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Subject: EU ETS: Linking negotiations with Switzerland  
- Joint non-paper (comments from Switzerland)

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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THE EUROPEAN UNION**

**Brussels, 5 December 2013**

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**NOTE**

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from :	General Secretariat
to :	Delegations
Subject :	EU ETS: Linking negotiations with Switzerland - Joint non-paper (comments from Switzerland)

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Delegations will find attached two sets of comments by Switzerland on the earlier version of the Commission/CH joint non-paper on a draft Agreement (13373/13), as transmitted by the Commission. Annex I contains the Swiss comments on dispute settlement. Annex II contains the Swiss comments on the other chapters of the draft Agreement. The latest drafting suggestions by Switzerland are shown in track changes. Specific comments are set out in boxes.

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**Swiss position on Article 12 of the draft ETS Agreement  
5<sup>th</sup> of November 2013**

CHAPTER VI  
DISPUTE SETTLEMENT

Article 12  
Dispute Settlement

1. The Parties shall refer disputes on the interpretation or application of this Agreement arising between them to the Joint Committee for resolution.
2. Where the Joint Committee is unsuccessful in settling the dispute within six months after the referral to it, the dispute shall be referred, at the request of either a Party, to the Permanent Court of Arbitration in accordance with its Arbitration Rules 2012.

**Paragraph 2:** CH accepts the EU proposal to submit the dispute to the Permanent Court of Arbitration. Concerning the procedural rules for the arbitration, we propose to refer to the PCA Arbitration Rules 2012 as these Rules are for use in arbitrating disputes involving States and intergovernmental organization.

**Old Paragraph 3:** we deleted this paragraph because according to Art. 34 of the Arbitration Rules 2012 “All awards shall be made in writing and shall be final and binding on the parties”.

CHAPTER III  
INTERNATIONAL AVIATION

Article X

Collaboration on the administration of aircraft operators

The Parties shall collaborate in order to ensure that the administration of each aircraft operator is in line with the principle that one operator has one single administrator. For this purpose, Switzerland is considered in the linked system as an “Administering Member State” as defined in the EU ETS legislation and will cooperate accordingly.

We would like to keep this article. It should be avoided that in a linked ETS the same aircraft operators have to deal at the same time with a competent authority in the EU and the competent authority in Switzerland. For the Swiss ETS and the EU ETS each aircraft operator shall be administered only by one national authority (in line with article 18a of the EU ETS Directive). The competent Swiss authority will administer aircraft operators with a Swiss operating licence and aircraft operators from third countries whose flight emissions are mainly attributed to Switzerland. The administration of aircraft operators includes primarily the free allocation of emission rights and the enforcement of monitoring and compliance as well as possible sanctions. Monitoring plans, monitoring reports and free allocations of emission allowances that are approved by a national authority in the EU/EEA shall be accepted by the competent Swiss authorities and vice versa.

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**DRAFT AGREEMENT between the European Union and the Swiss Confederation on the linking of their greenhouse gas Emissions Trading Systems  
- comments from Switzerland**

THE EUROPEAN UNION,

(hereinafter referred to as ‘the Union’)

of the one part, and

THE SWISS CONFEDERATION,

(hereinafter referred to as ‘Switzerland’)

of the other part,

(hereinafter referred to as ‘the Parties’),

CONSCIOUS OF the global challenge presented by climate change and the international efforts required to reduce greenhouse gas emissions to combat climate change;

NOTING the international commitments, in particular the United Nations Framework Convention on Climate Change and its Kyoto Protocol, to reduce greenhouse gas emissions;

CONSIDERING THAT Switzerland and the Union share the objective of reducing greenhouse gas emissions significantly by 2020 and beyond;

RECOGNISING THAT Emissions Trading Systems are an effective tool for reducing greenhouse gas emissions cost-effectively;

CONSIDERING THAT linking Emissions Trading Systems to enable the trade of emission allowances between systems will help build a robust international carbon market and further reinforce the emission reduction efforts of the Parties who have linked their systems;

HAVING REGARD TO the Emissions Trading System of the Union, established by Directive 2003/87/EC as amended, and the Emissions Trading System of Switzerland, established by the CO<sub>2</sub> Act;

NOTING THAT this Agreement does not affect the provisions by means of which the Contracting Parties set their objectives for reducing greenhouse gas emissions not covered by their Emissions Trading Systems.

