

Loi du 8 mars 2023 portant approbation de l' « Agreement between the Grand Duchy of Luxembourg and the Kingdom of Denmark on the statistical transfers of energy from renewable sources under directive 2018/2001/EC », fait à Luxembourg, le 3 octobre 2022.

Nous Henri, Grand-Duc de Luxembourg, Duc de Nassau,

Notre Conseil d'État entendu ;

De l'assentiment de la Chambre des Députés ;

Vu la décision de la Chambre des Députés du 8 février 2023 et celle du Conseil d'État du 28 février 2023 portant qu'il n'y a pas lieu à second vote ;

Avons ordonné et ordonnons :

Article unique.

Est approuvé l' « Agreement between the Grand Duchy of Luxembourg and the Kingdom of Denmark on the statistical transfers of energy from renewable sources under directive 2018/2001/EC », fait à Luxembourg, le 3 octobre 2022.

Mandons et ordonnons que la présente loi soit insérée au Journal officiel du Grand-Duché de Luxembourg pour être exécutée et observée par tous ceux que la chose concerne.

*Le Ministre des Affaires étrangères
et européennes,
Jean Asselborn*

*Le Ministre de l'Énergie,
Claude Turmes*

Palais de Luxembourg, le 8 mars 2023.
Henri

AGREEMENT

BETWEEN THE GRAND DUCHY OF LUXEMBOURG AND THE KINGDOM OF DENMARK ON THE STATISTICAL TRANSFERS OF ENERGY FROM RENEWABLE SOURCES UNDER DIRECTIVE 2018/2001/EC

This Agreement is entered into between:

The Grand Duchy of Luxembourg, represented by the Minister for Energy having its seat at 4, place de l'Europe, L-1499 Luxembourg, hereinafter referred to as "the Buying Member State",

and

the Kingdom of Denmark, represented by the Minister of Climate, Energy and Utilities, having its seat at Holmens Kanal, 20, DK-1060 Copenhagen K, hereinafter referred to as "the Selling Member State",

Hereinafter individually referred to as "a Party" or "the Party" and collectively as "the Parties",

WHEREAS:

1) Parties wish to enter into an agreement for the Statistical Transfer of the amount(s) of energy from renewable sources as specified in this Agreement from the Selling Member State to the Buying Member State under Article 8 of Directive 2018/2001/EC.

2) The Kingdom of Denmark shall use the payments from the Statistical Transfer primarily to co-finance any potential expenses that the Danish state will hold directly towards the Energy Island Project in the North Sea, including but not limited to preliminary site investigations and environmental assessments.

Secondly, if the Kingdom of Denmark will not hold all expenses directly towards the Energy Island Project up to the amount equal to the payments for the Statistical Transfers, the payments shall be used for renewable energy projects in general, including offshore wind, for instance, but not limited to, preliminary site investigations and environmental assessments for a possible second Energy Island Project in the Danish waters.

Lastly, if any funds remain from the payments from the Statistical Transfers, the payments shall be used for co-financing development of green gasses, including green hydrogen, bio-methane and green PtX-fuels, such as market development e.g. tenders and support for demonstration projects to mature technologies and develop scale.

CONCLUDE THE FOLLOWING:

Article 1 - Objective

(1) The objective of this Agreement is to provide a legal framework for the implementation of statistical transfers under Article 8 of Directive 2018/2001/EC.

(2) To achieve this objective the Selling Member State agrees to sell and the Buying Member State agrees to buy specified amounts of energy from renewable sources for the period 2021 to 2025, and particularly for the years 2022 and 2025 in view to reach the indicative trajectory foreseen in Article 4 of Regulation 2018/1999/EC.

(2) The Parties enter into this Agreement with the purpose of contributing to the cost-efficient achievement of the European Union's renewable energy trajectory.

