



Council of the  
European Union

054131/EU XXVI. GP  
Eingelangt am 14/02/19

Brussels, 14 February 2019  
(OR. en)

17418/13  
DCL 1

ENV 1171  
ENER 567  
IND 363  
COMPET 907  
MI 1135  
ECOFIN 1121  
TRANS 655  
AELE 78  
CH 55

#### DECLASSIFICATION

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of document:	ST 17418/13 RESTREINT UE/EU RESTRICTED
dated:	5 December 2013
new status:	Public

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

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

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Delegations will find attached the latest comments/replies from the Commission to the Swiss suggestions on the Commission/CH joint non-paper on a draft Agreement, as transmitted by the Commission. The latest drafting suggestions by the Commission are shown in track changes. Specific comments are set out in boxes.

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

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;

[CONCIOUS THAT linking of Emission Trading Systems requires access to as well as exchange of sensitive information between the Parties and therefore appropriate security measures],

NOTING THAT this Agreement does not affect the provisions by means of which the 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 links the Emissions Trading System of the Union (hereinafter referred to as “EU ETS”) with that of Switzerland (hereinafter referred to as “ETS of Switzerland”).

EC Comment: Difficult to determine when the systems are linked (who would take this decision and on what basis?). Therefore replaced 'aims at' with 'links' and clarified in article 17 on ratification that the instrument of ratification will only be deposited once all conditions for linking will have been fulfilled.

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

"Sensitive information" means information and material whether in oral, visual, electronic, magnetic or documentary form, including equipment and technology, which has been provided by or exchanged between the Parties in connection with this Agreement and (i) the unauthorised disclosure of which could cause varying degrees of damage or harm to the interests of Switzerland, the Union or one or more of the Member States of the Union; (ii) which requires protection against unauthorised disclosure in the security interests of one of the Parties; and (iii) which bears a sensitivity marking assigned by one of the Parties.

"Handling" includes generating, processing, storing, transmitting or destroying the sensitive information or any information contained therein.

EC Comment: 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 Parties.
2. Each Party shall provide non-discriminatory access through markets to emission allowances for account holders active in the ETS of at least one 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]

EC Comment: Open issue: bilateral vs multilateral
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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:

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- 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.
4. The Swiss Registry Administrator, the Union Central Administrator or both Administrators jointly may suspend the registry link for system maintenance, security breach or security risk 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.
  5. 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.
  6. 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 fail to reach an agreement on common operational procedures, the Parties may ask for an exchange of views in the Joint Committee.
  7. 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.

### EC Comment:

Para 4 (ex para 3(e)): adapted wording to the wording in the Registries Regulation

Para 7 (ex para. 5): Slight rewording

## Article 6

### Emission allowances and accounting

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 to the registry administrators and the account holders 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 between the systems to the extent that such general allowances have been used for compliance, Parties will transfer or receive where necessary to reflect Kyoto Protocol emissions, 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.

EC Comment: Redrafted para. 4 as requested by CH.

Article 7  
Auctioning

1. Each Party shall auction all allowances originating from its system, which are not allocated free of charge.
2. Each Party shall provide non-discriminatory access to auctions carried out within its ETS to operators under either ETS..
3. 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 D.
4. Results reports setting out at least the overall volume and aggregated prices of the auctions shall be published on the website of the entity in charge of auctioning on a regular basis. These reports shall cover at a minimum the following aspects:
  - a. volume sold in total and broken down to channels,
  - b. average price, including an indicator for the deviation from the relevant secondary market price,
  - c. total revenue.

A template for tables to be included in the results reports is provided in Annex II.

EC Comment: Article has been reworded in a multilateral manner and provides the possibility to Switzerland to use the common auction platform. Added paragraphs on free allocation and results reports.

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.

EC Comment: Reintroduced the two options.

Article 9  
Collaboration

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 ETS. 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.

EC Comment: We can accept the article on collaboration.

EC Comment: We reject any compensation claims for stop-the-clock.

[CHAPTER IV

SENSITIVE INFORMATION AND SECURITY

Article 10  
Sensitive information

Without prejudice of the respective laws and regulations of the Parties, each Party shall protect sensitive information, in particular against unauthorised disclosure or integrity loss, in accordance with the sensitivity levels and handling instructions defined in Annex III.

