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

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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NOTE

from : General Secretariat
to : Delegations

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

With a view to the WPE meeting on 19 September on the above, delegations will find attached a Commission/CH joint non-paper on a draft Agreement, as transmitted by the Commission. The latest comments/replies from the Commission to the Swiss suggestions (circulated in doc. 13372/13) are shown in track changes.

The document also contains replies from the Commission to particular questions/comments by delegations.

DRAFT AGREEMENT between the European Union and the Swiss Confederation on the linking of their greenhouse gas Emissions Trading Systems

- COMMENTS AND REPLIES 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 CO₂ 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:

Reply to CH: Accepted all changes proposed by CH with the exception of the deletion of “and beyond” – we need to indicate in the agreement that it is intended to look beyond 2020.

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”).

Reply to CH: OK, no changes

Reply to IT: “aims at linking” cannot be replaced by “links”, as the agreement in itself does not link the two systems but sets out the condition for linking, namely the coverage of international aviation (article 8).

Reply to HU: agree with HU assessment that “aims at linking” is the correct phrasing.

Article 2
Definitions

Emission allowances= general and aviation allowances issued in the Swiss 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

Notification of changes to the legislation , etc.

Reply to CH: Provisionally accepted changes proposed by CH. Article to be revisited once the remainder of the agreement has been largely finalised. Already suggested adding ‘notification’ as a term to be defined.

Reply to HU: agree that it would be useful to define ‘notification’

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 linked Parties.
2. Each Party shall provide non-discriminatory access through markets to emission allowances ~~issued under its ETS~~ for account holders active in at least one of the the ETS of the other Party linked systems.
3. [The Parties shall coordinate on:
 - a. Monitoring, reporting, ~~and verification and~~
 - b. surrendering, including compliance and enforcement penalties
 - c. Domestic and international credit rules:
 - International credit rules:
 - d. Banking and borrowing; and
 - e. Price interventions; and
 - f. Aviation:]

Reply to CH:

Accepted most changes proposed by CH. Slight re-drafting in paragraph 1 (to ensure that bilateral agreement could become a multilateral agreement in the future) and in paragraph 2 (to ensure that all account holders active in at least one of the linked systems have non-discriminatory access to all allowances in the linked systems). The use of the term “non discriminatory” is problematic – both systems discriminate between compliance users on access to allowances (eg free allocation). This could be addressed with the inclusion of “through markets”.

There may be a need to include language on coordination – either here or as a separate article. Preference for this to also cover collaboration on aviation, instead of introducing a separate article on collaboration on aviation as suggested by CH.

Reply to FR: Deleted paragraph 3 (earlier surrender deadline) as requested.

Reply to UK: Clarified that it could become a multilateral agreement. The minimum criteria and article 17 on linking with others clarify that emission allowances used in either linked system must be agreed by all linked parties.

Article 4

Minimum Criteria

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

Reply to CH: OK, accepted changes proposed by CH.

Reply to DE: The minimum criteria will be assessed carefully. A technical meeting largely dedicated to this issue will take place in September. Results will be shared with MS. No obligations for the modification of the EU ETS will follow from the minimum criteria.

Reply to HU: The reference to the article on consequences has been removed.

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 maintenance or to ensure the integrity of the carbon market, and only in accordance with provisions contained in applicable Swiss and European Union laws/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 ~~[for Joint Committee]~~ shall determine common operational procedures related to technical or other matters requiring a joint approach necessary for the operation of the linking and taking into account the priorities of domestic legislation, in advance of the registry link commencing operation.
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 ~~European Union~~ Central Administrator and in accordance with the determined common operational procedures.~~[for Joint Committee]~~.

Reply to CH: OK, accepted changes proposed by CH and made small redrafting suggestions. On the procedure for paragraphs 5 and 6, further discussion is required.

Reply to FR: Although not considered to be strictly necessary, we added some language to highlight the importance of Annex 1, Part C. The annexes have not been completed yet. A technical meeting with the Swiss will take place in mid-September to identify the appropriate minimum criteria and further develop the annexes (see reply to DE in article 4). The final agreement will also cover MIFID and MAD however not in this article.

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 which have Kyoto Protocol units valid for the relevant period shall will transfer and acquire as necessary Assigned Amount Units valid for the second commitment period at an agreed interval. a stock of Kyoto Protocol units reflecting the flows of emission allowances. 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 once the relevant international rules have been adopted and shall include agreement on the management of the share of proceeds applied to international emissions trading.

