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DCL 1

ENV 877
ENER 441
IND 265
COMPET 689
MI 816
ECOFIN 847
TRANS 498
AELE 59
CH 37

DECLASSIFICATION

of document: 14237/13 RESTREINT UE/EU RESTRICTED
dated: 1 October 2013
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Subject: EU ETS: Linking negotiations with Switzerland
- Comments from delegations

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

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



COUNCIL OF
THE EUROPEAN UNION

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NOTE

from : General Secretariat
to : Delegations

No. prev. doc. : 13373/13 ENV 806 ENER 401 IND 242 COMPEET 627 MI 729 ECOFIN 768
TRANS 461 AELE 54 CH 34
13740/13 ENV 833 ENER 419 IND 252 COMPET 653 MI 769 ECOFIN 796
TRANS 478 AELE 57 CH 35

Subject : EU ETS: Linking negotiations with Switzerland
- Comments from delegations

Following the WPE meeting on 19 September, delegations will find in Annex comments from CZ/DK/DE/FR/AT/SE/UK on the above.

CZECH REPUBLIC**Comments on the Swiss request concerning aviation auctioning revenues for 2012**

The Czech Republic's view on this issue is rather skeptical for following legal, strategic, administrative and technical reasons:

- First of all, the Czech Republic believes the proposed solution to transfer share of 2012 auctioned revenues to Switzerland from EU member states to be very difficult from the administrative and technical perspective. It would potentially create more administrative burden to a member state than the benefit that would arise to Switzerland. It is not clear at all what procedure should the member state take in case it would decide to follow up on Switzerland's request and whether/how it would be consulted with other Member States.
- Moreover, it is not clear to us at all, on what legal basis would such a transfer be justified and on what pretense should the Member States act should it decide to do so.
- In general, we also consider this solution as a potentially dangerous precedent. The EU could subsequently face similar proposals for compensation from other countries opposing EU ETS as such.
- Finally, we are also of the view, that such a step might not be reasonable from the strategic perspective. The transfer of allowances might be interpreted as if Switzerland was covered by the Stop-the-Clock proposal without a sufficient legal basis and might be definitely looked upon as a compensation for previous action of the EU/Member States.

DANEMARK

Comments on the Swiss request concerning aviation auctioning revenues for 2012

At working party meeting in the council working group 19 September 2013 on the status of negotiations between the European Commission and Switzerland the European Commission services requested Member States to comment on the Commission non-paper 13740/13 on 25 September at latest.

In response to that request we can inform you that the Danish government has not yet taken a formal position towards Switzerland's request for a share of proceeds from Member State auctions of aviation allowances. The issue will require further consideration, if Switzerland maintains the requirement.

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GERMANY**A. Comments on the Swiss request concerning aviation auctioning revenues for 2012**

Germany supports the statement of the Presidency made at the Meeting of the Working Party for Environment that before Member States take any decision on the voluntary transfer of aviation allowances questions posed by Member States need to be clarified. The time until the next high level meeting on 9 October 2013 seems too short for a decision to be taken until then.

Questions to the EU-Commission:

First of all, we ask the Commission to clarify the relevance of this transfer of allowances to Switzerland for continuation of the linking negotiations at the next high level meeting with Switzerland. We would also ask the Commission to point out at this meeting that the revenues to be expected are likely to be disproportionate to the complex proceedings necessary in each Member State as well as within the European Council.

If Member States agreed to this transfer, how would the Commission implement the transfer of allowances into a reserve or something equivalent, e. g. by modifying the auctioning regulation?

If a linking agreement between the EU-ETS and the ETS of Switzerland is to start on 1 January 2016, would not Switzerland ask for further transfer of allowances for the years 2013, 2014 and 2015 equivalent to the transfer for 2012?

Furthermore, we ask the Commission for more detailed information on the absolute number of allowances that would need to be transferred from Germany to Switzerland in the event that the Member States agree to such a transfer.

Questions to the Legal Service of the European Council:

We ask the Legal Service of the European Council for a legal assessment on the following issues:

- Implications of such a transfer on the decision of the European Union to not apply the "Stop-the-Clock"-Decision to Switzerland in the context of the enforcement of the inclusion of international aviation in the EU-ETS or pending lawsuits in this context
- Could the transfer for 2012 serve as a precedent for further transfers in 2013, 2014 and 2015?

Furthermore, we ask the Legal Service to clarify the following questions:

How would the necessary process to take such a decision look like?

Is a unanimous decision by Member States necessary?

Which Council Working Parties would need to be involved?

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B. Comments on the joint non-paper

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.

RESTREINT UE/EU RESTRICTED

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.

Comments by Germany: The term "ETS of Switzerland" (instead of "Swiss ETS") should be used in the entire document to ensure language consistency.

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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.