HAVE AGREED AS FOLLOWS:

CHAPTER I  
GENERAL PROVISIONS

Article 1  
Objective

This Agreement aims at linking the Emissions Trading System of the Union (hereinafter referred to as “EU ETS”) with that of Switzerland (hereinafter referred to as “ETS of Switzerland”).

Article 2  
Definitions

Emission allowances= general and aviation allowances issued in the ETS of Switzerland or the EU ETS

Non-discriminatory access

Minimum criteria

Union registry, Swiss registry, administrator

Account holders active in at least one of the linked emissions trading systems

Article to be revisited once the remainder of the agreement has been largely finalised.

Article 3  
Principles

1. Emission allowances that can be used for compliance under the Emissions Trading System (hereinafter referred to as “ETS”) of one Party shall be recognised for compliance under the ETS of the other Party.
2. Each Party shall provide non-discriminatory access through markets to emission allowances for account holders active in the ETS of the other Party.
3. [The Parties shall coordinate on:
  - a. Monitoring, reporting, verification,
  - b. surrendering, including compliance and enforcement;
  - c. Domestic and international credit rules;

- d. Banking and borrowing;
- e. Price interventions; and
- f. Aviation]

The possibility of other Parties joining this Agreement needs further discussions. Switzerland is not against this possibility per se, but consequently many institutional articles would have to be adapted (joint committee, dispute settlement, suspension and termination, linking agreement with third parties, etc.). In any case unanimity should remain the rule for decision-making at the joint committee (see article 10).

#### Article 4

##### Minimum Criteria

The ETS of the Parties shall meet the minimum criteria set out in Annex I.

## CHAPTER II

### TECHNICAL PROVISIONS

#### Article 5

##### Registries

1. The registries of the Parties must meet the minimum criteria defined in Annex I, Part C.
2. To operationalize the link between the EU ETS and the ETS of Switzerland, a direct link between the Union registry and the Swiss registry shall be established, which will enable the registry-to-registry transfer of emission allowances issued under either system.
3. The registry link shall, inter alia:
  - a. be administered for Switzerland by the Swiss Registry Administrator and for the Union by the Union Central Administrator.
  - b. operate in accordance with applicable laws in each jurisdiction.
  - c. be supported by automated processes integrated into both the Swiss registry and the Union registry to enable transactions.
  - d. be implemented so as to ensure consistent functionality to the extent possible for users of the Swiss registry and the Union registry.
  - e. only be suspended where necessary, for example for system maintenance or security or to ensure the integrity of the carbon market, and only in accordance with provisions contained in applicable Swiss and European Union legislations. The Parties shall give notice of a suspension of the registry link and shall make the suspensions as brief as possible.

4. The Parties shall act promptly and in close cooperation using measures available in their respective jurisdictions to prevent fraud and preserve market integrity. The Swiss Administrator, the Union Central Administrator and National Administrators from European Union Member States shall work together to minimise the risk of fraud, misuse or criminal activity involving the registries, to respond to such incidents, and to protect the integrity of the registry link.
5. Without prejudice to the minimum criteria for the registries set out in Annex I, Part C and paragraphs 3 and 4 of this article, the Parties through the Swiss Administrator and the Union Central Administrator shall determine common operational procedures related to technical or other matters necessary for the operation of the linking and taking into account the priorities of domestic legislation. If the Administrators cannot find a solution, the Parties may ask for an exchange of views in the Joint Committee.
6. Issues requiring resolution arising out of the implementation and operation of the registry link will be resolved through timely consultation by the Parties through the Swiss Administrator and the Union Central Administrator and in accordance with the determined common operational procedures.

Paragraph 5: the Agreement cannot contain an obligation that has to be fulfilled before its entry into force (“in advance of the registry link commencing operation”).