Article 11  
Sensitivity levels



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1. Each Party is solely responsible for marking information it releases as sensitive and for downgrading or removing the level of sensitivity of information it released. Where sensitive information is released jointly by the Parties, the Parties shall agree together on the marking and the level of sensitivity, as well as the downgrading and removal of the level of sensitivity.
2. Sensitive information shall be marked ETS CRITICAL, ETS SENSITIVE or ETS LIMITED in accordance with its level of sensitivity. The level of sensitivity of information shall be determined by the sensitive information originator of the releasing Party in accordance with Annex III.
3. The sensitive information originator of the releasing Party should downgrade sensitive information to a lower sensitivity level as soon as information ceases to require a higher degree of protection or remove the sensitivity status as soon as the information no longer requires protection against unauthorised disclosure or loss of integrity.
4. The releasing Party shall inform the recipient Party of any new sensitive information and its associated level of sensitivity, as well as of any downgrades in sensitivity level or removals of sensitivity status.
5. A shared sensitive information list shall be established and maintained by the Parties.

### Article 12 Security Oversight

1. For Switzerland, the ..... shall oversee the implementation of the provisions in this Chapter and Annex III.
2. For the Union, the Director responsible for the European Carbon Market shall oversee the implementation of the provisions in this Chapter and Annexes III and IV.]

EC Comment: We consider it necessary to include a chapter on sensitive information handling and security oversight. Whilst the detailed provisions of the relevant Articles and the corresponding Annex still need to be finalised, we believe the Annex should at least include provisions on sensitive levels and their determination and handling instructions. We forwarded two separate documents covering these issues, which reflect the elements we would like to see integrated in the Annex. Other issues to be covered in the Articles or in the Annex are in particular the access to sensitive information from individuals, including contractors and measures to prevent and deal with data breaches and disclosures.

## CHAPTER V DEVELOPMENT OF LAW

### Article 13 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 15(4).

EC Comment: Accepted CH redrafting suggestions.

EC Comment: We are unable to accept your request for Swiss observer participation in Committees (WG3), as this would run contrary to the new EU internal approach on such matters.

## CHAPTER VI JOINT COMMITTEE

### Article 14

#### 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. Agreement shall be reached through mutual agreement in a bilateral agreement and through the simple majority of votes in a multilateral agreement, whereby the weight of each Party's vote shall be determined on the basis of the [eg size (coverage, allowances, emissions, etc) of its ETS].
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.

EC Comment: Bilateral vs Multilateral issue. Reject mutual agreement as decision-making modality in a multi-lateral agreement.

### Article 15

#### 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 the Articles 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 13(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 17, 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 17.
7. The functions of the Joint Committee shall be limited to those foreseen in this Agreement.

EC Comment:

- (2) and (3): agree to the distinction proposed by CH between annexes and articles  
(7): slight rewording

CHAPTER VII

DISPUTE SETTLEMENT

Article 16

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 of the Parties, to the Permanent Court of Arbitration for resolution in accordance with the Permanent Court of Arbitration's Rules of 2012.
3. This dispute settlement mechanism shall remain available after the termination of the agreement.

EC Comment:

Para.2: Provisionally accepted the PCA as dispute settlement body and for 2012 PCA Rules to apply, which state amongst others that “all awards shall be made in writing and shall be final and binding on the parties”.

Para.3: Consider it crucial that the dispute settlement body remains available even after termination of the agreement, as this is when disputes are most likely to arise. Nothing prevents an agreement from setting out that the dispute settlement mechanism remains available after termination of the agreement.

## CHAPTER VIII TERMINATION

### Article 17 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. Non-extension of the ETS of Switzerland by 1 July 2018 shall lead to the automatic termination of the Agreement on 31 December 2019.
3. Without prejudice to paragraph 1, a Party may suspend this Agreement in the following circumstances:
  - a. Where the other Party announced to adopt or implement or adopts or implements 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 announces to impose or imposes restrictions on the compliance use of emission allowances originating from the Party’s system.
  - e. Where the other Party announces to no longer provide or fails to provide non-discriminatory access to emission allowances through markets for operators active in the ETS of the other Parties.
  - 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.
4. 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.

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5. 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.
6. During suspension, allowances originating from another Party's ETS cannot be surrendered for compliance in the ETS requesting the suspension.