Gelöscht: 1

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, for account holders active in at least one of the linked systems.
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]

- Gelöscht: y
- Gelöscht: (issued under its ETS)
- Gelöscht: the ETS of the other Party
- Gelöscht: and
- Eingefügt: and verification
- Gelöscht: and
- Eingefügt: and
- Gelöscht: penalties
- Eingefügt: penalties; ¶ Domestic
- Gelöscht: <->international credit rules; ¶
- Gelöscht: and
- Gelöscht: .
- Eingefügt: ¶

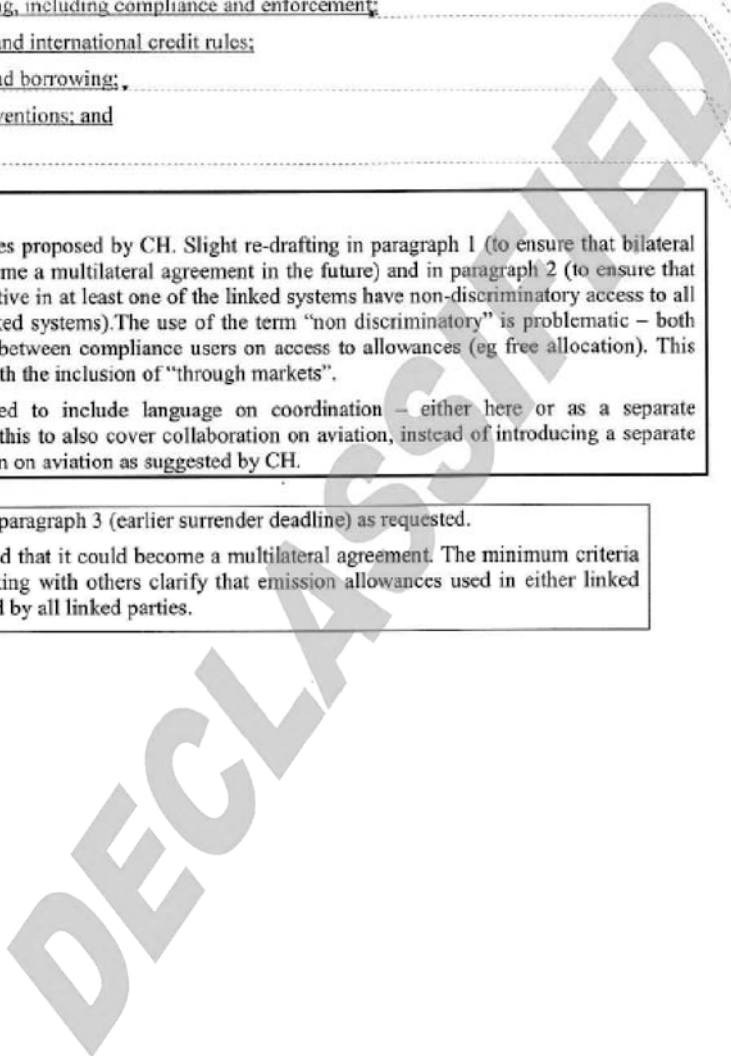
Reply to CH:

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 or to ensure the integrity of the carbon market, and only in accordance with provisions contained in applicable Swiss and European Union legislations. The Parties shall give notice of a suspension of the registry link and shall make the suspensions as brief as possible.
4. The Parties shall act promptly and in close cooperation using measures available in their respective jurisdictions to prevent fraud and preserve market integrity. The Swiss Administrator, the Union Central Administrator and National Administrators from European Union Member States shall work together to minimise the risk of fraud, misuse or criminal activity involving the registries, to respond to such incidents, and to protect the integrity of the registry link.

Gelöscht: maintenance

Gelöscht: laws

5. Without prejudice to the minimum criteria for the registries set out in Annex I, Part C and paragraphs 3 and 4 of this article, the Parties through the Swiss Administrator and the Union Central Administrator, shall determine common operational procedures related to technical or other matters necessary for the operation of the linking and taking into account the priorities of domestic legislation, 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 Union Central Administrator and in accordance with the determined common operational procedures.

Gelösch: [or Joint Committee]
 Gelösch: requiring a joint approach

Gelösch: European
 Gelösch: [or Joint Committee]

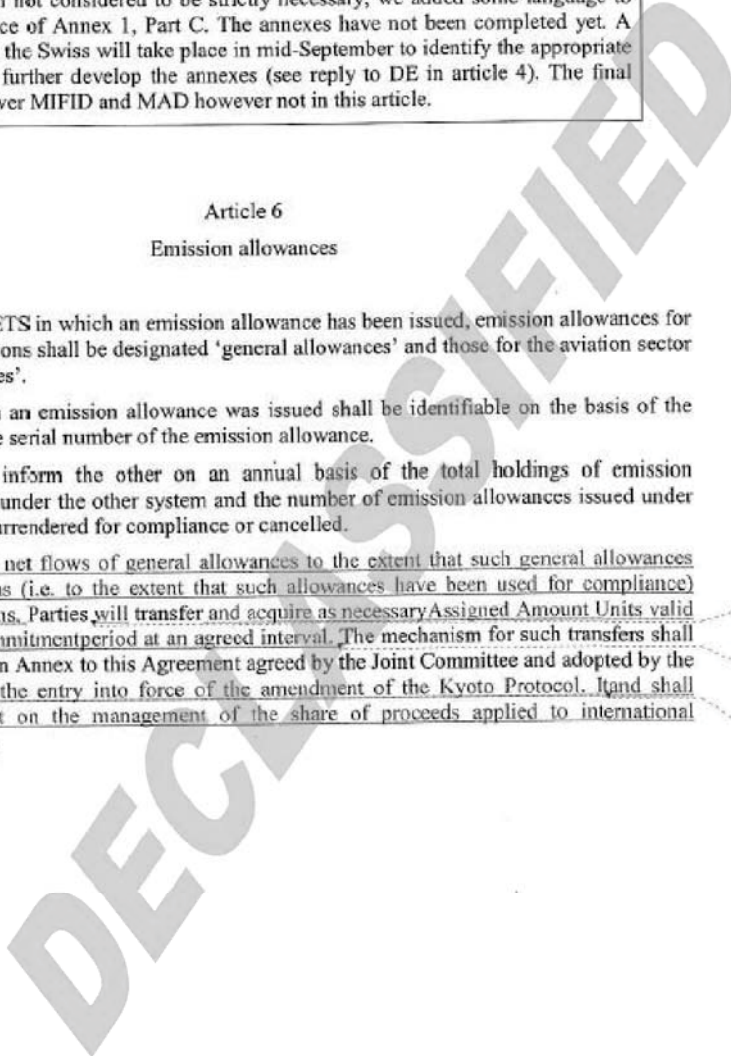
Reply to CH: OK, accepted changes proposed by CH and made small redrafting suggestions. On the procedure for paragraphs 5 and 6, further discussion is required.

