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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Agreement between the European Union and the Swiss Confederation on
electricity

AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE SWISS CONFEDERATION
ON ELECTRICITY

THE EUROPEAN UNION, hereinafter referred to as the "Union",

and

THE SWISS CONFEDERATION, hereinafter referred to as "Switzerland",

hereinafter referred to as the "Contracting Parties",

CONSIDERING the existing particularly close integration of the electricity systems of the Union and Switzerland and that Switzerland was part of the group of European countries which developed cross-border electricity trade in Europe on the basis of cooperation between transmission system operators, with a view to benefitting from the advantages of shared energy resources;

NOTING that a dense legal framework has been created in the Union in the last two decades to organise an efficient internal electricity market with electricity trading mechanisms, such as Union-wide market coupling, replacing the former cooperation framework;

RECOGNISING that the absence of the application of Union rules for electricity trade and security of supply in Switzerland, and the resulting absence of Switzerland from joint trading schemes, platforms and coordination bodies governed by Union law, has posed increasing challenges for electricity cooperation between the Contracting Parties and for their security of supply, leading to market inefficiencies, higher transaction costs, legal uncertainty and a lack of reliability in the exchange of electricity, resulting in additional cost for electricity consumers;

EMPHASIZING that this Agreement, while taking into account the existing physically close integration of the Swiss electricity system into the European electricity system, is meant to enhance mutual cooperation in the electricity sector, to enable the participation of Switzerland in all trading schemes, platforms and common coordination bodies governed by Union law, to foster cross-border trading of electricity, to increase economic efficiency and social welfare, to strengthen security of supply, to increase grid stability, and to facilitate the transition to a net zero greenhouse gas energy system in Europe by 2050, for the mutual benefit of Switzerland and the Union;

CONSIDERING that the participation of Switzerland in the internal electricity market of the Union requires the integration of Switzerland in a manner that ensures the same rights and obligations for the Contracting Parties, and that this requires in turn appropriate rules on a level playing field which ensures open and fair competition between the Contracting Parties, including relevant rules on competition, environment and renewable energy production;

NOTING the need for close cooperation between the Contracting Parties and their authorities for the proper interpretation and application of the rules of the internal electricity market of the Union and for enhanced regional grid stability, as well as for security of supply, especially in times of an energy crisis;

EMPHASIZING that the Contracting Parties attach a great importance to electricity security of supply in their cooperation under this Agreement and that a key purpose of this Agreement is to create reliable rules, guaranteeing that both Contracting Parties will continue exchanging electricity also in times of an energy crisis, on the basis of clear rules, so that they can rely on electricity flows from each other, reducing costs for electricity consumers;

RECOGNISING that physical long-term cross-border capacity reservations restrict the principle of third-party access as implemented in the Union's electricity market rules and that the treatment of historic contracts with physical long-term reservations with non-Union countries may raise complex legal questions, this Agreement should provide legal certainty as to the phasing out of such reservations and to the regime applicable in the transitional period;

CONSIDERING the benefits of trading electricity across borders and incentivising investment for cost efficient, clean and secure electricity supply in the Union and Switzerland;

RECOGNISING that public ownership of electricity infrastructure can be a legitimate political choice;

AIMING to strengthen and deepen the participation of Switzerland and its undertakings in the internal market of the Union, in which Switzerland participates on the basis of this Agreement;

RECOGNISING that the proper functioning and homogeneity in the fields of the internal market in which Switzerland participates requires a level playing field for competition between Swiss and Union undertakings based on substantive and procedural rules equivalent to those that apply in the internal market as regards State aid;

REAFFIRMING the autonomy of the Contracting Parties and the role and competences of their institutions and, as far as Switzerland is concerned, respect for the principles deriving from its constitutional order, including direct democracy, the separation of powers and federalism;

WHEREAS the Union and Switzerland are bound by numerous bilateral agreements covering various fields, providing for specific rights and obligations similar, in certain respects, to those provided for within the Union;

RECALLING that the purpose of those bilateral agreements is to increase Europe's competitiveness and to create closer economic ties between the Contracting Parties, based on equality, reciprocity and the general balance of their advantages, rights and obligations;

RESOLVED to strengthen and deepen Switzerland's participation in the internal market of the Union, on the basis of the same rules as those that apply to the internal market, while preserving their independence and that of their institutions and, as regards Switzerland, respect for the principles stemming from direct democracy, federalism and the sectoral nature of its participation in the internal market;

REAFFIRMING that the competence of the Swiss Federal Supreme Court and all other Swiss courts as well as that of the Member States' courts and of the Court of Justice of the European Union to interpret the Agreement in individual cases is preserved;

CONSCIOUS of ensuring uniformity in the fields related to the internal market in which Switzerland participates, both current and future,

HAVE AGREED AS FOLLOWS:

PART I

GENERAL PROVISIONS

ARTICLE 1

Purpose

1. The purpose of this Agreement is to allow the participation of Switzerland in the internal electricity market of the Union by ensuring the uniform application of the rules of the internal electricity market as adapted where necessary, under the terms and conditions laid down in this Agreement.
2. Pursuant to paragraph 1, the aim of this Agreement is to:
 - (a) guarantee to all market participants equal market access to both the Union and the Swiss electricity markets, including access to joint trading schemes, platforms and coordination bodies;
 - (b) foster cross-border electricity trade for the mutual benefit of the Union and Switzerland, including through an improved allocation and management of the capacity of the transmission system, especially on interconnectors;
 - (c) ensure the stability of the regional electricity network and of the connection of the Swiss electricity system into the interconnected system of the Union;
 - (d) ensure a high degree of security of supply;

- (e) guarantee the integrity and transparency of the wholesale electricity market;
- (f) increase and promote the share of electricity produced from renewable energy sources and guarantee a high level of environmental protection in the electricity sector, to facilitate the transition to a net zero greenhouse gas energy system in Europe by 2050; and
- (g) increase the cooperation between the Contracting Parties, their respective regulatory authorities and operators in the electricity sector.

ARTICLE 2

Scope

1. This Agreement applies to the electricity sector, as regards the generation, transmission, distribution, trading and supply of electricity.
2. This Agreement also applies to the matters directly related to the electricity sector as set out in this Agreement.

ARTICLE 3

Non-discrimination

The Contracting Parties undertake not to take discriminatory measures when applying this Agreement.

PART II

RULES CONCERNING PARTICIPATION IN THE INTERNAL ELECTRICITY MARKET

ARTICLE 4

Rules governing the electricity sector

Switzerland shall apply the legal acts regarding the electricity sector listed in Annex I.

ARTICLE 5

Swiss transmission system operator

1. Without prejudice to the provisions on unbundling of transmission system operators (hereinafter referred to as "TSOs") in the legal acts listed in Annex I, no provision of this Agreement shall be interpreted as preventing Swiss public bodies, such as cantons and municipalities, from holding a direct or indirect majority in the operator of the Swiss transmission system.
2. Nothing in this Agreement shall be interpreted as preventing companies active in the electricity sector from holding a direct or indirect majority in the Swiss TSO within the limits of the provisions on unbundling of TSOs in the legal acts listed in Annex I.

ARTICLE 6

Swiss distribution system operators

Without prejudice to the provisions on unbundling of distribution system operators in the legal acts listed in Annex I, no provision of this Agreement shall be interpreted as preventing Swiss public bodies, such as cantons or municipalities, from:

- (a) fully owning or holding a direct or indirect majority in Swiss distribution system operators;
- (b) organising their grid operators and entities for generation or supply under public law.

ARTICLE 7

Swiss universal service

1. No provision of this Agreement shall be interpreted as preventing Switzerland from adopting consumer protection measures which provide for a right for households and enterprises below a certain consumption threshold to benefit from a universal service, including the services of a supplier of last resort in accordance with the provisions of the legal acts listed in Annex I.
2. This Agreement shall not be interpreted as preventing price regulation for the universal service in accordance with the provisions of the legal acts listed in Annex I.

ARTICLE 8

Transitional regime for existing long-term capacity reservations on interconnectors at the Swiss borders

1. In order to establish compliance with the principle of non-discriminatory grid access, the existing long-term capacity reservations for electricity at interconnectors between Switzerland and France, as identified in the contracts concluded before 1 January 2002, which are listed in Section B of Annex II, shall be removed upon the entry into force of this Agreement.
2. Financial compensation shall be granted to the holders of those contracts for a transitional period ending seven years after the entry into force of this Agreement but for no longer than the end date of the respective existing contract listed in Section B of Annex II if that contract terminates before. Changes to the contracts listed in Section B of Annex II shall not affect the removal of long-term capacity reservations or the transitional period.
3. Section A of Annex II sets out the principles of financial compensation and the National Regulatory Authorities' (hereinafter referred to as "NRAs") tasks related to the compensation and its financing.
4. Notwithstanding paragraph 1, the capacity reservations related to cross-border hydropower installations with a smaller volume of capacity reservation not exceeding 65 MW, as listed in Section C of Annex II, shall be preserved during a transitional period ending 15 years after the entry into force of this Agreement but for no longer than the end date of the respective existing concession, if the concession terminates before, and shall be removed thereafter.