### EC Comment:

Further reflection/consultation required on duration and consequences of suspension although suspension of surrender appears to be the preferred option with stakeholders).

Para 2: reject deletion of review clause; crucial for EU in view of Swiss sunset clause.

Para 3: We continue to be of the view that suspension must be available at announcement as otherwise the usefulness of suspension is greatly diminished. We therefore rejected deletion of possibility to suspend on announcement 3(a), (d), (e); Issue regarding bilateral vs multilateral in 3(e); accepted prolong instead of extend in 3(g); added 'implement'/'implements' in (a) to cover the situation where minimum criteria would no longer be met without formal legislative changes.

Para 5: Accepted CH rewording of para

Para 6: slight rewording

### Article X

#### Consequences of Termination

EC Comment: further internal discussion/consultation required – would stranded allowances become void?

## CHAPTER IX

### FINAL PROVISIONS

#### Article 18

##### Implementation

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

#### Article 19

##### Linking Agreement with third Parties

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1. The Parties to this Agreement may negotiate jointly or unilaterally with a third Party to establish a link.
2. Where a Party negotiates unilaterally with a third Party with the intention to establish a link, 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 with 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.

EC Comment: multilateral vs bilateral issue

Changed back to multilateral. Accepted the clarification of timing proposed by CH (X months in advance instead of sufficiently in advance).

### Article 20

#### Annexes

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

### Article 21

#### 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 22

#### Ratification and Entry into Force

1. This Agreement shall be concluded for an indefinite period, unless terminated in accordance with Article 17.
2. This Agreement shall be ratified or approved by the Parties in accordance with their respective internal procedures.
3. The Parties shall deposit their instruments of ratification once all conditions for linking have been fulfilled, including the arrangements for the aviation sector laid down in....

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4. Without prejudice to specific arrangements for the aviation sector laid down in ..., this Agreement shall enter into force on the 1 January following the completion of the internal procedures necessary for ratification by both Parties.

EC Comment: See comment on article 1.