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 will transfer and acquire as necessary Assigned Amount Units valid for the second commitment period at an agreed interval. The mechanism for such transfers shall be determined in an Annex to this Agreement agreed by the Joint Committee and adopted by the Parties following the entry into force of the amendment of the Kyoto Protocol. It and shall include agreement on the management of the share of proceeds applied to international emissions trading.

Gelösch: which have Kyoto Protocol units valid for the relevant period shall,
 Gelösch: a stock of Kyoto Protocol units reflecting the flows of emission allowances,
 Gelösch: once the relevant international rules have been adopted



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.

Comment by Germany:

What is the background for the proposed approach for the share of proceeds? On the level of enterprises money will be transferred from the net buyer country to the net seller country. Would it then not be fairer for the net seller country to pay the share of proceeds? Is there a similar agreement with Norway, Iceland and Liechtenstein that serves as precedent?

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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 and the Swiss Confederation 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 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.

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.

- Gelöscht:** Union
- Gelöscht:** tzerland
- Eingefügt:** Union and
- Eingefügt:** tzerland on Air Transport
- Gelöscht:** appropriate coverage
- Eingefügt:** appropriate coverage of international aviation in both systems. To this end, the ETS of the Parties
- Gelöscht:** shall
- Eingefügt:** shall meet the minimum criteria set out in Annex I.B.

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

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.

- Gelöscht:** ¶
[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.¶
- Eingefügt:** [
- Eingefügt:** The Parties shall collaborate in order to ensure a common administration of the aviation sector as set out in Annex I.B.]
- Gelöscht:** Article X¶
Transfer of aviation emission allowances to Switzerland for the year 2012¶
¶
<#>The Union shall transfer to Switzerland X aviation emission allowances to partially compensate its exclusion from the decision no. 377/2013/EU.¶
<#>The transfer shall take place X months after the entry into force of this Agreement at the latest.¶

CHAPTER IV
DEVELOPMENT OF LAW

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

Gelöscht: keep

Gelöscht: informed

Gelöscht: relevant domestic legislation

Gelöscht: relevant

Gelöscht: thereof

Gelöscht: covered by

Gelöscht: an information

Gelöscht: 13

Gelöscht: 4

Gelöscht: applies

Eingefügt: 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.

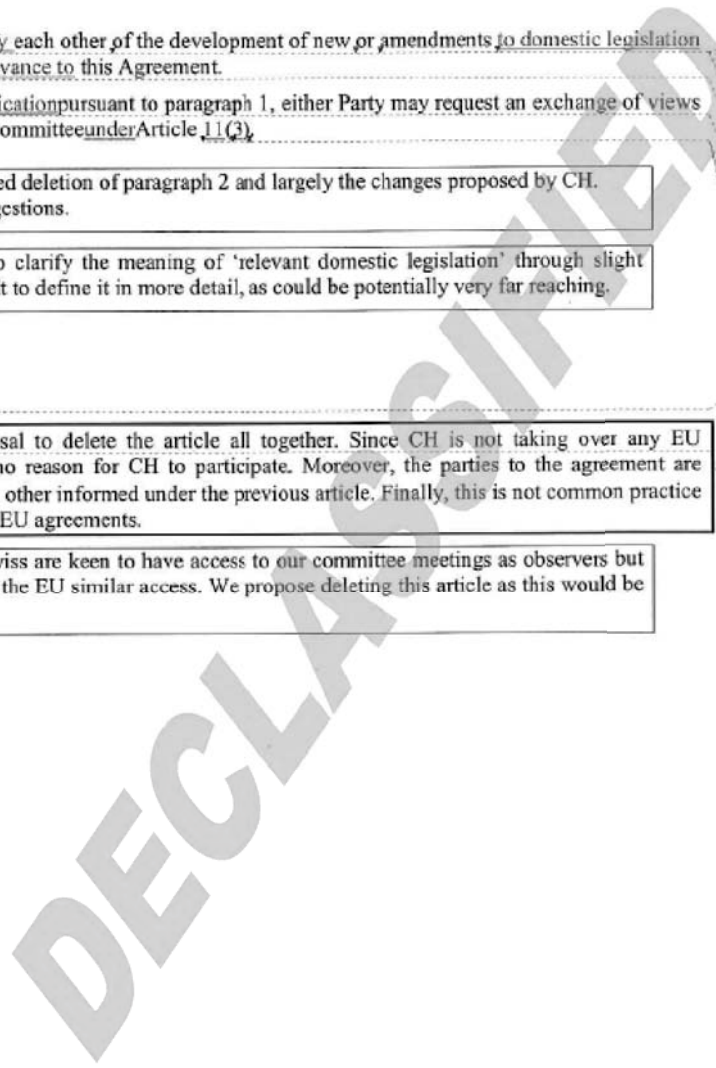
Gelöscht: Article 11 ¶
Participation in the Committees ¶

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.

