotas shall preferably be made in connection with a progress review. Each party shall set its quotas with the aim of achieving the target and obligation in Article 2, and shall be both entitled and obliged to make the quota adjustments in the period to 2035 that are necessary to achieve this, following consultation with the other party.

Article 7
Registration and monitoring

1. Each party shall establish a system for issuing, transferring and annulling electricity certificates. The parties shall coordinate information registered about electricity certificates.
2. Each party shall appoint a registrar to maintain an electronic register of electricity certificates. The registers shall enable electricity certificates to be issued, transferred and annulled under the same conditions in the territories of the two parties.
3. Each party shall introduce requirements specifying the precise measurement data needed to issue electricity certificates.
4. Each party shall appoint authorities to approve plants, monitor the issue of electricity certificates and market participants subject to the electricity certificate obligation, and track the development of the market.
5. If the registrar is not a public authority, the parties shall appoint an authority to monitor the activities of the registrar.
6. The parties shall coordinate the publication of information in the common electricity certificate market.
7. The energy authorities of the parties shall prepare at least one joint report per year that collates statistics and analysis data on the development of the common electricity certificate market. The report shall be presented to the council described in Article 11.

Article 8
Progress reviews

1. The council established pursuant to Article 11 shall set dates for progress reviews. The first progress review shall take place by the end of 2015 at the latest. Unless the council decides otherwise, progress reviews shall thereafter take place every four years.
2. Decisions by the parties on matters affecting the material framework conditions for the electricity certificate market shall preferably be made in connection with progress reviews.

Article 9
Exchange of information and communication with the electricity certificate market

1. The parties shall inform the council of changes to general framework conditions that may materially affect competition conditions in the common electricity certificate market. This applies particularly to:
 - a) changes to the permit policy applicable to plants that produce electricity from renewable sources;
 - b) the principles for distributing the costs of connecting power stations to the grid between the producer and the grid owner;
 - c) legislative amendments that may affect the electricity certificate market.
2. The parties shall otherwise ensure the exchange of relevant information concerning the electricity certificate cooperation.

3. The parties shall establish a common communications strategy for measures affecting market participants, to create transparency in the market and ensure equal treatment in connection with the publication of market-relevant information.
4. The parties shall ensure that market-sensitive information is published as specified in paragraph 3.

PART III: INSTITUTIONS

Article 10 Contact point

The contact point for the purposes of Article 4(8), Article 5(2) and Article 13(2) shall be the government ministry responsible for electricity certificates within the territory of each party.

Article 11 Council

1. The parties shall establish a council to ensure that the common electricity certificate system functions and is developed in accordance with this agreement. The council shall comprise representatives at ministry level. Each party have at least one representative on the council. Each party shall have one vote on the council, and the council shall make decisions unanimously.
2. The council shall be responsible for matters such as facilitating the planning and implementation of progress reviews, conducting ongoing monitoring of the development of the electricity certificate market, analysing any needs for further development of the regulatory framework for the common electricity certificate system, exchanging information and preparing a common communications strategy pursuant to Article 9, and facilitating discussion of issues without triggering the dispute resolution mechanism described in Article 16.
3. The council shall meet at least once per year, unless the council itself decides otherwise. If special circumstances indicate that it is necessary, a party may call for a meeting of the council within 30 days. The council shall be subject to any additional provisions agreed by the two parties at any time. In the council, the parties may raise any matter related to the implementation and application of this agreement.

Article 12 Committee

1. The parties shall establish a committee comprising the representatives of the authorities of each country that are appointed pursuant to this agreement. In the committee, the energy authorities of the parties shall brief one another and discuss the design and application of the regulatory framework pursuant to Article 4(9).
2. The council shall formulate the committee's statutes.
3. The representatives on the committee shall provide the background materials the committee requires to perform its tasks.

4. Disagreements in the committee shall be submitted to the council.
5. Each party shall be granted full access to committee documents.

PART IV: FINAL PROVISIONS

Article 13 Third parties

1. The parties shall jointly consider requests by third-party countries to participate in the electricity certificate market. The inclusion of third-party countries in the electricity certificate market and the setting of conditions for inclusion shall require the agreement of both parties.
2. If a party wishes to utilise opportunities in the electricity sector pursuant to Articles 7 or 9 of the Renewables Directive on joint projects with other states, it shall inform the contact point of the other party pursuant to Article 10 of the plans. Such joint projects shall be permitted provided that the other party does not give notice within three months of receiving the information that the matter is to be discussed by the council with the aim of finding a solution that is mutually acceptable to the parties. In such cases, the plans shall not be implemented before discussions have taken place and the parties have found an acceptable solution.