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## Annex I

## Minimum Criteria

## A. Minimum Criteria for Stationary Installations

	Minimum Criteria														
Mandatory nature of the participation in the ETS	Participation in the ETS shall be mandatory for the installations carrying out the activities and emitting the GHG listed below (coverage of activities).														
Calculation of the Cap	To be completed														
Stringency of the Target	To be completed														
The level of ambition (reduction trajectory (beyond 2020 and consequences of not having it))	To be completed														
Coverage of GHG	The ETS of the parties shall cover at least the following GHG: Carbon dioxide (CO <sub>2</sub> ) Methane (CH <sub>4</sub> ) Nitrous Oxide (N <sub>2</sub> O) Hydrofluorocarbons (HFCs) Perfluorocarbons (PFCs) Sulphur Hexafluoride (SF <sub>6</sub> )														
Coverage of activities	<p>The ETS of the parties shall cover at least the following categories of activities:</p> <table border="0"> <thead> <tr> <th style="text-align: left;"><b>Activities gases</b></th> <th style="text-align: left;"><b>Greenhouse gases</b></th> </tr> </thead> <tbody> <tr> <td>Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste)</td> <td>Carbon dioxide</td> </tr> <tr> <td>Refining of mineral oil</td> <td>Carbon dioxide</td> </tr> <tr> <td>Production of coke</td> <td>Carbon dioxide</td> </tr> <tr> <td>Metal ore (including sulphide ore) roasting or sintering, including pelletisation</td> <td>Carbon dioxide</td> </tr> <tr> <td>Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour</td> <td>Carbon dioxide</td> </tr> <tr> <td>Production or processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and</td> <td></td> </tr> </tbody> </table>	<b>Activities gases</b>	<b>Greenhouse gases</b>	Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste)	Carbon dioxide	Refining of mineral oil	Carbon dioxide	Production of coke	Carbon dioxide	Metal ore (including sulphide ore) roasting or sintering, including pelletisation	Carbon dioxide	Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour	Carbon dioxide	Production or processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and	
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	<p data-bbox="480 150 592 185">pickling</p> <p data-bbox="480 215 916 286">Production of primary aluminium and perfluorocarbons</p> <p data-bbox="480 315 1350 421">Production of secondary aluminium where combustion units with a total rated thermal input exceeding 20 MW are operated</p> <p data-bbox="480 450 1331 629">Production or processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 MW are operated</p> <p data-bbox="480 658 1362 763">Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day</p> <p data-bbox="480 792 1362 898">Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day</p> <p data-bbox="480 927 1362 999">Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day</p> <p data-bbox="480 1028 1362 1133">Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day</p> <p data-bbox="480 1162 1362 1267">Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day</p> <p data-bbox="480 1296 1362 1402">Drying or calcination of gypsum or production of plaster boards and other gypsum products, where combustion units with a total rated thermal input exceeding 20 MW are operated</p> <p data-bbox="480 1431 1331 1503">Production of pulp from timber or other fibrous materials</p> <p data-bbox="480 1532 1362 1603">Production of paper or cardboard with a production capacity exceeding 20 tonnes per day</p> <p data-bbox="480 1632 1362 1771">Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues, where combustion units with a total rated thermal input exceeding 20 MW are operated</p> <p data-bbox="480 1800 798 1872">Production of nitric acid and nitrous oxide</p> <p data-bbox="480 1901 807 1973">Production of adipic acid and nitrous oxide</p>	<p data-bbox="1161 150 1362 185">Carbon dioxide</p> <p data-bbox="1161 215 1362 250">Carbon dioxide</p> <p data-bbox="1161 344 1331 380">Carbon dioxide</p> <p data-bbox="1161 551 1331 586">Carbon dioxide</p> <p data-bbox="1161 725 1362 761">Carbon dioxide</p> <p data-bbox="1161 855 1362 891">Carbon dioxide</p> <p data-bbox="1161 963 1362 999">Carbon dioxide</p> <p data-bbox="1161 1104 1362 1140">Carbon dioxide</p> <p data-bbox="1161 1189 1362 1225">Carbon dioxide</p> <p data-bbox="1161 1373 1362 1408">Carbon dioxide</p> <p data-bbox="1161 1435 1331 1471">Carbon dioxide</p> <p data-bbox="1161 1576 1362 1612">Carbon dioxide</p> <p data-bbox="1161 1749 1362 1785">Carbon dioxide</p> <p data-bbox="1161 1812 1362 1848">Carbon dioxide</p> <p data-bbox="1161 1908 1362 1944">Carbon dioxide</p>
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	Production of glyoxal and glyoxylic acid and nitrous oxide	Carbon dioxide
	Production of ammonia	Carbon dioxide
	Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide
	Production of hydrogen (H <sub>2</sub> ) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day	Carbon dioxide
	Production of soda ash (Na <sub>2</sub> CO <sub>3</sub> ) and sodium bicarbonate (NaHCO <sub>3</sub> )	Carbon dioxide
	Capture of greenhouse gases from installations covered by this Directive for the purpose of transport and geological storage in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
	Transport of greenhouse gases by pipelines for geological storage in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
	Geological storage of greenhouse gases in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
	<p>1. [ Installations or parts of installations used for research, development and testing of new products and processes and installations exclusively using biomass are not covered.</p> <p>2. The thresholds values given above generally refer to production capacities or outputs. Where several activities falling under the same category are carried out in the same installation, the capacities of such activities are added together.</p> <p>3. When the total rated thermal input of an installation is calculated in order to decide upon its inclusion in the ETS, the rated thermal inputs of all technical units which are part of it, in which fuels are combusted within the installation, are added together. These units could include all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units. Units with a rated thermal input under 3 MW and units which use exclusively biomass shall not be taken into account for the purposes of this calculation. ‘Units using exclusively biomass’ includes units which use fossil fuels only during start-up or shut-down of the unit.</p> <p>4. If a unit serves an activity for which the threshold is not expressed as total rated thermal input, the threshold of this activity shall take precedence for the decision about the inclusion in the ETS.]</p>	