#### Article 6

#### Emission allowances

1. Regardless of the ETS in which an emission allowance has been issued, emission allowances for stationary installations shall be designated ‘general allowances’ and those for the aviation sector ‘aviation allowances’.
2. The ETS in which an emission allowance was issued shall be identifiable on the basis of the country code of the serial number of the emission allowance.
3. Each Party shall inform the other on an annual basis of the total holdings of emission allowances issued under the other system and the number of emission allowances issued under the other system surrendered for compliance or cancelled.
4. In order to reflect net flows of general allowances to the extent that such general allowances represent emissions (i.e. to the extent that such allowances have been used for compliance) between the systems, Parties will transfer and acquire as necessary Assigned Amount Units valid for the second commitment period at an agreed interval. The mechanism for such transfers shall be determined in an Annex to this Agreement agreed by the Joint Committee and adopted by the Parties following the entry into force of the amendment of the Kyoto Protocol. It shall include agreement on the management of the share of proceeds applied to international emissions trading.

Paragraph 4: CH agrees with the concept but the EU will do redrafting suggestion e.g. on “acquire as necessary” (as agreed at the expert meeting). Is it necessary to mention in the first sentence “allowances represent emissions”? Couldn’t we just say “allowances that have been used for compliance” instead?

When does the amendment of the Kyoto Protocol enter into force? What happens if it doesn’t enter



into force?

Article 7  
Auctioning

1. Each Party shall provide non-discriminatory access to auctions carried out within its ETS for account holders active in the ETS of the other Party.
2. Any auctioning platform used within the ETS of the Parties and the participants in these auctions must meet the minimum criteria set out in Annex I, Part C.
3. Switzerland intends to use an auctioning platform set up in the Union or one of its Member States under the EU ETS. If Switzerland does not auction on an auctioning platform appointed pursuant to the Auctioning Regulation, it shall appoint an auctioning platform pursuant to an open and competitive WTO-wide tender procedure, [without prejudice to the requirements of adequate supervision of the auctions by national competent authorities.]

**Paragraph 3:** Suggestion: if CH announces its intention to use an EU platform, we could get rid of the rest of this article.

If we keep the para and CH sets up its own auctioning platform, it would probably fall under WTO procurement rules anyway.

CHAPTER III  
INTERNATIONAL AVIATION

Article 8  
Coverage of International Aviation

~~Option 1 (EC): This Agreement shall come into effect once European Union legislation on climate impacts from aviation has been included into the Annex of the Agreement between the European Community and the Swiss Confederation on Air Transport<sup>1</sup> and is applied to flights departing and arriving from airports in the territory of Switzerland.~~

~~Option 2 (CH): Entry into force of this agreement is dependent on the inclusion of international aviation in both systems. To this end, the ETS of the Parties must meet the minimum criteria set out in Annex I.B.~~

This article needs further discussions.

The question on how aviation will be treated in the EU after ICAO meeting, and its repercussions on the relations Switzerland-EU, remains open.

For Switzerland all aspects including aviation shall be regulated in this Agreement and not in the Air Transport Agreement. This for several reasons:

- The ATA is part of the first bilateral agreement package between CH and EU, including the guillotine clause. It is therefore in a completely different institutional framework than this agreement.
- ETS is an environment file, regulated in the CO2 Act and not in the air transport act. The EU has also chosen to regulate the ETS in a single directive (the Directive was adopted on the basis of Art. 175 (now 192) TFEU).
- The ETS aviation should respect the same general principles as stationary ETS; these principles must be stated in the same agreement.
- In the Swiss legislation we would have two different logics: for the stationary ETS we have to respect minimum criteria, but for the aviation ETS we would have to incorporate EU acquis in the ATA and, consequently, in the CO2 Act.
- It would be a complicated task to “sort out” aviation specific articles from the EU ETS directive. Especially for overlapping topics like auctioning or registries.
- There would be a complicated structure with two separate Joint Committees. The definition of responsibilities and boundaries would be difficult and might lead to unnecessary frictions between the two agreements.

- There would be many institutional problems (What would happen e.g. in case of termination of the ETS agreement? Would the aviation ETS still be regulated in the air transport agreement?)

[Article X

Collaboration

The Parties shall collaborate in order to ensure a common administration of the aviation sector as set out in Annex I.B.]