Reply to CH: OK, accepted changes proposed by CH and redrafted para. 4 to address your queries/comments. See below EC answers to your questions:

We want to make sure that the KP units would be AAUs, if applicable, not CERs or ERUs?

We replaced KP units by AAUs in para. 4.

Do we really want to reflect the flows of allowances? The backing of AAUs is only relevant for those allowances which have been used for compliance (or cancelled). Holdings do not necessarily need to be covered by KP units.

This has also been clarified in para. 4. The backing of AAUs will only be required for general allowances that have been used for compliance.

How about aviation units which are not covered under the KP? Is this article referring to the whole of the linked ETS system?

Para. 4 has been redrafted so that it is clear that it only applies to general allowances.

We will need to discuss VAT on Swiss allowances in the technical meeting in September.

Reply to FR: Question of VAT on the Swiss allowances to be addressed in a technical meeting with the Swiss in mid-September. Paragraph 4 on transfer of AAUs has been deliberately kept relatively open to allow us to get a better understanding how the share of proceeds will work in the future and to reduce the costs as much as possible. We propose that the share of proceeds will be paid by the net buyer.

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 its participants] must meet the minimum criteria set out in Annex I, Part C.
3. Switzerland may choose 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 EFTA-wide tender procedure, [without prejudice to the requirements of adequate supervision of the auctions by national competent authorities.]

Reply to CH: Largely OK, accepted changes proposed by CH. When discussing minimum criteria to consider whether to specify minimum criteria that must be met for being able to participate in an auction. We are working on the minimum criteria for appointment of an auction platform, and on supervision and for the auction monitor. These require further discussion in September. These discussions may influence the wording of paragraph 3. We will develop a list of issues to be discussed in September.

Reply to FR: The harmonisation of the auctions will be ensured through the minimum criteria set out in Annex I.C. Amongst others, the Swiss auctioning platform will have to meet the same criteria as the auctioning platforms of MS that chose to opt out of the Union platform.

Reply to DE: We need to assess the best options for Swiss auctions and the procurement of an auction platform given the small volume of allowances in their system. We will be meeting in September to discuss the minimum criteria to be set out in the Annex. This work will allow us to refine the text in paragraph 3 and the principles that need to be kept. This will also allow us to spell out the provisions with regards to the single auction monitor. We will also consider including details on appointment then.

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~~Union~~ and the Swiss Confederation~~zerland~~ on Air Transport¹ 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 ~~appropriate coverage~~ of international aviation in both systems. To this end, the ETS of the Parties ~~must~~ shall meet the minimum criteria set out in Annex I.B.

Reply to CH: We note the views expressed by CH. We have included both options for further discussion.

Reply to IT/FR: Text has been redrafted to clarify that entry into force is conditional upon the coverage of international aviation by the CH ETS.

¹[OJ L 114, 30.4.2002.](#)

~~[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.]~~

Reply to CH: Coordination on aviation included in Article 3.

~~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.~~
- ~~1. The transfer shall take place X months after the entry into force of this Agreement at the latest.~~

Note: At the High Level Meeting, Switzerland proposed that an amount of allowances equivalent to Swiss entitlement for auctioning had they been linked into ETS in 2012 be set aside and transferred under the bilateral linking agreement once this is agreed. They asked for an exchange of letter to indicate that such a transfer would take place. As the Commission does not “own” allowances such an arrangement would ultimately need to be endorsed by the Member States. Consultation with Member States takes place in the Working Party on Environment on 19 September. To this end, the Member States will receive a note on the impacts on their auctioning revenues in advance to the meeting.

Reply to CH: Rejected the inclusion as requires MS endorsement.

CHAPTER IV
DEVELOPMENT OF LAW

~~Article X~~
~~Interpretation of Law~~

Reply to CH: Accepted CH proposal to delete the article provided that all terms/concepts open to interpretation shall be defined in the definitions article.

Article 9
Development of Law

1. Parties shall ~~keep-notify~~ each other ~~informed~~ of the development of new ~~relevant-domestic legislation~~ or ~~relevant~~ amendments ~~thereof-to domestic legislation~~ [in an area] ~~covered-by-of relevance to~~ this Agreement.
2. Following ~~an informationa~~ notification pursuant to paragraph 1, either Party may request an exchange of views within the Joint Committee ~~under Article 1311(43) applies~~.