<p>Qualitative Limits on International Credits</p>	<p>Credits from the following Kyoto Protocol's Clean Development Mechanism (CDM) and Joint Implementation (JI) mechanism projects are accepted for compliance:</p> <ul style="list-style-type: none"> <li>• Credits from projects registered before 1 January 2013: <ul style="list-style-type: none"> <li>○ Representing emission reductions achieved before 1 January 2013: <ul style="list-style-type: none"> <li>▪ CERs and ERUs issued in respect of emission reductions up to and including 31 December 2012 are valid and usable up to and including 31 March 2015;</li> <li>▪ ERUs that represent emission reductions achieved before 1 January 2013 are valid and usable up to and including 31 March 2015 if they were issued by an EU member state or Switzerland after 31 December 2012 but prior to 30 April 2013. ERUs issued by an EU member state or Switzerland after 30 April 2013 are valid only if they originate from projects not causing 'double counting' in the EU or Swiss ETS.</li> <li>▪ All other types of ERUs that represent emission reductions achieved before 1 January 2013 issued by non-EU member states after 31 December 2012 that represent emission reductions achieved up to and including 31 December 2012 are valid and usable up to and including 31 March 2015, if: <ol style="list-style-type: none"> <li>1. they were issued by a non-EU member state which has ratified the Doha Amendment and participates in the second Kyoto period;</li> <li>2. they were issued by a country that is not participating in the second Kyoto period, provided that they concern track 2 projects or track 1 projects verified by an accredited independent entity.</li> </ol> </li> </ul> </li> <li>○ Representing emission reductions achieved from 1 January 2013: <ul style="list-style-type: none"> <li>▪ CERs issued in respect of emission reductions from 2013 onwards are valid and usable up to and including the year 2020;</li> <li>▪ [All other types of ERUs issued by EU-member states as well as non-EU member states that represent emission reductions achieved from 1 January 2013 onwards: These ERUs currently don't exist. ERUs are AAUs that have been converted by the host country of the JI project. The treaty which describes the second period of Kyoto (2013-2020) has not yet entered into force. After it does, countries participating in this sequel to Kyoto will receive their AAUs for the second trading period. Only then JI projects can continue.]</li> </ul> </li> </ul> </li> <li>• Projects registered after 1 January 2013: <ul style="list-style-type: none"> <li>○ Only CERs from projects taking place in the 'Least Developed Countries' (LDCs) are valid and usable.</li> </ul> </li> </ul> <p>The following credits are not accepted: credits stemming from nuclear energy projects, afforestation or reforestation activities, and projects involving the destruction of trifluoromethane (HFC-23) and nitrous oxide (N<sub>2</sub>O) from adipic acid production.</p> <p>Acceptance of credits from JI or CDM hydroelectric projects exceeding 20</p>
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	<p>MW of installed capacity is subject to the projects being in compliance with international criteria and guidelines, including those contained in the 2000 report of the World Commission on Dams. The following guidelines shall be considered in ensuring compliance:  <a href="http://ec.europa.eu/clima/policies/ets/linking/docs/art11b6_guide_en.pdf">http://ec.europa.eu/clima/policies/ets/linking/docs/art11b6_guide_en.pdf</a></p>
<p>Quantitative Limits on International Credits</p>	<p><b>Option 1:</b>          Separate rules for EU ETS participants and CH ETS participants. Suggest making a reference to the relevant EU/CH ETS legislation and stating that quantitative limits may be no less stringent than what is foreseen in these.</p> <p><b>Option 2:</b>          Common language/rules for EU ETS participants and CH ETS participants.</p> <p><b>Operators of stationary installations</b> are entitled to use international credits for compliance up to the following limits:</p> <ul style="list-style-type: none"> <li>• If covered during the 2008-2012 phase and the 2013-2020 phase, up to the higher of the two limits during the 2008-2020 period:             <ul style="list-style-type: none"> <li>○ The international credit entitlement in the 2008-2012 phase; or</li> <li>○ 11% of the free allocation of allowances granted in the 2008-2012 phase.</li> </ul> </li> <li>• If a new entrant during the 2008-2012 phase or an operator of stationary installations newly included in the ETS in the 2013-2020 phase, which did not receive free allocations nor entitlements for international credit use during the 2008-2012 phase, up to 4.5% of their verified emissions in the 2013-2020 phase.</li> <li>• If operators of stationary installations with a significant capacity extension or operators of stationary installations which received free allocation in the 2008-2012 phase, which carry out activities newly included in the ETS in the 2013-2020 phase, the highest of:             <ul style="list-style-type: none"> <li>○ The international credit entitlement specified in the national allocation plan in phase 2; OR</li> <li>○ 11% of the free allocation of EU allowances granted to them in phase 2; OR</li> <li>○ 4.5% of their verified emissions in phase 3.</li> </ul> </li> </ul>
<p>Free allocation using uniform benchmarks, including new entrants</p>	<p>Free allocation is to be calculated on the basis of benchmarks and adjustment factors in line with the relevant EU rules.          A maximum of five percent of the respective Swiss and Community-wide quantity of allowances over the period from 2013 to 2020 shall be set aside for new entrants.</p>
<p>Penalties</p>	<p>Switzerland and EU Member States shall lay down the rules on penalties applicable to infringements of their respective ETS rules and shall take all measures necessary to ensure that such rules are implemented. The penalties provided for must be effective, proportionate and dissuasive.</p> <p>Switzerland and EU Member States shall ensure that any operator or aircraft operator who does not surrender sufficient allowances by 30 April</p>