We would like to keep this article for the moment. Depending on the scheme for aviation we will have a common implementation and therefore a strong collaboration in the aviation area will be crucial.

Article X

Transfer of aviation emission allowances to Switzerland for the year 2012

1. The Union shall transfer to Switzerland X aviation emission allowances to partially compensate its exclusion from the decision no. 377/2013/EU.
2. The transfer shall take place X months after the entry into force of this Agreement at the latest.

Switzerland prefers to keep this article. The MS should reply to the Commission before the conclusion of this Agreement.

CHAPTER IV  
DEVELOPMENT OF LAW

Article 9  
Development of Law

1. Parties shall notify each other in a timely manner of the development of new domestic legislation or amendments thereof [in an area]of relevance to this Agreement.
2. Following a notification pursuant to paragraph 1, either Party may request an exchange of views within the Joint Committee under Article 11(3).

CH proposes slight redrafting suggestions.

Article X  
Participation in the Committees

Without prejudice to the participation of other organisations, the Union shall allow representatives from Switzerland to attend the agenda items in committee meetings which are of relevance for this Agreement as observers.

Switzerland prefers not to delete this article, as proposed by the EU.

Both the EU and CH have an interest in CH to be an observer in the committees (WG III) to ensure that Switzerland has enough time and information to decide to amend its legislation or not in the same direction as the future new or amended EU-legislation, and this as quickly as possible. This would also spare time to the EU to organise special bilateral meetings with CH.

EU wrote: *“Finally, this is not common practice in other bilateral CH-EU agreements.”*: this is not correct. CH participates as observer to several Committees, e.g. MEDIA Committee or Group of coordinators for the recognition of professional qualifications.

Finally, especially if we have a common implementation for aviation purposes, it is relevant for CH but also for the integrity of the linked system, to be able to follow the discussions on the relevant topics.

CHAPTER V  
JOINT COMMITTEE

Article 10

Composition and functioning of the Joint Committee

1. A Joint Committee composed of representatives of the Parties is hereby established.
2. Either Party may request the convening of a meeting; the Joint Committee shall meet within [X days] of such a request.
3. The Joint Committee shall reach its decisions by mutual agreement.
4. The Joint Committee shall establish its rules of procedure which shall contain, inter alia, provisions on the convening of meetings, the appointment of a chairperson and the chairperson's term of office.
5. The Joint Committee may decide to set up any subcommittee or working group that could assist it in its work.

Paragraph 3: See comment on article 3.

Article 11  
Functions of the Joint Committee

1. It shall be the responsibility of the Joint Committee to administer this Agreement and ensure its proper implementation.
2. The Joint Committee may decide to adopt a new annex or an amendment of an annex of this Agreement.
3. The Joint Committee shall discuss amendments to this proposed by one of the Parties. If the Joint Committee agrees to the proposal, it shall submit the proposal to the Parties for adoption according to their respective internal procedures.
4. Upon a request made pursuant to article 9(2), the Joint Committee shall hold an exchange of views and take a position as to whether the proposed new legislation or amendments to existing legislation would result in the respective Party's ETS no longer meeting the minimum criteria set out in Annex I.
5. Upon notification of a suspension of or intention to terminate this Agreement in accordance with article 13, the Joint Committee shall hold an exchange of views and shall aim to find agreement to end the suspension or prevent the termination.
6. The Joint Committee shall aim to settle disputes arising between and referred to it by the Parties in line with article 12.
7. The Joint Committee shall only take decisions in the cases provided in this Agreement. These decisions shall be put into effect by the Parties in accordance with their international procedures.

**Paragraph 2 and 3:** CH prefers to have two different paragraphs because the procedure for the annexes and the Agreement is not the same. Furthermore, this would be a contradiction with other bilateral CH-EU agreements and the EEA agreement.

The agreement itself can only be amended following the "heavy" treaty adoption procedure: the JC cannot modify it.

**Paragraph 7:** The JC has to be a general competent organ, so the list of its functions shall not be exhaustive. We redrafted this paragraph to make sure that the JC can only take decisions if this is foreseen in the Agreement, and that the decision of the JC shall be adopted by the Parties in accordance with their procedures.

