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

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 Switzerland)

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 drafting suggestions from Switzerland 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 Ttrading Ssystems**- Comments by 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 ~~[as well as future international agreements]~~, to reduce greenhouse gas emissions;

CONSIDERING THAT Switzerland~~the Swiss Confederation~~ and the Union share the objective of reducing greenhouse gas emissions significantly by 2020~~and beyond~~ ~~[add 2050 targets]~~;

RECOGNISING THAT eEmissions Ttrading Ssystems are an effective tool for reducing greenhouse gas emissions cost-effectively;

CONSIDERING THAT linking eEmissions ~~t~~Ttrading ~~s~~Ssystems 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~~the Swiss Confederation~~, 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 eEmissions ~~t~~Ttrading ~~s~~Ssystems.

HAVE AGREED AS FOLLOWS:

Preambles are fine.

We only deleted the reference to “future international agreements”, because we can not make a reference to agreements which do not exist yet. In any case, if the Parties adopt new international obligations, this Agreement should be revised.

We deleted “and beyond” and “[add 2050 targets]” because Switzerland has not defined any 2050 targets until now.

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 is fine.

Article 2
Definitions

Emission allowances = general and aviation allowances

Non-discriminatory access

Minimum criteria

~~Fundamental change: actions/measures with the result that emissions trading system would fall short of the minimum criteria.~~

Union registry, Swiss registry, administrator

~~Authorised Parties~~

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

~~Decision—legally binding acts taken by the Joint Committee~~

~~Recommendation—non-legally binding acts taken by the Joint Committee~~

~~Link (bilateral agreement, accession to this treaty, allowing sectoral credits in)~~

We agree that terms which require definitions will be identified and defined once the other articles have been largely finalised. The above list is only provisional.

It's not necessary to define “fundamental change” anymore, because we agreed on the “minimum criteria” principle.

In our view it is not necessary to define “decision, recommendation, link”.

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 ~~to this Agreement~~ shall be recognised for compliance under the ETS of the other Party ~~to this Agreement~~.
2. Each Party shall provide non-discriminatory access to emission allowances issued under its ETS for account holders active in the ETS of the other Party. ~~[Parties shall provide non-discriminatory access to emission allowances issued under one of the linked emissions trading systems for account holders active in at least one of the linked emissions trading systems.]~~
~~Emission allowances can only be surrendered for compliance in an ETS other than the ETS from which it is originating X in advance of the surrender deadline.~~

Paragraph 1 is fine. We accepted to merge old paragraphs 1 and 2 of the CH proposal. We only changed “any Party” in “the other Party” because there are only two Parties to this Agreement.
Paragraph 2 We accepted to change ‘Operators’ to ‘account holders’. We don’t understand what the doubt is for the Commission referring to:
- “non-discrimination” (comment in EU non-paper: “*Old paragraph 3 (now para 2) requires further work: non-discriminatory access leads to confusing with respect to free allocation particularly as it is covered later in the document with respect to access to auctions.*”).
Paragraph 3: We think this concept leads to unnecessary complication of the linked ETSs and could lead to market fragmentation. We would prefer another mechanism for “security” and de-linking. We’ll provide you a proposal.

Article 4
Obligations Minimum Criteria

The ~~Emissions Trading Systems~~ ETS of the Parties shall meet the minimum criteria set out in Annex I.

~~The Parties shall not take any actions whereby their respective emissions trading systems would fall short of the minimum criteria set out in the Annex I.~~

~~A Neither party shall inform the other party in writing of any intention to link its emissions trading system to that of a third party. If, without the prior consent by the other party to this agreement does not consent, the consequences set out in Article 17 shall apply.~~

Title: we changed the title because this article only contains obligations on minimum criteria. "Obligations" is too wide, as the entire Agreement contains obligations.

Paragraph 1: as we cancelled paragraphs 2 and 3, we do not need to have a number 1.

Paragraph 2:

We agree that this paragraph is superfluous in light of paragraph 1 and accept to remove it.

Paragraph 3: We removed this article because its content was the same as in art. 18. It's not necessary to repeat it in this article.