Article 2 - Definitions

Pursuant to this Agreement the following terms are defined as:

a) Selling Member State: The Kingdom of Denmark as a Member State of the European Union which, as a party to this Agreement, shall statistically transfer the renewable energy target amounts to the Buying Member State according to this Agreement;

b) Buying Member State: Grand Duchy of Luxembourg, as a Member State of the European Union which, as a party to this Agreement, shall buy the renewable energy amounts under Directive 2018/2001/EC from the Selling Member State;

- c) Minimum Amount: an amount of Statistical Transfer of energy from renewable sources, as specified in Article 5 (1), which the Buying Member State irrevocably undertakes to buy and the Selling Member State irrevocably undertakes to sell;
- d) Maximum Amount: an amount of Statistical Transfer of energy from renewable sources, as specified in Article 5 (2), which the Selling Member State guarantees to sell and the Buying Member State may buy under this Agreement;
- e) Renewable energy amount(s): the statistical value of energy from renewable sources as mentioned in Article 8 of Directive 2018/2001/EC and reported as the national contributions to the Union trajectory for the share of energy from renewable sources in final energy consumption and for the purposes of the baseline envisaged in Article 3(4) of Directive 2018/2001/EC;
- f) Statistical Transfer: statistical transfer of a specified amount of energy from renewable sources from the Selling Member State to the Buying Member State in accordance with Article 8 of Directive 2018/2001/EC and pursuant to this Agreement.

Article 3 - Cooperation

- (1) The Parties shall at all times co-operate in order to establish and maintain the necessary and favorable conditions for the implementation of the Statistical Transfer.
- (2) National contact points are established to facilitate the implementation of this Agreement and deal with any matters arising in the course of the implementation. The contact point of the Selling Member State will be Head of Department of the Office of EU Affairs in the Ministry of Climate, Energy and Utilities. The contact point of the Buying Member State will be the Head of the Renewable Energy directorate at the Ministry, which is in charge of the energy sector of the Grand Duchy of Luxembourg, being on the date of the signature the Ministry of Energy and Spatial Planning of the Grand Duchy of Luxembourg.
- (3) The Selling Member State shall use the revenues received from Statistical Transfer to accelerate transition towards the use of renewable energy sources and more specifically for the Energy Island Project in Danish waters.

Each year not later than by December 31, the Selling Member State shall report to the Buying Member State the use of the revenues from Statistical Transfers in respect to the previous calendar year. If in respective year revenues are not used or used partially by the Selling Member State, such amount of unused revenues will be transferred to the next calendar year, the number of such transfers of unused revenues being not limited.

Article 4 - Obligations of the Parties

- (1) The Selling Member State guarantees the availability of the below-mentioned Minimum and Maximum Amounts of energy from renewable energy sources.
- (2) The Buying Member State shall disburse the due amounts for the transfers to the Selling Member State according to the terms laid down in this Agreement.

Article 5 - Specifications of Statistical Transfer

- (1) This Agreement covers the Statistical Transfer of a Minimum Amount of 2400 GWh of energy from renewable energy sources for the period 2021 to 2025.
- (2) In addition, the Buying Member State shall have the right but not the obligation to buy a Maximum Amount of 4800 GWh of energy from renewable energy sources statistically transferred for the period 2021 to 2025.
- (3) In respect to the individual years, the 2400 GWh of Minimum Amounts referred to in paragraph (1) and the 4800 GWh of Maximum Amounts referred to in paragraph (2) are the following:

	2021	2022	2023	2024	2025	Total
Minimum Amounts (GWh)	800	1200	0	0	400	2400
Maximum Amounts (GWh)	800	1500	1200	500	800	4800

(4) The Buying Member State shall determine whether or not it wants to exercise the option referred to in paragraph (2) of this article to have the additional amounts up to the Maximum Amounts, in whole or in part, statistically transferred to itself for the period 2021 to 2025 and shall notify the Selling Member State thereof before October 1 of the year $n+1$ in respect to a Statistical Transfer for the year n . At any time prior to this date, and as soon as qualitative data on energy from renewable energy sources are available, the Buying Member State is encouraged to notify the Selling Member State to reduce if the additional volume, the Maximum Amount, for a given is required.