EU wrote: "*It is crucial to agree on which acts of the JC are legally binding within the agreement.*": Acts of the JC are the expression of the agreement between the representatives (competent organs) of Switzerland and the EU in the JC. The decision of the JC will become legally binding only when the Parties have adopted it, according to their internal procedures.

## CHAPTER VI

### DISPUTE SETTLEMENT

#### Article 12

Dispute Settlement

3. The Parties shall refer disputes on the interpretation or application of this Agreement arising between them to the Joint Committee for resolution.
4. Where the Joint Committee is unsuccessful in settling the dispute [within certain delay], the dispute shall be referred, at the request of either of the Parties, to [an arbitration tribunal according to Annex II][the Court of Justice of the European Union]for resolution.
5. The decisions of thedispute settlement bodytaken pursuant to this article shall be legally binding on the Parties.

**Paragraph 2:**

EU wrote: “*We believe we should refer to the Court of Justice of the European Union as dispute settlement mechanism to ensure coherence with the future institutional framework agreement.*”: comment of CH: the future institutional framework doesn’t give the ECJ any decisional power. It is merely foreseen that the ECJ will give its interpretation of the relevant EU acquis. The JC will remain responsible of the dispute settlement. Please note that this solution is foreseen for market access agreements only, that it needs to be further foreseen in both negotiation mandates (the EU hasn’t a negotiation mandate yet) and that it has to be definitely accepted by both Parties after negotiations. It is not sure yet, that this will be the final future institutional framework.

In any case, this framework cannot be applied to the ETS Agreement because it is not a market access agreement and because any EU acquis will be integrated in this Agreement.

We propose an arbitration procedure according to Annex II, which has to be defined yet.

**Old Paragraph 3:**an agreement cannot have effects after its termination.

CHAPTER VII  
TERMINATION

Article 13

Suspension and Termination

1. A Party may terminate this Agreement at any time by notifying the other Party of its decision in writing and after consultation within the Joint Committee. The termination shall take effect [X months] after the notification has been made to the other Party. The decision shall be made public after the notification has been made to the other Party.
2. Without prejudice to paragraph 1, a Party may suspend this Agreement in the following circumstances:

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- a. Where the other Party adopts changes to its ETS, whereby its system no longer meets the minimum criteria set out in Annex I.
  - b. Where the other Party informs the Party in writing of its intention to link its ETS to that of a third Party, and the Party does not consent.
  - c. Where the other Party fails to inform the Party of its intention to link its ETS to that of a third Party.
  - d. Where the other Party imposes restrictions on the compliance use of emission allowances originating from the Party's system.
  - e. Where the other Party fails to provide non-discriminatory access to emission allowances through markets for operators active in the ETS of the other Party.
  - f. Where the other Party announces its intention to terminate this Agreement.
  - g. Where the other Party announces its intention not to prolong or abolish its ETS.
3. A Party shall notify its decision to suspend the Agreement in writing to the other Party together with a justification for this suspension. The decision shall be made public after the notification has been made to the other Party.
4. A Party's decision to suspend the agreement shall be of a temporary duration of X months. The Party may decide to shorten or extend the duration of the suspension. ~~Option 1: During suspension, allowances originating from a Party's ETS cannot be surrendered for compliance in the ETS of the other Party~~  
~~[Option 2: During suspension, allowances originating from a linked ETS cannot be transferred to the ETS of the Party requesting the suspension.]~~

**Paragraph 1:** We agree that appropriate delay requires further consideration.

**Paragraph 2:**

EU wrote: "*Suspension must remain available on announcement, as otherwise the usefulness of suspension is greatly diminished.*": this is not correct because the dissuasive effect is due to the fact that a Party knows that if it adopts changes to its ETS, the other Party can suspend the Agreement. The suspension has to be limited to changes that are really decided, and not on ideas that maybe will never be applied.

Let. (e): see comment on article 3.

Let.(g): what do you mean by "extend"? To extend the duration or the sectors covered by the ETS?  
Would prolong fit better?