About EU idea to envisage a MoU to regulate the collaboration on the administration of the aviation sector (CH proposal: "2. The Parties shall collaborate in order to ensure a common administration of the aviation sector as set out in Annex..."), we would prefer avoiding creating MoUs besides this Agreement. If we can rule it now that we are drafting this Agreement, it would spare us some efforts later on. Therefore including a general obligation to cooperate would make sense in our view, but it would be better to include it in Chapter III on aviation.

CHAPTER II TECHNICAL PROVISIONS

Article 5 Registries

1. The registries of the ~~contracting~~ 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 ~~the Government of~~ Switzerland by the Swiss Registry Administrator and for the ~~European Commission~~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 for users of the Swiss registry and the Union registry.
 - e. only be suspended where necessary, for example for system 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. 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 paragraphs 3 and 4, the Parties through the Swiss Administrator and the Union Central Administrator **[or Joint Committee]** shall determine common operational procedures related to technical or other matters requiring a joint approach, in advance of the registry link commencing operation.
6. Issues requiring resolution arising out of the operation of the registry link will be resolved through timely consultation by the Parties through the Swiss Administrator and the European Central Administrator **[or Joint Committee]**.

Article is fine. Process to be discussed (maybe the registry administrators could discuss and define solutions, and the JC agrees/rejects them?)

Article 6

Emission aAllowances

1. Regardless of the ~~ETS emissions trading system~~ 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 ~~emissions trading system~~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. Parties which have Kyoto Protocol units valid for the relevant period shall, transfer 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 once the relevant international rules have been adopted.

Article is fine. Comments on Paragraphs 2 and 4:

Paragraph 2: We don't have a problem with the allowances being identifiable as long as the (surrendering) rules are the same for CH and EU allowances.

Paragraph 4: We want to make sure that the KP units would be AAUs, if applicable; not CERs or ERUs.

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.

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

Article 7
Auctioning

1. Each Party shall provide non-discriminatory access to auctions carried out within its ~~emissions trading systems~~ETS for account holders active in the ETS of the other Party.
2. Any auctioning platform used within the ~~emissions trading systems~~ETS of the Parties ~~and authorised parties participating in their auctions~~ 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 the common~~ 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.]

Article is fine. COM checks the EFTA-wide tender procedure. If we set up our own auctioning platform, it would probably fall under WTO procurement rules anyway.

What are the “requirements of adequate supervision”?

Article
Exchange of national experts

We accept to delete this article.

CHAPTER III
INTERNATIONAL AVIATION

Article 8

Coverage of International Aviation

~~This Agreement shall come into effect in respect of international aviation once European Union legislation on climate impacts from aviation has been included into the Annex of the Agreement between the European Union and the Swiss Confederation on Air Transport, pursuant to the Joint Committee under Article 23 of this agreement, from the date of application of this legislation to flights departing and arriving from airports in the Swiss Confederation.~~

Rejected the EU proposal to regulate aviation ETS in the Air Transport Agreement for several reasons:

- ETS is an environment file (regulated in the CO2 act and not in the air transport act. The Directive was adopted on the basis of Art. 175 (now 192) TFEU).
- Complicated task to “sort out” aviation specific articles from the EU ETS directive. Especially for overlapping topics like auctioning or registries.
- complicated structure with two separate Joint Committees. Definition of responsibilities and boundaries is difficult and might lead to unnecessary frictions between the two agreements.
- Adds complexity to the linking agreement.
- What would happen if we terminated this Agreement? Would the aviation ETS still be regulated in the ATA?

We therefore suggest regulating aviation in this agreement. As already explained in the negotiations (and proposed in our non-paper), we do not have differences on the substance of the aviation regulation. CH is ready to apply EU ETS equivalent rules for aviation (with exception of small-emitters rule). The question on how aviation will be treated in the EU after ICAO meeting remains open.