(5) The Selling Member State will keep the additional volume, as referred to in paragraph (2) of this article reserved for The Buying Member State until at least October 1 of the year $n+1$ in respect to a Statistical Transfer for the year n . If the Buying Member State has given prior notice of reduction of that volume in accordance with paragraph (4), the Selling Member State is free to statistically transfer to any third party the reserved volume of energy from renewable energy sources, which the Buying Member State did not choose to exercise.

(6) If the Selling Member State, due to Force Majeure, is not able to notify the European Commission according to the terms of this Agreement, the Buying Member State is not obliged to make the payments as set out in this Agreement.

(7) This Agreement does not affect the Buying Member State's right to obtain statistical transfers of further volumes of energy from renewable sources, other than the volumes envisaged in paragraphs (1) and (2), from third parties.

Article 6 - Notification to the European Commission

(1) The Selling Member State shall notify the European Commission according to Article 8 of Directive 2018/2001/EC, in writing, specifying the exact amount of energy from renewable sources statistically transferred from the Selling Member State to the Buying Member State, as defined in Article 2 (b) of this agreement, as well as the corresponding price to be paid by the Buying Authority.

(2) The Buying Member State shall notify the European Commission according to Article 8 of Directive 2018/2001/EC, in writing, specifying the exact amount of energy from renewable sources statistically transferred from the Selling Member State to the Member State of which the Buying Authority is part as well as the corresponding price to be paid by the Buying Authority.

(3) The moment of informing the European Commission in accordance with paragraphs (1) and (2) of a Statistical Transfer for the year n shall be no later than 31 January of the year $n+2$.

(4) A copy of the notification shall be sent to the contact point of the other Party.

Article 7 - Price

The price per Renewable energy amount statistically transferred pursuant to this Agreement shall be € 13.80 (thirteen euros and eighty cents) per MWh. The same price shall apply for the minimum and additional amounts envisaged in paragraphs (1) and (2) respectively of article 5.

Article 8 - Payment(s)

(1) Buying Member State shall pay the due amount as set out in article 7 onto the following account:

Account owner: Danish Energy Agency

Address of the account owner: Carsten Niebuhrs Gade 43, Copenhagen, Denmark

Reg. no: 0216

Account number: 4069071767

IBAN: DK 3102164069071767

BIC/SWIFT: DABADKKK

(2) The payment of the due amount will take place in EURO no later than two months after the notification by the Selling Member State to the European Commission in accordance with Article 6(1) and (3) of this Agreement.

Article 9 - Responsibilities in case of non-compliance

(1) Parties assume the responsibility for any failure or refusal to perform their obligations under this Agreement other than for reasons of Force Majeure according to Article 11 of this Agreement.

(2) In case of non-compliance with any obligation under this Agreement a Party is obliged to compensate the injured Party fully for any damage incurred due to the non-compliance.

(3) The payment of such damages shall not limit the right to seek further compensation under this Agreement or otherwise.

Article 10 - Force Majeure

(1) Responsibility for non-performance or delay in performance on the part of any Party to this Agreement with respect to any obligations or any part thereof under this Agreement, other than an obligation to pay money, shall be suspended to the extent that such non-performance or delay in performance is caused or occasioned by *Force Majeure*, as defined in this Agreement.

(2) Force Majeure shall be limited to:

a) Natural disasters (earthquakes, landslides, cyclones, floods, fires, lightning, tidal waves, volcanic eruptions and other similar natural events or occurrences);

b) War between sovereign States where the relevant State has not initiated the war under the principles of international law, acts of terrorism, sabotage, rebellion or insurrection;

c) International embargoes against States other than the relevant State, provided, in every case, that the specified event or cause of the above mentioned types and any resulting effects preventing the performance by the relevant State of its obligations, or any part thereof, are beyond the relevant State's control.

(3) If a Party to this Agreement is prevented from carrying out its obligations or any part thereof under this Agreement (other than an obligation to pay money) as a result of Force Majeure, it shall notify in writing the other affected Party to which performance is owed at the earliest convenience. The notice must:

a) Specify the obligations or part thereof that cannot be performed;

b) Fully describe the event of Force Majeure;

c) Estimate the time during which the Force Majeure will continue; and

d) Specify the measures proposed to be adopted to remedy or abate the Force Majeure.