Article 14 Notification pursuant to the Renewables Directive

1. The parties shall develop a common notification for the electricity certificate market pursuant to the Renewables Directive.
2. Reporting pursuant to the Renewables Directive shall be based on the principle that the electricity produced by plants included in the common electricity certificate market shall be divided equally between the two parties. Target achievement reporting pursuant to the Renewables Directive shall utilise data on the electricity certificates issued in each state to plants that start production after the entry into force of this agreement, but exclude data on peat-based electricity production.
3. If new peat-based production of electricity is initiated, or if electricity certificates are issued to the owners of plants not mentioned in Articles 4(4) and 4(5), such production or electricity certificates shall be excluded from the results of the host country in reports to the EU Commission or the EFTA Surveillance Authority. Accordingly, production eligible for electricity certificates from such plants may amount to a maximum of 13.2 TWh in each country.

Article 15
Cessation and amendment

1. This agreement shall cease to apply on 1 April 2036.
2. Either party may give written notice to the other party of its intention to terminate this agreement before 1 April 2036. Such notification shall include an explanation of the intention to terminate the agreement, and be followed by negotiations between the parties concerning settlement of the obligations outstanding between the parties, with the aim of agreeing a solution that is mutually acceptable to the parties as quickly as possible. This agreement shall not cease to apply until the parties have reached agreement on such a solution.
3. Any amendment of this agreement, including changes pursuant to Article 2(3), Article 13(1) and Article 15(2), shall require the approval of each party and enter into force once the parties have notified one another by an exchange of notes that their domestic constitutional requirements are met.

Article 16
Dispute resolution

1. If a dispute arises about the interpretation or application of this agreement, the parties shall seek to resolve the dispute through negotiations. If the dispute cannot be resolved through negotiations, it shall in the first instance be resolved by an arbitration tribunal if the other party requests this.
2. The arbitration tribunal shall have three members, unless the parties agree a higher number. Each state shall appoint one member. The remaining member or members shall be appointed jointly by the parties, and shall not be Norwegian or Swedish citizens or resident in Norway or Sweden. The parties shall jointly appoint the chairman of the arbitration tribunal. If the arbitration tribunal is split in its opinion, the opinion of the majority of the members shall apply. Each state shall cover half of the costs of the arbitration tribunal. Each state shall otherwise cover its own costs connected to the arbitration proceedings. If the parties do not agree on the appointment of the arbitration tribunal members, either party may request that these members be appointed by the president of the Permanent Court of Arbitration in The Hague.
3. Alternatively, if one of the parties so requests, the dispute shall be settled in accordance with the rules of the Permanent Court of Arbitration in The Hague of 20 October 1992 for arbitrating disputes between two states.

Article 17
Entry into force, etc.

1. This agreement shall enter into force on 1 January 2012, provided that both parties have notified one another by an exchange of notes, on 31 December 2011 at the latest, that their domestic constitutional requirements are met, and provided that the decision of the EEA Joint Committee regarding incorporation of the Renewables Directive into the EEA Agreement has entered into force.

UNOFFICIAL TRANSLATION

2. If this agreement does not enter into force on 1 January 2012, it shall enter into force on the first day of the second month after both parties have notified one another by an exchange of notes that their domestic constitutional requirements are met, provided that the decision of the EEA Joint Committee regarding incorporation of the Renewables Directive into the EEA Agreement has entered into force by 1 June 2012 at the latest.
3. If this agreement enters into force after 1 January 2012, electricity certificates issued prior to its entry into force shall be included in the Norwegian transitional system for approving plants eligible for electricity certificate and the existing Swedish electricity certificate market, respectively. Production eligible for electricity certificates at plants approved after 1 January 2012 but prior to the entry into force of this agreement shall be excluded from each party's target and obligation pursuant to Articles 2(1) and 2(2).
4. This agreement shall have the geographical scope which the EEA Agreement has in respect of each of the parties.

In witness hereof the undersigned, duly authorised thereto by their respective Governments, have signed this agreement.

Done in duplicate at Stockholm this 29th day of June 2011, in the Norwegian and Swedish languages, both texts being equally authoritative.

For the Government of
the Kingdom of Norway

For the Government of
the Kingdom of Sweden