CHAPTER IV

~~INTERPRETATION AND~~ DEVELOPMENT OF LAW

Article 9

~~Interpretation of Law/Reference to concepts of Union law~~

~~Insofar as this Agreement involves concepts of Union law, account shall be taken of the relevant case law of the Court of Justice of the European Union shall be used for the interpretation of this agreement.~~

We deleted the Article 9 “Interpretation of Law/Reference to concepts of Union law” because this Agreement is a mutual recognition of the two ETS systems; Switzerland does not take over any EU legislation, so there are not “concepts of Union law” which need to be interpreted. All the important concepts and principles are already defined in Art. 2.

The following articles need to be renumbered.

Article 10
Development of Law

1. Parties shall keep each other informed of the development of new relevant domestic legislation or relevant amendments thereof in an area covered by relevance to this Agreement, or as soon as there is a change in the case law to authorities against whose decisions there is no judicial remedy under domestic legislation in a field of relevance to this agreement, it shall inform the other Party thereof.

~~From the day of a notification pursuant to paragraph 1, the other Party shall have X days to consent to or reject the change (proposal/adoption)development. Where the party fails to respond to the notification, this shall be considered as consent to the change (proposal/adoption)development.~~

2. Following an informationnotification pursuant to paragraph 1, either Party may request an exchange of views within the Joint Committee. Article 13(4) applies. on the new legislation or amendments to existing legislation of relevance within the Joint Committee as part of a continuous process of information and consultation.

We simplified this article because it must be read in relation to article 13(4). The determining factor in this system is whether or not the minimum criteria are met.

Old paragraph 2 as proposed by the EU is superfluous, so we cancelled it. The determinant element is the Joint Committee. We kept paragraph 3 (now 2) and made a specific link to art. 13(4).

Old paragraph 3 of the CH Proposal (“Le comité mixte peut décider de modifier les annexes du présent Accord ou d'en créer de nouvelles afin de tenir compte d'un amendement de la législation domestique en question”): we agree to delete this paragraph and to integrate the provisions on the decisions of the Joint Committee on amendment and creation of annexes in Art. 13 (Functions of the Joint Committee).

Old paragraph 4 of the CH Proposal (“Les Parties contractantes coopèrent au cours de la phase d'information et de consultation afin de faciliter, à la fin du processus, la prise de décision au sein du comité mixte.”) : we agree to cancel this paragraph.

Article
Amendments to the ETS falling short of the minimum criteria

Deletion is OK. This question is already regulated in Art. 10(2), Art. 13(4) and Art. 15(2a).

Article 11
Participation in the Committees

Without prejudice to the participation of other organisations, ~~Switzerland shall ensure that the Union are able to attend all meetings of the Swiss Parliament and reside and work in the Swiss Confederation as observers. Where this is foreseen in Union law,~~ the Union shall allow representatives from Switzerland to attend the agenda items in committee meetings which are of relevance for this Agreement as observers.

Reciprocity is difficult, since we don't have Working Groups like the EU. In practice it will be the case that CH is more likely to adapt its legislation according to changes in the EU ETS than the opposite. This is the reason why it is important for CH to be able to follow the discussions as observer in the WG III.

CHAPTER V
JOINT COMMITTEE

Article 12
Composition and functioning of the Joint Committee

1. A Joint Committee composed of representatives of the Parties is hereby established.
~~— 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.~~
- ~~2. The Joint Committee shall meet as required.~~
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 party groups that could assist it in its work.

Paragraph 2: merged paragraphs 2 and 3 of the EU proposal because they say the same.

Paragraph 3:

- moved the sub-paragraph about voting modality after paragraph 2, because more logical.
- Rejected EU proposal to insert elements of a multilateral agreement. We are concluding a bilateral treaty.

Article 13
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. ~~Either Party may request the~~ The Joint Committee may decide to adopt a new annex or an ~~and discuss possible amendments of an annex of this to the Agreement treaty and its annexes, as well as the adoption of new annexes.~~
3. ~~Upon agreement within the~~ The Joint Committee shall discuss adopt an ~~amendments to this Agreement proposed by one of the Parties and submit proposed amendments to the Parties for adoption according to their respective internal procedures or a new annex following a request made under paragraph 2, the Joint Committee shall take a decision to this end.~~
4. Upon a request made pursuant to article ~~910(32)~~, 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 ~~Emissions Trading System~~ 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 ~~15~~, the Joint Committee shall hold an exchange of views and shall make every effort to agree on the duration of the suspension and aim to find agreement to end the suspension or prevent the termination.
~~In case the Joint Committee identifies asymmetries between the Emissions Trading Systems of the Parties, it may provide recommendations to the parties on how these could be best addressed.~~
- 5-6. The Joint Committee shall [aim to] settle disputes arising between and referred to it by the Parties in line with article 14.
7. The Joint Committee shall only carry out the functions listed in this ~~article~~ Agreement.