Reply to CH: Accepted deletion of paragraph 2 and largely the changes proposed by CH. Slight redrafting suggestions.

Reply to FR: tried to clarify the meaning of 'relevant domestic legislation' through slight redrafting but difficult to define it in more detail, as could be potentially very far reaching.

~~Article 11~~
~~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.~~

Reply to CH: Proposal to delete the article all together. Since CH is not taking over any EU legislation, there is no reason for CH to participate. Moreover, the parties to the agreement are required to keep each other informed under the previous article. Finally, this is not common practice in other bilateral CH-EU agreements.

Reply to DE: The Swiss are keen to have access to our committee meetings as observers but are reluctant to grant the EU similar access. We propose deleting this article as this would be the most just.

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. [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.

Reply to CH: Accepted most changes proposed by CH, but rejected mutual agreement. We propose our previous wording (mutual agreement for a bilateral agreement and weighted voting for a multilateral agreement) should the agreement be open to future accession.

Reply to DE: The idea of a double majority rule (majority of systems + majority of emissions) is an interesting concept for multilateral linking agreements. We could propose it as an alternative option to the CH.

Reply to UK/FR: Member States are usually invited to participate in the JC and are consulted on the draft agenda. They do not have formal speaking or voting rights during the meetings of the JC.

Reply to HU: We agree that the process of determining the votes requires further clarification but we need to find agreement with the Swiss on the overall voting modality first before setting out the details.

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.~~
- ~~3.2.~~ The Joint Committee shall discuss amendments to this Agreement and its Annexes, as well as the adoption of new Annexes proposed by one of the Parties ~~and Where the Joint Committee agrees to the proposal by one of the Parties, it shall~~ submit proposed amendments ~~the proposal~~ to the Parties for adoption according to their respective internal procedures.
- ~~4.3.~~ Upon a request made pursuant to article ~~109~~(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.
- ~~5.4.~~ Upon notification of a suspension of or intention to terminate this Agreement in accordance with article ~~1513~~, the Joint Committee shall hold an exchange of views and shall ~~make every effort to agree on the duration of the suspension~~ aim to find agreement to end the suspension or prevent the termination.
- ~~6.5.~~ The Joint Committee shall ~~aim to~~ settle disputes arising between and referred to it by the Parties in line with article ~~412~~.
- ~~7.6.~~ The Joint Committee shall only carry out the functions listed in this ~~Agreement~~ article.

Reply to CH:

Paragraph 1: OK

Paragraph 2: rejected changes proposed by CH: the JC should not be in a position to amend, delete or adopt annexes without involvement of the parties. The same procedure should be followed for making changes to the agreement and its annexes. Therefore one single paragraph suffices. If a simplified procedure (eg no involvement of Parties) is necessary for certain changes/adoption of new annexes, a separate paragraph needs to be developed, which clearly sets out the circumstances when the simplified procedure can be followed.

Paragraph 3: OK, accepted changes proposed by CH

Paragraph 4: rejected changes proposed by CH: it is important to refer to termination as well as article 13(1) foresees a role for the JC in case of termination. Moreover, suspension should not be possible for an indefinite period of time but be limited to periods of time, with potentially the possibility to extend the suspension.

Paragraph 5: OK, accepted deletion of paragraph on asymmetries as proposed by CH.

Paragraph 6: OK

Paragraph 7: OK, changed from Agreement to article, as all functions of the JC should be listed in this paragraph.

Replies to specific questions:

- 1) It is important to set a time limit within which the JC must act to avoid delays. We will consider including this within the Rules of Procedures rather than the agreement itself.
- 2) It is crucial to agree on which acts of the JC are legally binding within the agreement.

Reply to DE: The paragraph on asymmetries has been removed. Asymmetries related to significant differences between the two ETS. For example, if the EU were to decide to ban more international credits in the future, the JC may recommend to CH to follow suit.

Reply to DE/FR: We agree that the legal nature of the actions of the JC must be clarified in this agreement. In the current draft it is not foreseen that CH or the JC can force the EU to make changes to its ETS. CH could make a proposal to the JC for amendments to the agreement and its annexes; the JC could formally submit such proposals to the parties. The parties would have to adopt the proposal according to their internal procedures. Having said that, it may be advantageous/necessary to add some flexibility and to provide for a simplified procedure in certain circumstances – eg adoption of a new annex (article 6(4)).