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	<p>of each year to cover its emissions during the preceding year shall be held liable for the payment of an excess emissions penalty. The excess emissions penalty shall be at least EUR 100 or 125 CHF for each tonne of carbon dioxide equivalent emitted for which the operator or aircraft operator has not surrendered allowances. Payment of the excess emissions penalty shall not release the operator or aircraft operator from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in relation to the following calendar year.</p> <p>Switzerland and EU Member States shall ensure publication of the names of operators and aircraft operators who are in breach of requirements to surrender sufficient allowances.</p>
Monitoring, reporting and verification, including accreditation of verifiers	To be completed
Market Supervision/Oversight (Mifid/Mad) VAT Treatment	To be completed

EC Comment: We began filling in the Annex in accordance with the technical discussions that took place in September.

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**B. [Aviation]**

EC Comment: We consider it premature to draft the annex on aviation.

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**C. Minimum Criteria for Registries**

EC Comment: We will send this part of the annex separately later this week.

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#### D. Minimum Criteria for Auctioning Platforms and Participants in Auctions

Auctioning shall meet the following minimum criteria.

The auctions shall be conducted in an open, transparent, and non-discriminatory manner. To this end, the process should be predictable, in particular as regards the timing and sequencing of sales and the estimated volumes to be made available. The main elements of the auctioning method, including the schedule, dates and estimated volumes of sales shall be published on the website of the entity in charge of auctioning at least one month before the start of the auction. Any significant adjustment shall, to the extent practicable, be announced at least one month in advance as well. The auctions shall be organized to ensure that all participants have access to the same information simultaneously.

The auctioning of allowances shall be performed with the objective of minimising any impact on the EU ETS and the Swiss ETS. The entity in charge of auctioning shall ensure that the auctioning prices do not deviate significantly from the relevant secondary market prices over the auctioning period.

The auction and the participation in the auction shall be cost-efficient and avoid undue administrative cost.

The selection of the entities involved in auctioning shall be conducted in order to preserve fair competition in the carbon and related markets.

Auctioning shall be effected in accordance with applicable laws in respect of money-laundering, terrorist financing and market abuse and, accordingly, counterparties acting on behalf of the entity in charge of the auctioning shall be required to demonstrate their compliance with such laws.

In addition, any auctioning platform used within the ETS of the Parties and the participants in these auctions must comply with the principles reflected in the Auctioning Regulation.

**Annex II  
Results Report Template**

[BankX] sold a total of [xxxxx] allowances for a total value (before fees and expenses) of [xxxxx] on behalf of [xxxxx] in the reporting month [xxxxx]. Of these, [xxxxx] allowances were sold as direct screen trades on [Exchanges]; [xxxxx] allowances were sold via auctions on [Exchanges]; [xxxxx] allowances were sold as OTC forward transactions and [xxxxx] allowances were sold as OTC exchange-cleared transactions. The volumes sold per trading day varied between [xxxxx] and [xxxxx] allowances during the reporting month.