Paragraph 2 and 3: we do not accept the EU proposal to merge these two articles because this could create misunderstandings. We prefer to keep two separate articles, one concerning the annexes and one concerning the Agreement to keep clear that the Joint Committee can not adopt amendments of the Agreement, and that such amendments have to be proposed to the Parties for adoption according to their respective internal procedures.

Old Paragraph 6: we cancelled this paragraph because the Parties have the obligation to respect minimum criteria. They do not have the obligation to have equivalent (symmetrical) legislations.

New Paragraph 7: we accept the EU proposal because the powers of the JC must be exhaustively defined. But the article should refer to the agreement.

Questions from DG CLIMA:

Do we need to agree on delays within which the Joint Committee needs to act?

CH: Can we rule this in the Rules of Procedures?

Do we need to clarify what is legally binding and what is not? Here or in other articles?

CHAPTER VI
DISPUTE SETTLEMENT

Article 14
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 Joint Committee shall refer~~ the dispute ~~to shall be referred, at the request of either of the Parties, to an~~ the European Court of Justice of the European Union/EFTA court/~~the~~ arbitration tribunal ~~according to Annex II of the International Court of Justice~~ for resolution.
~~This dispute settlement mechanism shall also remain available after the termination of this agreement.~~
3. The decisions of the ~~Joint Committee and the~~ arbitration tribunal ~~or~~ taken pursuant to this article shall ~~be binding on the Parties~~~~have immediate and legally binding effect.~~

Paragraph 2: we cannot accept EU proposal because:

- European Court of Justice: we cannot accept a Court of the UE;

- EFTA court: this is not possible because an agreement CH-UE cannot create an obligation to the EFTA court;

- International Court of Justice: this is not possible because only States may be Parties in cases before the ICJ (see art. 34 of the Statute of the ICJ), and EU is not a State.

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

Old Paragraph 3: we cancelled it because an agreement cannot have effects after its termination.

CHAPTER VII
TERMINATION

Article 15
Suspension and Termination

1. A Party may terminate this Agreement at any time by notifying the other Party of its decision in writing, ~~The termination shall take effect~~ after consultation within the Joint Committee. ~~The termination shall take effect and not before [6 months]X~~ after the notification has been made ~~in writing~~ to the other Party. The decision shall be made public after the notification has been made to the other Party. ~~A decision to terminate shall be taken by a Party in accordance with its internal procedures.~~