Following this notice, and for so long as the Force Majeure continues, (i) any obligations or parts thereof which cannot be performed because of the Force Majeure, other than the obligation to pay money, shall be suspended and (ii) any obligation to pay money in consideration of an obligation whose performance is suspended by Force Majeure, shall likewise be suspended.

Article 11 - Dispute Settlement

(1) The Parties shall take all possible steps in good faith in order to ensure that all disputes and disagreements arising in connection with the implementation of this Agreement, or related to this Agreement are settled by mutual negotiations between the Parties.

(2) The Party raising any dispute shall first serve a written notification of the dispute to the other Party (a "Dispute Notice"). If within 2 weeks of the service of a Dispute Notice (or such longer time as the Parties may agree in writing), the dispute is not settled, then either Party shall be entitled to refer the dispute for final and binding resolution to arbitration in accordance with paragraph (3) of this article 11.

(3) Any dispute, controversy or claim arising out of or relating exclusively to this Agreement, or the breach, termination or invalidity thereof, shall be settled by the European Court of Justice.

Article 12 - Confidentiality

(1) The Parties to this Agreement and their advisors are committed to confidentiality against third parties for all information and objects that are not to be notified to the European Commission according to Article 6 of this Agreement or have not been otherwise published and are conveyed in confidence by the other Party. The receiving Party shall not use any such information or objects for any purpose other than in accordance with the terms of this Agreement. The disclosure of confidential information or objects requires the express written consent by the conveying Party.

(2) The confidentiality clause excludes objects or types of information that:

- a) have been developed or are being developed by the receiving Party independently of the information;
- b) are part of the generally accessible state of technology or that reach this status without the fault of the receiving Party;
- c) is publicly known on the date this Agreement is concluded or at any time after that date becomes publicly known (otherwise than by breach of this Agreement by a Party or its authorized representatives);
- d) must be disclosed by a Party under applicable law (such as freedom of information laws or laws regarding the adoption and publication of a decision to enter into this Agreement), including by governmental order, decree, regulation or rule issued by any governmental authority or agency, tax authority, court of competent jurisdiction or arbitral tribunal or any other statutory or regulatory body;
- e) is disclosed by both Parties or one Party to a third party in accordance with the written consent of the other Party; or
- f) were already in the possession of the receiving Party at the time of entry into force.

The disclosure of information to the employees, officials, lawyers, auditors, advisors and/or authorized representatives of the Parties shall not be considered a breach of this Article 13, provided the relevant persons are bound by and observe confidentiality obligations at least equivalent to those stipulated herein.

The Parties shall agree the text of a press release to be published upon signing of this Agreement. Information contained in that press release shall not be considered confidential and shall not be subject to this Article 13.

Article 13 - Additions

(1) All additions and modifications to this Agreement, which will be numbered consecutively, shall be duly signed by both Parties. No addition or modification of this Agreement shall be effective or binding on either of the Parties hereto unless agreed in writing and duly signed by the Parties.

(2) If the mechanisms ensuing from Article 6 of Directive 2018/2001/EC are amended in the future, the Parties commit in good faith to adapt the content of this Agreement to the amended framework conditions as specified by European Union Law.

Article 14 - Entry into Force

This Agreement shall enter into force on the first day of the month following the month in which the Parties shall have completed an exchange of diplomatic notes informing each other that their respective constitutional requirements necessary for the entry into force of this Agreement have been fulfilled.

Article 15 - Termination and Interpretation

- (1) This Agreement shall remain in force until 1 July 2027 or until both Parties duly performed their contractual obligations under the present Agreement.
- (2) By way of exception, this Agreement can be terminated prematurely by mutual written arrangement of the Parties.
- (3) This Agreement is concluded in the English language.

In witness, whereof, the Parties, being duly authorized by their respective Governments, have signed this Agreement in Luxembourg on the 3rd of October 2022.

For the Grand Duchy of Luxembourg,

For the Kingdom of Denmark,

Claude Turmes
Minister for Energy

Dan Jørgensen
Minister for Climate, Energy and Utilities