Gelöscht: ¶

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 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.

Gefächst: mutual

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.

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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 shall discuss amendments to this Agreement and its Annexes, as well as the adoption of new Annexes proposed by one of the Parties. Where the Joint Committee agrees to the proposal by one of the Parties, it shall submit the proposal to the Parties for adoption according to their respective internal procedures.
3. Upon a request made pursuant to article 9(2), the Joint Committee shall hold an exchange of views and take a position as to whether the proposed new legislation or amendments to existing legislation would result in the respective Party's ETS no longer meeting the minimum criteria set out in Annex I.
4. Upon notification of a suspension or intention to terminate this Agreement in accordance with article 13, the Joint Committee shall hold an exchange of views and shall aim to find agreement to end the suspension or prevent the termination.
5. The Joint Committee shall aim to settle disputes arising between and referred to it by the Parties in line with article 12.
6. The Joint Committee shall only carry out the functions listed in this article.

Gelösch: <?>The Joint Committee may decide to adopt a new annex or an amendment of an annex of this Agreement.¶

Gelösch: and

Gelösch: proposed amendments

Gelösch: 10

Gelösch: 15

Gelösch: make every effort to agree on the duration of the suspension

Gelösch: [

Gelösch:]

Gelösch: 14

Gelösch: Agreement

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)).

Comment by Germany:

The JC should be able to make decisions concerning technical criteria e.g. concerning registries and auctioning. A possibility would be to separate the Annexes in a “fundamental” part containing e.g. the minimum criteria and a technical Annex that can be modified by decisions of the JC if necessary.

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 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 dispute settlement body taken pursuant to this article shall be legally binding on the Parties.

Gelöscht: an arbitration tribunal according to Annex II

Gelöscht: arbitration tribunal

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 [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 this agreement.
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.
 - 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 at least one of the ETS.

Gelöscht: ,
Gelöscht: 6
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Comment by Germany:

In Article 2 concerning 'Definitions' the term "account holder" is used instead of operator. Would this not also be the more fitting term in paragraph 3.e?

Gelöscht: issued under its ETS
Gelöscht: of the Party
Formatiert: Keine Aufzählungen oder Nummerierungen

- f. Where the other Party announces its intention to terminate this Agreement.
 - g. Where the other Party announces its intention not to extend 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.
5. 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.

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Gelöscht: to

Gelöscht: 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.

Comment by Germany:

The first sentence seems to us superfluous, if the duration may be shortened or extended. Proposal for alternative text: "When a Party decides to suspend the agreement, it shall notify the other Party of the length of the suspension and the conditions for termination of the suspension."

Formatiert: Keine Aufzählungen oder Nummerierungen

6. [Option 1: During suspension, allowances originating from the other Party's ETS cannot be surrendered for compliance in 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.]

Gelöscht: 1

Gelöscht: a Party's

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, (c) 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.

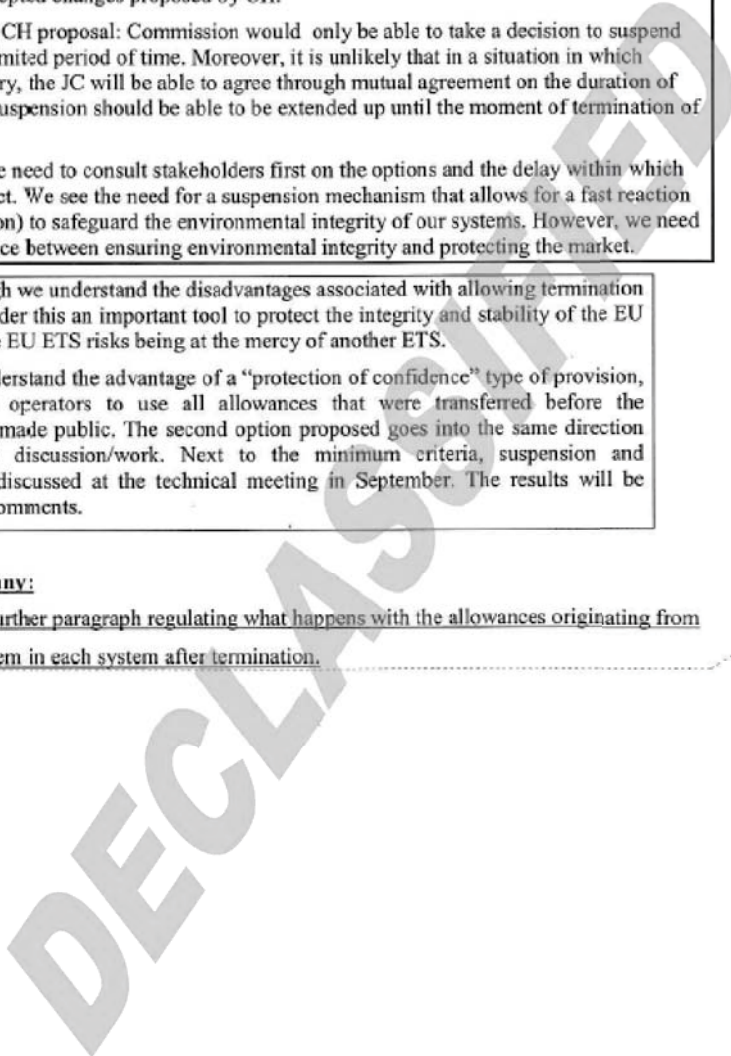
Reply to FR: Although we understand the disadvantages associated with allowing termination at any time, we consider this an important tool to protect the integrity and stability of the EU ETS, as otherwise the EU ETS risks being at the mercy of another ETS.