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 certain delay], the dispute shall be referred, at the request of either of the Parties, to ~~an arbitration tribunal according to Annex H~~ the Court of Justice of the European Union for resolution.
3. This dispute settlement mechanism shall remain available after the termination of this agreement.
4. The decisions of the ~~arbitration tribunal~~ dispute settlement body taken pursuant to this article shall be legally binding on the Parties.

Reply to CH: 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. The mechanism must remain available after termination, as disputes are likely to arise following the end of the link.

Reply to DE: Even if the decisions of the dispute settlement body are of a legally binding nature, they would not necessarily result in an automatic change of the EU legislation.

Reply to HU: The JC would be considered to have been unsuccessful if it fails to find a solution within the deadline.

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 [~~6~~ 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.
- ~~1.2.~~ Non-extension of the ETS of Switzerland by 1 July 2018 shall lead to the automatic termination of this agreement.
- ~~2.3.~~ Without prejudice to paragraph 1, a Party may suspend this Agreement in the following circumstances:
- a. Where the other Party announces to adopt or 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.
 - ~~b.c.~~ Where the other Party fails to inform the Party of its intention to link its ETS to that of a third Party.
 - ~~e.d.~~ Where the other Party announces to impose or imposes restrictions on the compliance use of emission allowances originating from the Party's system.
 - ~~d.e.~~ Where the other Party announces to no longer provide or fails to provide non-discriminatory access to emission allowances through markets issued under its ETS for operators active in at least one of the ETS ~~of the Party~~.
 - ~~e.f.~~ Where the other Party announces its intention to terminate this Agreement.
 - ~~f.g.~~ Where the other Party announces its intention ~~to not to extend or~~ abolish its ETS.
- ~~3.4.~~ 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.
- ~~4.5.~~ The duration of the suspension of this Agreement shall be decided by the Joint Committee, which shall pursue its efforts to agree on a mutually acceptable solution in order for the suspension to be ended as soon as possible. A Party's decision to suspend the agreement shall be of a temporary duration of X months. The duration may be shortened or extended. A decision to extend the suspension shall be taken by a Party in accordance with its internal procedures.

5.—

6. [Option 1: During suspension, allowances originating from the other Party's ETS cannot be surrendered for compliance in a Party's the ETS of the Party requesting the suspension.] [Option 2: During suspension, allowances originating from a linked ETS cannot be transferred to the ETS of the Party requesting the suspension.]

Reply to CH:

Paragraph 1: accepted changes proposed by CH. Appropriate delay requires further consideration.

Paragraph 2: did not accept most changes proposed by CH. Suspension must remain available on announcement, as otherwise the usefulness of suspension is greatly diminished. Moreover, (e) was aligned with article 3(2) and in (g) we insist on "not to extend" due to the sunset clause in the CH ETS.

Paragraph 3: OK, accepted changes proposed by CH.

Paragraph 4: rejected CH proposal: Commission would only be able to take a decision to suspend the agreement for a limited period of time. Moreover, it is unlikely that in a situation in which suspension is necessary, the JC will be able to agree through mutual agreement on the duration of suspension. Finally, suspension should be able to be extended up until the moment of termination of the agreement.

Paragraph 5: Note: we need to consult stakeholders first on the options and the delay within which suspension takes effect. We see the need for a suspension mechanism that allows for a fast reaction (faster than termination) to safeguard the environmental integrity of our systems. However, we need to find the right balance between ensuring environmental integrity and protecting the market.

Reply to FR: Although we understand the disadvantages associated with allowing termination at any time, we consider this an important tool to protect the integrity and stability of the EU ETS, as otherwise the EU ETS risks being at the mercy of another ETS.

Reply to DE: We understand the advantage of a "protection of confidence" type of provision, which would allow operators to use all allowances that were transferred before the suspension has been made public. The second option proposed goes into the same direction but requires further discussion/work. Next to the minimum criteria, suspension and termination will be discussed at the technical meeting in September. The results will be shared with MS for comments.