2. Without prejudice to paragraph 1, ~~either a~~ Party may suspend this Agreement in the following circumstances:
- a. Where ~~contrary to article 9, a the other~~ Party adopts/~~announces to adopt~~ changes to its ~~emissions trading system~~ ETS, whereby its system no longer meets the minimum criteria set out in Annex I.
 - b. Where ~~a the other~~ Party ~~announces/informs~~ the ~~other~~ Party in writing of its intention to link its ~~emissions trading system~~ ETS to that of a third Party, and the ~~other~~ Party does not consent.
 - ~~b.c.~~ Where the other Party fails Failure to inform the ~~other party~~ Party of its intention to link its ~~emissions trading system~~ ETS to that of a third Party ~~shall be considered as a failure to consent for the purposes of this article.~~
 - ~~e.d.~~ Where ~~a the other~~ Party imposes/~~announces additional~~ restrictions on the compliance use of ~~emission~~ allowances originating from ~~the an~~ Party's ~~other linked~~ system ~~other than those restrictions foreseen in article by 3(3) and article 14(4) of this agreement.~~
 - ~~d.e.~~ Where ~~a the other~~ Party fails to provide/~~announces to no longer provide~~ non-discriminatory access to emission allowances issued under ~~it~~ one of ~~the its~~ linked ~~emissions trading systems~~ ETS for operators active in ~~the~~ at least one of the ~~linked emissions trading systems~~ ETS of the Party.
 - ~~e.f.~~ Where ~~a the other~~ Party announces its intention to terminate this Agreement.
 - ~~f.g.~~ Where ~~the other a~~ Party announces its intention to ~~not extend or~~ abolish its ~~emissions trading system~~ ETS.
3. A Party shall notify its decision to suspend the Agreement in writing to the other ~~Parties~~ Party ~~to the link~~ together with a justification for this suspension. The decision shall be made public after the notification has been made to the other Party.
4. ~~During suspension, only allowances originating from the Party's ETS can be used for compliance in that ETS. Allowances originating from another ETS cannot be surrendered for compliance during suspension.~~
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 is of temporary duration [eg 2 months]. The duration of the suspension may be extended until the Agreement is terminated. A decision to extend the suspension shall be taken by a Party in accordance with its internal procedures.~~
- ~~5.6.~~ During suspension, allowances originating from the other Party's ETS cannot be surrendered for compliance in a Party's ETS.

This article needs further discussions.

We moved old paragraph 5 (now paragraph 4) because it refers to paragraph 3 (duration of the suspension).

Article 16
Consequences of Termination

CH: Further consultation needed. We'll make a proposal.
Agree on comment, to be cautious not to encourage claims.

EU comment:

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.

Article
Security Mechanism

We agree that no separate article is needed.

CHAPTER VIII
FINAL PROVISIONS

Article 17
Implementation

The Parties shall take all appropriate measures to implement the decisions of the Joint Committee and follow its act on the recommendations and ~~in accordance with the positions of the Joint Committee.~~

~~Decisions taken by the Joint Committee shall enter into force X days after completion of the internal procedures by both Parties.~~

~~Without prejudice to paragraph 2, decisions which increase the level of ambition of the minimum criteria set out in Annex I shall enter into force X days after adoption of the Joint Committee.~~

We deleted paragraphs 2 and 3 because the delay for the entry into force of a decision of the Joint Committee has to be decided in the decision of the Joint Committee and not in this Agreement.

Article 18
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.
3. A Party may only establish a link with a third Party if the other Party to this Agreement previously consents to the establishment of this link in writing.

Agree with EU proposal. However, the relation with third Parties will have to be discussed further.
Relation to EEA States to be discussed.

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.

We have added this Article in view of a possible solution of the “Stop-the-clock” problem.
The following Articles need to be renumbered.

Article 19
Annexes

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

Article is fine.

Article 20
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 21

Ratification and Entry into Force

1. This Agreement shall be concluded for an indefinite period, unless terminated in accordance with article 15.
2. This Agreement shall be ratified or approved by the pParties in accordance with their respective internal procedures.
3. Without prejudice to specific arrangements for the aviation sector laid down in Chapter III and in article 8 Annex I, Part B, this agreement shall enter into force on the 1 January following the completion of the internal procedures necessary for ratification by both pParties.

Comment on EU's Comment "may cause difficulties due to the 2020 sunset clause in the CH ETS":
In our view this is covered by art. 15(2)g.

On timing: For aviation 1 January is the only option. For the stationary ETS, a link could start at any date.

DECLASSIFIED

Annex I

We accept to merge the Annexes on Minimum criteria.
This Annex needs further work.

Minimum Criteria

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 Standard Criteria
The mandatory nature of the participation in the ETS <u>and its coverage</u> ;	
The coverage (sectors) of the ETS;	
The calculation of the cap;	
The level of ambition (reduction path);	
The use of international offsets and quality restrictions;	
The auctioning rules;	
The free allocation using uniform benchmarks;	

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);

The Monitoring and Verification rules;	
The level of the sanctions.	

B. Aviation

[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 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.

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 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).
- 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.

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.

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 II****Arbitration procedure according to article 14, paragraph 2**

Procedure to be defined.