**Paragraph 4:** We agree with EU proposal.

**Paragraph 5:** we propose Option 1, meaning that during suspension, compliance is not permitted but the transfer of the allowances should continue. We reformulated this Paragraph because it is not important to know which Party requested the suspension. In fact, during suspension, also the allowances originating from the Party requesting the suspension cannot be surrendered for compliance in the ETS of the other Party.

Article X

Consequences of Termination

**Note:**

Further discussions are needed.

CHAPTER VIII  
FINAL PROVISIONS

Article 14

Implementation

The Parties shall take all appropriate measures to implement the decisions of the Joint Committee and follow its recommendations and positions.

Article 15

Linking Agreement with third Parties

1. The Parties to this Agreement may negotiate jointly or unilaterally with a third Party to establish a link between the ETS of the Parties of this Agreement and the ETS of the third Party.
2. Where a Party negotiates unilaterally with a third Party with the intention to establish a link between its ETS and the ETS of the third Party, the former shall inform the other Party to this Agreement thereof and regularly update it on the status of the negotiations.
3. A Party to this Agreement may only establish a link of its ETS with the ETS of a third Party if it has notified the other Party to this Agreement X months in advance in writing of the establishment of this link and the other Party has not rejected this new link within X months from the notification.

**Paragraphs 1 and 2:** See comment on Art. 3.

**Paragraph 3:**

It is necessary to specify what you mean by “sufficiently in advance”. We propose to define a time framework (“X months in advance”).

In order to be sure that the other Party has a fixed time framework to reject the link (and consequently, that the Party which wants to establish a link with a third Party knows until when it has to wait before to establish the link), it is necessary to specify the delay for the



rejection.

Article 16

Annexes

The Annexes to this Agreement are an integral part of it.

Article 17

Languages

This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, Gaelic, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

Article 18

Ratification and Entry into Force

1. This Agreement shall be concluded for an indefinite period, unless terminated in accordance with article 13.
2. This Agreement shall be ratified or approved by the Parties in accordance with their respective internal procedures.
3. Without prejudice to specific arrangements for the aviation sector laid down in article 8, this Agreement shall enter into force on the 1 January following the completion of the internal procedures necessary for ratification by both Parties.

**Annex I**

**Minimum Criteria**

**Note:** Did not acceptor reject any changes (with the exception of calculation of the cap) at this stage as minimum criteria to be further developed during technical meeting with Swiss in September. Added some proposals for inclusion. Further discussion is required on carry-over from voluntary to mandatory system in Switzerland.

**Question for clarification from Swiss:** why has the format of the annex been changed – previous version four columns?

**A. Minimum Criteria for Stationary Installations**

	<b>Minimum Criteria</b>
The mandatory nature of the participation in the ETS and its coverage (sectors and gases, including size of installation/ minimum criteria);	
Stringency of Target	
The calculation of the cap;	
The level of ambition (reduction trajectory (beyond 2020 and consequences of not	

having it));	
The use of international offsets and quality restrictions;	
Banking and Borrowing	
The auctioning rules;	
The free allocation using uniform benchmarks;	
The Monitoring and Verification rules (including accreditation of verifiers);	
The level of the sanctions.	
International Credits	
Excessive price fluctuations	
New entrants	
VAT Treatment	
Market Supervision/Oversight (Mifid/Mad)	

**B. [Aviation]**

We consider it premature to add/discuss any language on aviation in the annexes before no agreement has been reached on article 8.

CH: we propose to keep this text in brackets and not delete it since it could provide useful elements for new future approaches.

[All references to aviation are subject to change depending on further developments of the EU legislation in this respect (e.g. depending on resolutions of the ICAO Assembly in Autumn 2013.)]