Article X

Consequences of Termination

Note:

Further consultation is required, also with stakeholders to see whether termination would be taken into account in contractual arrangements or whether needs to be regulated.

Potential claims by account holders in a party's registry or other private entities should be decided under the domestic laws and relevant international obligations in force in the parties' respective jurisdictions. With regards to the question of how the liability in respect to such claims should be shared between the parties, this should be settled by arbitration. No reference to such claims should be expressly made in the treaty, as this would encourage such claims and to make it more difficult to conclude the treaty.

Reply to DE: Although the serial numbers will not be shown, the origin of the allowances will be visible. We aim to develop a mechanism which has the least negative impact on the market as possible, whilst being able to potentially safeguard the integrity of the ETS.

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.

Reply to CH: OK, accepted changes proposed by CH.

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.
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.
1. ~~A~~One Party to this agreement may only establish a link with a third Party if it has notified the other Party to this Agreement ~~previously consents~~[sufficiently in advance] in writing ~~of~~to the establishment of this link ~~in writing and the other Party has not rejected this new link~~.

Reply to CH: OK, slight redrafting of para 3 to clarify that all parties must agree to a third party link.

Reply to UK: Included change proposed by the UK.

Article 16

Annexes

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

Reply to CH: OK, no changes

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.

Reply to CH: OK, no changes

Article 18

Ratification and Entry into Force

1. This Agreement shall be concluded for an indefinite period, unless terminated in accordance with article ~~15~~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 ~~Chapter III and in Annex I, Part B 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.

Reply to CH: OK, no changes

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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

Pursuant to article 4(1), the rules for the Emissions Trading Systems of the Contracting Parties defined in the respective domestic legislation (EU ETS directive¹, Swiss CO₂ Act² and ordinance³) concerning the elements listed below are considered as being equivalent minimum criteria:

	Minimum Criteria
The mandatory nature of the participation in the ETS <u>and its coverage (sectors and gases, including size of installation/ minimum criteria);</u>	
<u>Stringency of Target</u>	
<u>The calculation of the cap;</u>	
The level of ambition (reduction <u>trajectory (beyond 2020 and consequences of not having it) path</u>);	
The use of international offsets and quality restrictions;	

¹ 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)

² Bundesgesetz über die Reduktion der CO₂-Emissionen vom 23. Dezember 2011 (CO₂-Gesetz; SR 641.71)

³ Verordnung über die Reduktion der CO₂-Emissionen vom 30. November 2012 (CO₂-Verordnung; SR 641.711)

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<u>Banking and Borrowing</u>	
The auctioning rules;	
The free allocation using uniform benchmarks;	
The Monitoring and Verification rules(<u>including accreditation of verifiers</u>);	
The level of the sanctions.	
<u>International Credits</u>	
<u>Excessive price fluctuations</u>	
<u>New entrants</u>	
<u>VAT Treatment</u>	
<u>Market Supervision/Oversight (Mifid/Mad)</u>	

General Note: The annex needs to be further elaborated. A technical meeting on this matter is scheduled for mid-September. The results will be shared with MS for comments.

Reply to DE: Whilst benchmarks would not usually feature in a linking agreement, this may be necessary in the CH-EU linking agreement due to the geographical situation of CH and due to CH being an EFTA state. Market supervision has been included.

Reply to FR: Many of the elements proposed by France were added.

Reply to IT question: The minimum criteria envisaged for the use of international credits are very likely to be same as the provisions in the EU ETS. Accreditation has been provisionally been integrated in A.

B. [Aviation]

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

~~[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).]~~

~~— 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 Directive¹~~

~~— 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-kilometres².~~

~~• Auctioning: The emission allowances not allocated free of charge have to be auctioned.~~

~~¹Directive 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).~~

~~²2011/638/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.~~

~~— Use of CERs and ERUs:~~~~— Quality: quality requirements of the EU ETS Directive¹~~~~— 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 Directive².~~~~— Sanctions: The sanction in case of non-compliance must be not lower than 100 Euro or 125 Swiss Franc per tonne of CO₂. An operating ban as measure of last resort needs to be foreseen.~~~~i. 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 Directive³). 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).~~

~~¹Directive 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).~~

~~²ibid~~~~³See footnote 1.~~

- ~~• 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]

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
...		

~~D. Minimum Criteria for International Credits~~

Annex H

Arbitration procedure according to article 14, paragraph 2