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.

Comment by Germany:

There needs to be a further paragraph regulating what happens with the allowances originating from the other Party's system in each system after termination.

Kommentar: from



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.

RESTREINT UE/EU RESTRICTED

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

Gelöscht: A
Gelöscht: previously consents
Gelöscht: to
Gelöscht: in writing

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

Gelöscht: 15

Gelöscht: Chapter III and in Annex I, Part B

Reply to CH: OK, no changes

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.

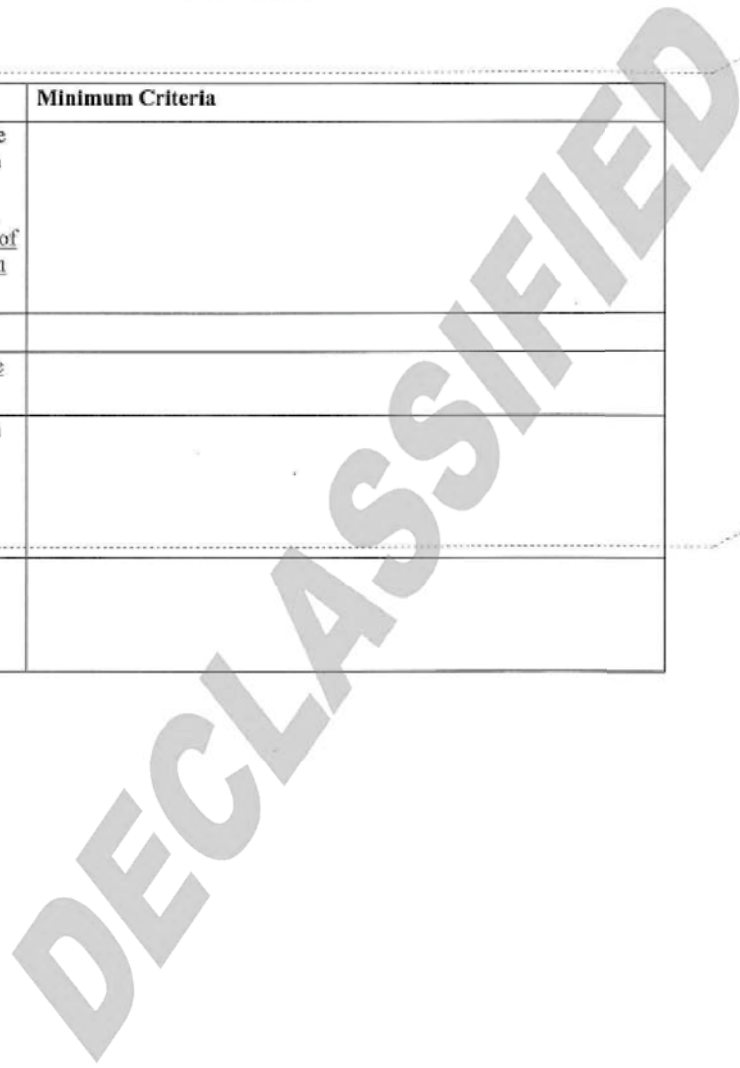
Question for clarification from Swiss: why has the format of the annex been changed – previous version four columns?

A. Minimum Criteria for Stationary Installations

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

Gelöscht: 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:

Gelöscht: path



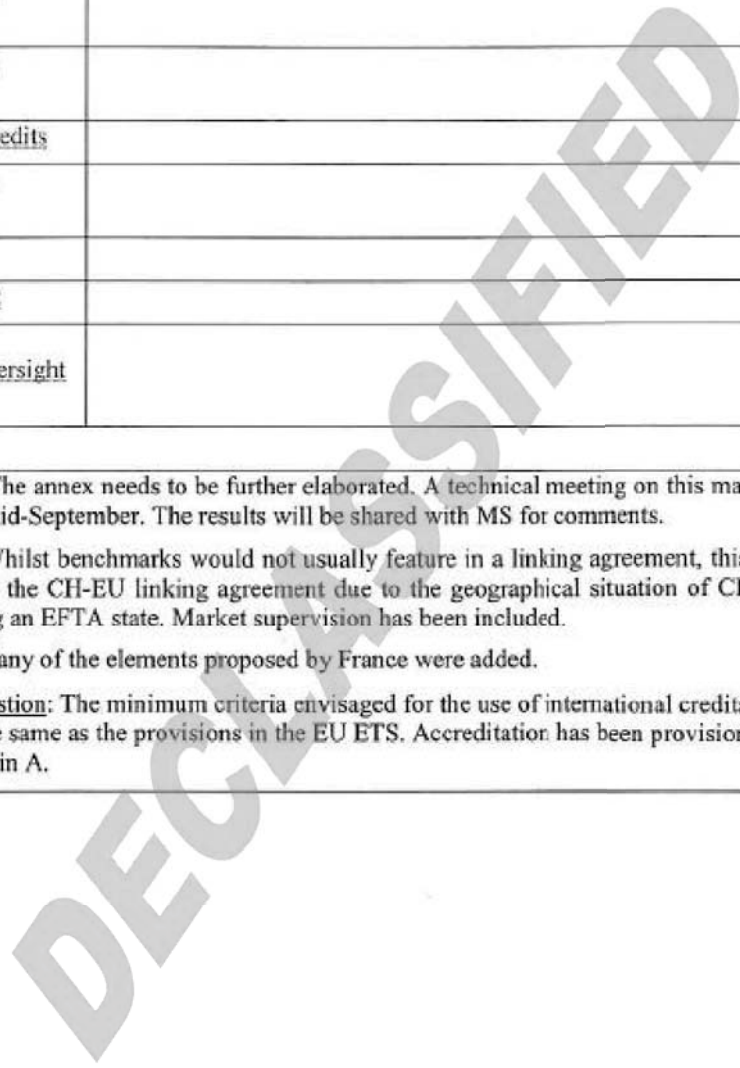
<u>Banking and Borrowing</u>	
The auctioning rules;	
The free allocation using uniform benchmarks;	
The Monitoring and Verification rules(including accreditation of verifiers);	
The level of the sanctions.	
<u>International Credits</u>	
<u>Excessive price fluctuations</u>	
<u>New entrants</u>	
<u>VAT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

Gelöscht: 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.

•

Gelöscht: [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 Directive.¶
 <#>Flights of aircraft operators with total annual emissions lower than 10'000 tonnes per year or fewer than 243 flights per period for three consecutive four-month periods.¶
 <#>Cap: The cap until 2020 is not higher than 95 percent of the historical emissions of the considered flights in the period 2004-2006.¶
 <#>Free allocation of emission allowances: The number of emission allowances allocated free of charge to aircraft operators is calculated based on the EU/EEA-benchmark for tonne-kilometres.¶
 Auctioning: The emission allowances not allocated free of charge have to be auctioned.

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DECLASSIFIED

Gelöscht: ¶
 <#>Use of CERs and ERUs: ¶
 <#>Quality: quality requirements of the EU ETS Directive ¶
 <#>Quantity: at least 1.5% of the verified emissions, at most 50% of the reduction below the historical emissions (Ø 2004-2006). ¶
 <#>Monitoring, verification and accreditation: Monitoring, verification and accreditation must comply with the general requirements laid down in the EU ETS Directive ¶
 <#>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. ¶
 ¶
 ¶
 <#>Technical provisions on international aviation and cooperation ¶
 ¶
 <#>Technical provisions / cooperation ¶
 <#>Attribution of flights between Switzerland and EU/EEA and vice versa: The flights are attributed to the two systems according to the departing flight principle. Flights departing from Switzerland are attributed to the ETS of Switzerland, flights departing from EU/EEA are attributed to the EU ETS. Consequently, the revenues from auctioning are attributed based on the same principle.
 Vols au départ ou à destination de l'aéroport de Bâle-Mulhouse : L'attribution des vols à l'Etat membre responsable est régie par le droit national sous lequel s'effectue le vol. ¶
 Administration of aircraft operators: For the Swiss ETS and the EU ETS each aircraft operator is administered only by one national authority (in line with article 18a of the EU ETS Directive). In case of aircraft operators from EU/EEA/CH the state which granted the operating licence shall administer ¶

Eingefügt: ¶
 <#>Use of CERs and ERUs: ¶
 <#>Quality: quality requirements of the EU ETS Directive ¶
 <#>Quantity: at least 1.5% of the verified emissions, at most 50% of the reduction below the historical emissions (Ø 2004-2006). ¶
 <#>Monitoring, verification and accreditation: Monitoring, verification and accreditation must comply with the general requirements laid down in the EU ETS Directive ¶
 <#>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. ¶
 ¶