**i. Minimum Criteria for Aviation**

[Pursuant to article 4(1), the following elements are considered as being minimum criteria as regards the aviation sector:

- Covered flights: The following flights have to be covered :
  - Domestic flights
  - Flights within EU/EEA/CH
  - [Flights from/to third countries]
- Exceptions: The following exceptions from the above-mentioned principles can be foreseen:
  - Exceptions foreseen in Annex I of the EU ETS Directive<sup>1</sup>
  - Flights of aircraft operators with total annual emissions lower than 10'000 tonnes per year or fewer than 243 flights per period for three consecutive four-month periods
- Cap: The cap until 2020 is not higher than 95 percent of the historical emissions of the considered flights in the period 2004-2006.
- Free allocation of emission allowances: The number of emission allowances allocated free of charge to aircraft operators is calculated based on the EU/EEA-benchmark for tonne-kilometres<sup>2</sup>.
- Auctioning: The emission allowances not allocated free of charge have to be auctioned.
- Use of CERs and ERUs:
  - Quality: quality requirements of the EU ETS Directive<sup>3</sup>
  - Quantity: at least 1.5% of the verified emissions, at most 50% of the reduction below the historical emissions (Ø 2004-2006).
- Monitoring, verification and accreditation: Monitoring, verification and accreditation must comply with the general requirements laid down in the EU ETS Directive<sup>4</sup>.
- Sanctions: The sanction in case of non-compliance must be not lower than 100 Euro or 125

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<sup>1</sup>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 of 25.10.2003, p. 32), as last amended by Directive 2009/29/EC of 23 April 2009 so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community(OJ L 140 of 23.04.2009, p. 63).

<sup>2</sup>2011/638/EU: Commission Decision of 26 September 2011 on benchmarks to allocate greenhouse gas emission allowances free of charge to aircraft operators pursuant to Article 3e of Directive 2003/87/EC of the European Parliament and of the Council.

<sup>3</sup>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 of 25.10.2003, p. 32), as last amended by Directive 2009/29/EC of 23 April 2009 so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community(OJ L 140 of 23.04.2009, p. 63).

<sup>4</sup>ibid

Swiss Franc per tonne of CO<sub>2</sub>. An operating ban as measure of last resort needs to be foreseen.

ii. **Technical provisions on international aviation and cooperation**

1. Technical provisions / cooperation

- Attribution of flights between Switzerland and EU/EEA and vice versa: The flights are attributed to the two systems according to the departing flight principle. Flights departing from Switzerland are attributed to the ETS of Switzerland, flights departing from EU/EEA are attributed to the EU ETS. Consequently, the revenues from auctioning are attributed based on the same principle.

Vols au départ ou à destination de l'aéroport de Bâle-Mulhouse : L'attribution des vols à l'Etat membre responsable est régie par le droit national sous lequel s'effectue le vol.

- Administration of aircraft operators: For the Swiss ETS and the EU ETS each aircraft operator is administered only by one national authority (in line with article 18a of the EU ETS Directive<sup>1</sup>). In case of aircraft operators from EU/EEA/CH the state which granted the operating licence shall administer the operator. In case of aircraft operators from third countries, the state with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator in the base year (2010) shall administer the operator. If the administrative responsibility passes on from a national authority to the Swiss authority, operators that do not have a Swiss operating licence may choose to remain with the original administering state until 2020 at the latest.

Monitoring plans, monitoring reports and free allocations of emission allowances that are approved by a national authority in the EU/EEA will be accepted by the Swiss authorities and vice versa.

For the purpose of free allocation of emission allowances to the administered aircraft operators, emission allowances have to be transferred from the Union registry to the registry of Switzerland or vice versa (see articles 5 and 6).

- Mutual recognition of accredited verifiers: Both Contracting Parties mutually recognize their accredited verifiers.
- Collaboration with Eurocontrol: The European Commission ensures that the necessary data in order to determine the small emitters in the whole EU/EEA/CH area and to calculate the cap for the ETS of Switzerland is provided in due time by Eurocontrol.]

**C. Minimum Criteria for Registries and Auctioning**

Minimum Standards [to be developed]

E.g. Data Exchange Standards (DES) of the UNFCCC, version XYZ

DES for the communication between the secondary transaction log of Switzerland and the transaction log of the Union [to be elaborated]

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<sup>1</sup>See footnote 1.

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Security requirements

Description	CH-ETS	EU-ETS
2-factor authentication	Yes (mandatory)	Yes ()
4-eyes-principle	Yes (mandatory)	Yes ()
Safety delay	NO	Yes
Holding accounts (Trusted account list)	NO	Yes
Trading accounts	Yes	Yes
Hiding of serial numbers	Planned	Yes
SMS Tan for transactions		Yes
...		

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