



**AGREEMENT**  
**between the Government of the Republic of Malta and**  
**the Government of the Republic of Estonia on the**  
**establishment of a framework for the statistical**  
**transfer of energy from renewable sources**

The Republic of Estonia, hereinafter referred to as “the Selling Member State”, and the Republic of Malta, hereinafter referred to as “the Buying Member State” (hereinafter individually referred to as “a Party” or “the Party” and collectively as “the Parties”), have agreed as follows:

**PART I**

**Objective and Definitions**

*Article 1*

*Objective*

(1) The objective of this Agreement is to provide a legal framework for the implementation of statistical transfers under Article 6 of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16). Directive 2009/28/EC shall be repealed with effect from 1 July 2021 whereupon references to said Article of the latter directive shall be construed to refer to Article 8, paragraphs 1, 4 and 5 of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast) (OJ L 328, 21.12.2018, p. 82–209).

(2) The Parties enter into this Agreement with the purpose of:

- a) contributing to the cost-efficient achievement of the European Union target to increase the share of energy from renewable sources to 20% by 2020, and to at least 32% by 2030;
- b) optimizing the balance of benefits from statistical transfers of renewable energy target amounts for both the Buying Member State and the Selling Member State.

## *Article 2*

### *Definitions*

Pursuant to this Agreement, the following terms are defined as:

- a) **Selling Member State:** the Republic of Estonia as a Member State of the European Union which, as a Party to this Agreement, intends to transfer the renewable energy target amounts to the Buying Member State according to this Agreement;
- b) **Buying Member State:** the Republic of Malta as a Member State of the European Union which, as a Party to this Agreement, intends to receive the renewable energy amounts for target compliance purposes under Directive 2009/28/EC, as carried forward under Directive (EU) 2018/2001, from the Selling Member State;
- c) **Directive 2009/28/EC:** Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC;
- d) **Directive (EU) 2018/2001:** Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable source (recast);
- e) **Renewable energy target amount:** the statistical value of energy from renewable sources as reported to the European Commission for the purpose of compliance with the mandatory national targets for the share of energy from renewable sources in final energy consumption as set out in the third column in part A of Annex I to the Directive 2009/28/EC, as reproduced in Annex I of Directive (EU) 2018/2001;
- 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 6 of Directive 2009/28/EC, which upon repeal shall be replaced by Article 8, paragraphs 1, 4 and 5 of Directive (EU) 2018/2001;
- g) **Renewable energy:** energy originating from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas or biogases, in any proportion or combination thereof as determined by the Selling Member State.

## **PART 2**

### **Obligations of the Parties**

#### *Article 3*

##### *Cooperation*

(1) The Parties shall at all times co-operate in order to establish and maintain the necessary and favourable conditions for the implementation of 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 shall be the Ministry of Economic Affairs and Communications of the Republic of Estonia, Suur-Ameerika 1, Tallinn, Estonia. The contact point of the Buying Member State shall be the Ministry for Energy and Water Management, Barrieria Wharf,

Valletta, Malta.

#### *Article 4*

##### ***Obligations of the Parties***

(1) The Selling Member State enters into an obligation to guarantee the availability of the energy target amounts for the Buying Member State as set out in Article 6 of this Agreement, and to notify the statistical transfer according to the terms of this Agreement to the European Commission within the deadline set out in Article 6, paragraph 2 of Directive 2009/28/EC, which upon repeal shall be construed to refer to Article 8, paragraph 4 of Directive (EU) 2018/2001.

(2) The Buying Member State agrees to remunerate the Selling Member State according to the terms laid down in Article 7 of this Agreement for each unit of renewable energy target amount notified by the Selling Member State according to paragraph 1 as being subject to a statistical transfer to the benefit of the buying Member State.

(3) The Selling Member State shall use the revenues received from statistical transfer to accelerate transition towards the use of renewable energy sources. This includes additional funds made available for new renewable energy and energy efficiency projects in various stages of development.

(4) By December 31 of every calendar year, 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 revenues are not used or used partially by the Selling Member State, such amount of unused revenues shall be transferred to the next calendar year, the number of such transfers of unused revenues being not limited.

### **PART 3**

#### **Specifications and Notification of Statistical Transfers**

##### *Article 5*

##### ***Specifications of Statistical Transfers***

The Selling Member State guarantees the availability of renewable energy target amount (fixed and optional quantities) for the price of €20/MWh.

##### *Article 6*

##### ***Fixed and Optional Quantities Subject to Statistical Transfer***

(1) The Parties agree to transfer 100 GWh of renewable energy for the price set out in Article 5, provided that the Buying Member State optionally reserves the right to request that such amount be reduced by up to 20 GWh, or increased by up to 40 GWh as required.

(2) The Buying Member State shall make a request, in writing, to the Selling Member State by February 28 of the year 2021, regarding the optional quantities to be transferred, referred to in paragraph 1, and confirming the total energy target amount to be transferred under this Agreement.