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

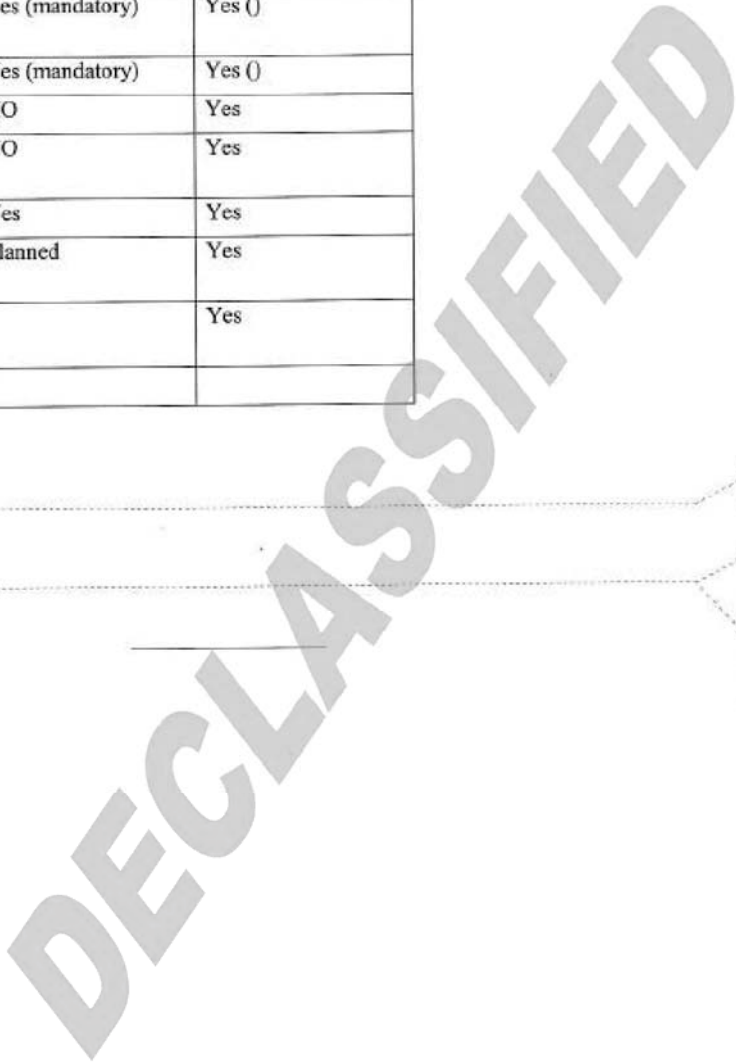
Description	CH-ETS	EU-ETS
2-factor authentication	Yes (mandatory)	Yes ()
4-eyes-principle	Yes (mandatory)	Yes ()
Safety delay	NO	Yes
Holding accounts (Trusted account list)	NO	Yes
Trading accounts	Yes	Yes
Hiding of serial numbers	Planned	Yes
SMS Tan for transactions		Yes
...		

Gelöscht: ¶
 <#>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.¶

Gelöscht: <#>Minimum Criteria for International Credits¶

Gelöscht: Annex II¶
 ¶ Arbitration procedure according to article 14, paragraph 2¶

Eingefügt: Annex II¶
 ¶ Arbitration procedure according to article 14, paragraph 2



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.

Technical provisions on international aviation and cooperation

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

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.

registry of Switzerland or vice versa (see articles 5 and 6).

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FRANCE

Comme souhaité à l'issue du groupe de travail environnement du Conseil du 19 septembre, consacré à l'examen du projet de connexion entre l'ETS européen et l'ETS suisse, les autorités françaises souhaitent, par la présente, faire part de leurs observations, en réponse aux requêtes formulées par la Suisse.

1 – Rappel des demandes suisses :

- a. La Suisse demande que lui soit affectée une partie des recettes des enchères de quotas aviation au titre des émissions 2012, compte tenu de son maintien dans le périmètre de la décision « stop the clock » pour l'EU ETS aviation

Depuis le 1er janvier 2012, les activités aériennes de ou vers l'Union européenne ont été intégrées dans le système d'échange de quotas de gaz à effet de serre européen en application de la directive 2008/101 adoptée le 19 novembre 2008 pendant la présidence française de l'Union européenne. Tous les vols réalisés au départ ou à l'arrivée des aéroports de l'espace économique européen sont concernés. Ainsi, les opérateurs aériens, quelle que soit leur nationalité, desservant les pays de l'Union européenne doivent racheter à terme l'équivalent de 15 % de leurs émissions de dioxyde de carbone (CO₂).

Cependant, prenant acte de l'opposition politique au dispositif et désireuse de progresser dans le cadre de l'Organisation de l'Aviation Civile Internationale dans la perspective d'aboutir un accord international sur un système global, sur proposition de la Commission européenne, le Conseil et le Parlement européen ont adopté une décision dérogeant temporairement à la directive en ce qui concerne les vols extra-européens (décision 377/2013/UE du 24 avril 2013 dite « Arrêt de l'horloge » ou « Stop the clock »). Dans le cadre de cette dérogation, il a toutefois été décidé de maintenir la Suisse dans le périmètre de l'ETS, eu égard à l'appartenance de la confédération à l'Association européenne de libre-échange (AELE).

Lors de la dernière réunion de haut-niveau de juillet 2013, la Suisse a demandé à pouvoir bénéficier d'une partie des recettes des enchères 2012 (à hauteur de la part des vols au départ de la Suisse et à destination des Etats-membres européens dans le périmètre total couvert par le « stop the clock »).

La demande officielle suisse a été consignée au procès-verbal de la réunion de haut-niveau, figure dans les commentaires suisses qui l'ont suivie et est proposée dans l'annexe du non papier soumis le 18 septembre 2013 aux Etats Membres.

- b. La Suisse demande à bénéficier d'une part des recettes des enchères prenant en compte le «secteur suisse» de l'aéroport de Bâle-Mulhouse.

Pour les années suivantes, la Suisse demande à bénéficier d'une part des recettes des enchères prenant en compte le «secteur suisse» de l'aéroport de Bâle-Mulhouse.

Or, l'aéroport est situé de manière constante sur le territoire français. Cela est spécifié tant sur le site internet de l'aéroport concerné que sur celui de l'OFAC (DGAC Suisse).