Summary of sold allowances	
Reporting period	[xx.xx. – xx.xx.xxxx]
Volume of allowances sold	[xxxxx]
Value of sold allowances	[xxxxx]
Average price per allowances sold	[xxxxx]

Overview of daily allowance volume sold during reporting month						
Date	Sales channels	Volume sold	Executed average price	Index	Deviation from Index	Revenues
[x.xx]	[Direct screen trades/ OTC forwards/ OTC exchange cleared/...]	[xxx]	[xxx]	[xxx]	[xxx%]	[xxxxx]
[x.xx]						
[x.xx]						
[x.xx]						
Total		[xxxxx]	[xxxxx]	[xxx]	[xxx%]	[xxxxx]

Overview of monthly and total allowance volumes sold each year					
Date	Sales channels	Volume sold	Executed average price	Deviation from Index	Revenues
[January]	[Direct screen trades/ OTC forwards/ OTC exchange cleared/...]	[xxx]	[xxx]	[xxx%]	[xxxxx]
[February]					
[March]					
...					
[December]					
Total		[xxxxx]	[xxxxx]	[xxx%]	[xxxxx]

**Annex III**  
**Minimum Security Requirements**

EC Comment: We shared separate documents, which set out the elements to be included in this Annex.

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**Annex IV**  
**Definition of ETS Sensitivity levels**

**A.1- Confidentiality and Integrity rating**

For each ETS information considered sensitive, confidentiality (resp. integrity) aspect has to be considered from the potential impact at business level in case this information is disclosed (resp. unwillingly modified, partially or totally destroyed).

For Each security aspect confidentiality and integrity a rating is assessed based on the definition provided in section A.2 and then the global sensitivity level of the information is evaluated thanks to the grid provided in section A.3

**A.2- Confidentiality and Integrity rating**

*A.2.1- Definition for "Low"*

Any information relating to the Emission Trading Scheme for which disclosure to unauthorised persons and/or loss of integrity would cause moderate prejudice to the Commission, other institutions, Member states or other parties to be likely to:

- moderately affect political or diplomatic relations;
- cause local negative publicity to the image or reputation of the Commission or other institutions;
- cause embarrassment to individuals;
- affect staff morale/productivity;
- cause limited financial loss or, moderately facilitate improper gain or advantage for individuals or companies;
- moderately affect the effective development or operation of EU policies;
- moderately affect the proper management of the EU and its operations.

*A.2.2- Definition for "Medium"*

Any information relating to the Emission Trading Scheme for which disclosure to unauthorised persons and/or loss of integrity would cause prejudice to the Commission, other institutions, Member states or other parties to be likely to:

- cause embarrassment to political or diplomatic relations;
- cause damage to the image or reputation of the Commission or other institutions in maximum three member states;
- cause distress to individuals;
- cause consequential reduction in staff morale/productivity;
- embarrass EU or Member States in commercial or policy negotiations with others;
- cause financial loss or facilitate improper gain or advantage for individuals or companies;
- affect the investigation of crime;

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- breach legal or contractual obligations on confidentiality of information;
- affect the development or operation of EU policies;
- affect the proper management of the EU and its operations.

### A.2.3- Definition for "High"

Any information relating to the Emission Trading Scheme for which disclosure to unauthorised persons and/or loss of integrity would cause catastrophic and/or unacceptable prejudice to the Commission, other institutions, Member states or other parties to be likely to:

- Adversely affect diplomatic relations;
- Cause substantial distress to individuals;
- Make it more difficult to maintain the operational effectiveness or security of Member States or other contributors' forces;
- Cause financial loss or facilitate improper gain or advantage for individuals or companies;
- Breach proper undertakings to maintain the confidence of information provided by third parties;
- Breach statutory restrictions on disclosure of information;
- Prejudice the investigation or facilitate the commission of crime;
- Disadvantage EU or Member States in commercial or policy negotiations with others;
- Impede the effective development or operation of EU policies;
- Undermine the proper management of the EU and its operations.

### A.3 – ETS Sensitive information level assessment

Based on both ratings for Confidentiality and Integrity completed as described in the former section, information sensitivity is established using the following mapping table:

<b>Confidentiality rating</b>	<b>Low</b>	<b>Medium</b>	<b>High</b>
<b>Integrity rating</b>			
<b>Low</b>	ETS Limited	ETS Sensitive (or ETS Limited*)	ETS Critical
<b>Medium</b>	ETS Sensitive (or ETS Limited*)	ETS Sensitive (or ETS Critical*)	ETS Critical
<b>High</b>	ETS Critical	ETS Critical	ETS Critical

\* Possible variation to be assessed on a case-by-case basis.

*Restricted*