(3) The Buying Member State reserves the right to opt for up to 20 GWh of said total final energy amounts to be notified to the Commission with respect to the year 2021, with the balance being notified to the Commission with respect to the year 2020.

#### *Article 7*

##### *Notification to the European Commission*

(1) Statistical transfers as agreed between the Parties shall be notified by the Parties to the European Commission according to Article 6, paragraph 2 of Directive 2009/28/EC, which upon repeal shall be construed to refer to Article 8, paragraph 4 of Directive (EU) 2018/2001, specifying the exact amount of energy from renewable sources to be statistically transferred from the Selling Member State to the Buying Member State for each relevant calendar year measured, as well as the corresponding price paid by the Buying Member State.

(2) Each Party shall send a copy of the notification to the other Party's contact point at least a month in advance of the deadline provided for in Article 6, paragraph 2 of Directive 2009/28/EC, which upon repeal shall be construed to refer to Article 8, paragraph 4 of Directive (EU) 2018/2001.

#### **PART 4**

##### **Payments and Other Responsibilities**

#### *Article 8*

##### *Payments*

The Buying Member State shall disburse the due amount for the transfer of the total energy target amount to be transferred under this Agreement according to the request made by the Buying Member State under Article 6, paragraph 2 of this Agreement onto the account of the Selling Member State at the latest by 30 April of the year 2021, following the notification to the Commission for the amounts transferred in respect of the year 2020 according to Article 7, paragraph 1 of this Agreement by the Selling Member State.

#### *Article 9*

##### *Responsibilities in Case of Non-compliance*

(1) The Parties assume the responsibility for any failure or refusal to perform their obligations under this Agreement other than for reasons of *force majeure* as defined in 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 damages incurred due to the non-compliance.

## PART 5

### General Provisions

#### *Article 10*

##### ***Relationship Between This Agreement and Other International Obligations***

Nothing in this Agreement shall derogate from the rights or obligations of either Party under any relevant international treaty or rule of international law.

#### *Article 11*

##### ***Force Majeure***

(1) The responsibility for non-performance or delay in performance on the part of either 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 whereby the relevant State, being a party to the conflict, has not initiated the war under the principles of international law;
- c) Acts of terrorism, sabotage, rebellion or insurrection;
- d) 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 control of the relevant State.

(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. 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, any obligations or parts

thereof, which cannot be performed because of the *force majeure*, shall be suspended.

## Article 12

### *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 months of the service of a dispute notice, the dispute is not settled or good faith consultations have not taken place, then either Party shall be entitled to refer the dispute to arbitration in accordance with paragraph 3 of this Article.

(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 arbitration in accordance with the UNCITRAL Arbitration Rules.

(4) The following conditions shall apply:

- a) The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration at The Hague;
- b) The number of arbitrators shall be three;
- c) The place of arbitration shall be The Hague;
- d) The language to be used in the arbitral proceedings shall be English.

## Article 13

### *Confidentiality*

(1) The Parties to this Agreement 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 7 of this Agreement or have not been otherwise published and are conveyed in confidence by either 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) are publicly known 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) are disclosed by a Party under applicable law, including by governmental order, decree,

- regulation or rule issued by any governmental authority or agency, tax authority, court of competent law or arbitration or any other statutory or regulatory body;
- e) are 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.

#### *Article 14*

##### *Additions and Modifications*

(1) All additions and modifications to this Agreement, which shall be numbered consecutively, shall be duly signed by both Parties. The entry into force of such addition or modification of this Agreement is subject to the conditions set out in Article 15.

(2) As per Article 37 of Directive (EU) 2018/2001, the mechanisms ensuing from Article 6 of Directive 2009/28/EC shall be repealed and replaced by the mechanisms ensuing from Article 8, paragraphs 1, 4 and 5 of Directive (EU) 2018/2001. If the mechanisms ensuing from Article 8, paragraph 1, 4 and 5 of Directive (EU) 2018/2001 are subsequently amended, 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 15*

##### *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 16*

##### *Termination and Interpretation*

(1) This Agreement shall remain in force until 31 December 2021, or, should the Buying Member State opt to request that a portion of the total final of energy target amounts to be transferred under this Agreement be notified to the Commission with respect to the year 2021 as per the provisions of Article 6, paragraph 2 of this Agreement, the Agreement shall remain in force until 31 December 2022 or, in either case, shall remain in force until both Parties have 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 duplicate, both in the English and Estonian languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

IN WITNESS, whereof, the Parties, being duly authorized by their respective Governments,  
have signed this Agreement at Valletta on 24/1/2020

**For the Government of the  
Republic of Malta**

**For the Government of the  
Republic of Estonia**

  
**Michael Farrugia  
The Minister for  
Energy and Water Management**

  
**Taavi Aas  
The Minister of  
Economic Affairs and Infrastructure**