Les autorités suisses estiment toutefois qu'il devrait y avoir une distinction dans le trafic global de l'aéroport entre les vols réalisés sous « droit national suisse », qualifiables selon eux de vols suisses, et ceux réalisés sous droit français.

L'enjeu soulevé par cette question est réel puisqu'il a trait à ce qui est défini par la Directive ETS comme « les émissions attribuées » aux Etats membres (voir le point r) de l'article 3 de la directive ETS 2003/87/CE) qui a pour conséquence de déterminer la part des enchères qui revient aux Etats membres et en fin de compte à la part des revenus issus de celles-ci.

Cela se traduirait par une baisse de la part des recettes revenant à la France.

2 - Les autorités françaises ne sont pas favorables à ces deux requêtes :

Il convient de relever que les autorités françaises s'opposent à la proposition de redistribution des enchères de quotas aviation au titre de 2012, qui concerne du reste l'ensemble des autres Etats membres de l'UE. En effet, dans la mesure où la Suisse n'est pas partie prenante de l'EU ETS aviation, elle n'administre, au sens de la directive ETS, aucun exploitant d'aéronef et n'a alloué, en conséquence, aucun quota gratuit. Par ailleurs, la mise en œuvre de l'ETS aviation a représenté un coût administratif important pour les Etats membres, que la Suisse n'aura pas à supporter.

Elle n'apparaît donc pas en situation de prétendre bénéficier d'une part des revenus issus des enchères à venir des quotas aviation au titre de l'année 2012.

Sur la question de l'aéroport Mulhouse – Bâle, les autorités françaises soulignent les points suivants :

Il apparaît que le champ d'application du dispositif EU ETS est rédigé d'une manière non ambiguë puisque selon les termes de l'annexe 1 de la directive précitée, le champ d'application du dispositif inclut « les vols au départ ou à l'arrivée d'un aéroport situé sur le territoire d'un Etat membre soumis aux dispositions du traité ».

L'aéroport en question est situé de manière constante sur le territoire français. Cela est spécifié tant sur le site internet de l'aéroport concerné que sur celui de l'OFAC (DGAC suisse).

La Cour de justice de l'Union a déjà eu, du reste, l'occasion de rappeler que la notion de territoire était la notion pertinente au sens de l'EU ETS.

AUSTRIA

Comments on the Swiss request concerning aviation auctioning revenues for 2012

We do not see any legal basis for the request from Switzerland to receive part of the auctioning revenues from auctioning EU aviation allowances for 2012. No linking agreement has yet been concluded, and Switzerland has not established an emissions trading scheme for aviation and – unlike EEA Member States – has not taken on any responsibilities as an administering State for such a scheme. Furthermore, for 2012 related EUAA auctions no sharing of auction revenues is foreseen for Croatia either, although flights between the EEA and Croatia remain included with “stop-the-clock” as well. Apart from the legal considerations the Swiss request would also create additional administrative and procedural complexities.

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SWEDEN**Comments on the Swiss request concerning aviation auctioning revenues for 2012**

Sweden supports the extension of the EU ETS and linking to other emission trading systems and therefore fully supports the on-going negotiations with Switzerland on linking.

However the Swiss request for obtaining a share of the aviation auctioning revenues for 2012 raises a range of questions that we would like the Commission to clarify in the discussions with Switzerland.

Sweden considers the motivation for the request, in more precise terms, unclear. Nor are the legal implications of how such a change in attribution of the aviation auctioning revenues would be effectuated well defined. Considering the relatively small amount of money that is involved, it is unclear how important this is to Switzerland.

Furthermore Sweden considers it particularly important to assess what implications and what signal an accommodation of the request would have on the on-going global discussions in relation to the 'stop the clock' discussions and the ICAO negotiations and if it could have a precedential effect on EU decisions that potentially affect third countries.

UNITED KINGDOM**Comments on the Swiss request concerning aviation auctioning revenues for 2012**

The UK remains supportive of the process to link the EU ETS with the Switzerland ETS but in principle disagrees with this request:

- The UK agrees that it is for Member States to take a decision to agree or disagree to Switzerland's request to a change to attribution concerning 2012 auctioning shares and revenues. The UK notes that such a change is outside the scope of the Swiss linking mandate and outside the scope of the negotiating directives.
- The rules for allocating aviation auctioning rights are clearly set out in the ETS Directive and "stop-the-clock" decision and based on attributed emissions; as emissions from aviation operators from Switzerland were not included in the EU ETS in 2012 there is no clear basis for allocating auctioning rights to Switzerland for these emissions. The UK also notes that Switzerland was not subject to the administrative costs of participating in the aviation EU ETS in 2012.
- The UK has consistently maintained the principle that ownership of auctioning rights and auctioning revenues rests individually with Member States. The UK is concerned at the precedent that this request might set in appearing to transfer revenues or taxes from one Member State to another in contradiction to this principle, regardless of the potentially limited impact of this particular request on overall Member State revenues.
- The Swiss linking mandate does not give the Commission authority to negotiate matters of Member State competence on behalf of the Member States. For that to happen, there would need to be a separate instrument agreed by representatives of the Governments of the Member States of the European Union meeting within the Council to mandate the negotiation of those parts of the agreement which fall within Member State competence. The resulting agreement with Switzerland would then need to be ratified by the EU and each of the Member States.