ARTICLE 9

Security of supply and reserves

1. The Contracting Parties shall attach great importance to electricity security of supply in their cooperation under this Agreement. To ensure functioning electricity markets and that electricity flows where it is most needed, cross-border interconnectors shall remain open, including in times of an electricity crisis, in line with this Agreement. Measures jeopardising electricity security of supply, especially in the event of electricity crises, shall be avoided, in particular interventions such as undue restrictions on cross-border electricity flows.
2. Switzerland may take necessary, proportionate and non-distorting measures to ensure security of electricity supply, in particular by establishing and having in place electricity reserves to the extent that they are compatible with this Agreement.
3. When assessing its national resource adequacy, Switzerland may make assumptions taking into account the particularities of national electricity demand and supply, including such particularities resulting from the fact that Switzerland is not a Member State of the Union, or from elements that may be particularly relevant for security of supply in Switzerland, such as reduced availability of nuclear power and gas for power generation in neighbouring countries, provided that such concerns are considered in a proportionate and reasonable manner.
4. In order to ensure the effectiveness of the rules on State support for generation adequacy under this Agreement and to take account of the new possibilities to exchange electricity on the basis of binding rules after the entry into force of this Agreement, State support for adequacy reserves granted before the entry into force of this Agreement that is not compatible with this Agreement shall not exceed a duration of six years from the entry into force of this Agreement.

ARTICLE 10

Participation of Switzerland in institutions and other bodies

1. Switzerland and the relevant Swiss actors shall participate in institutions, committees, regions, schemes, platforms, initiatives and other similar bodies relevant under this Agreement. In particular:
 - (a) the Swiss NRA shall participate in the European Union Agency for the Cooperation of Energy Regulators (hereinafter referred to as "ACER");
 - (b) the Swiss TSO shall participate in the European Network of Transmission System Operators for Electricity (hereinafter referred to as "ENTSO-E");
 - (c) Swiss distribution system operators shall participate in the European entity for distribution system operators (hereinafter referred to as "EU DSO entity").
2. The details of the participation of Switzerland are set out in the Annexes.

ARTICLE 11

Exploitation of energy resources and ownership of generation installations

1. Switzerland shall preserve the right to determine the conditions for exploiting its energy resources, including the use of hydropower, within the limits of the relevant applicable law under this Agreement, as well as its choice between different energy sources and the general structure of its energy supply.
2. Nothing in this Agreement shall prevent the public ownership of generation installations, including of hydropower generation, by public bodies, within the limits of the relevant applicable electricity law.

PART III

STATE AID

ARTICLE 12

Objectives of the State aid provisions

1. The objectives of this Part are to ensure a level playing field for competition between Union and Swiss undertakings in the fields of the internal market falling under the scope of this Agreement and to guarantee the proper functioning of the internal market by laying down substantive and procedural rules on State aid.
2. This Part and Annexes III and IV shall alter neither the scope nor the objectives of this Agreement.

ARTICLE 13

State aid

1. Save as otherwise provided in this Agreement, any aid granted by Switzerland or by a Member State of the Union, or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Contracting Parties within the scope of this Agreement, be incompatible with the proper functioning of the internal market.

2. The following shall be compatible with the proper functioning of the internal market:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
 - (c) the measures set out in Section A of Annex III.

3. The following may be considered to be compatible with the proper functioning of the internal market:
 - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
 - (b) aid to promote the execution of an important project of common European interest, or of common interest to the Contracting Parties, or to remedy a serious disturbance in the economy of a Member State of the Union or Switzerland;
 - (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the interest of the Contracting Parties;
 - (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition to an extent contrary to the interest of the Contracting Parties;
 - (e) the categories of aid set out in Section B of Annex III.

4. Aid granted in accordance with Section C of Annex III shall be presumed compatible with the proper functioning of the internal market and shall be exempted from notification requirements under Article 14 of this Agreement.
5. Aid granted to undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Agreement, in so far as the application of these rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interest of the Contracting Parties.
6. This Part shall not apply to aid where the amount granted to a single undertaking for activities within the scope of this Agreement constitutes *de minimis* aid as set out in Section D of Annex III.
7. The Joint Committee established by Article 25 of this Agreement (hereinafter referred to as the "Joint Committee") may decide to update Sections A and B of Annex III by specifying measures that shall be compatible, or categories of aid that may be considered to be compatible, with the proper functioning of the internal market.

ARTICLE 14

Surveillance

1. For the purposes of Article 12, the Union, in accordance with the distribution of competences between the Union and its Member States, and Switzerland, in accordance with its constitutional order of competences, shall supervise the application of State aid rules in their respective territory in accordance with this Part.

2. For the purposes of the implementation of this Part, the Union shall maintain a State aid surveillance system in accordance with Articles 93, 106, 107 and 108 of the Treaty on the Functioning of the European Union (hereinafter referred to as "TFEU") as supplemented by Union legal acts in the field of State aid and Union legal acts concerning State aid in the electricity sector listed in point 1 of Section A of Annex IV of this Agreement.

3. For the purposes of the implementation of this Part, Switzerland shall, within five years of the entry into force of this Agreement, establish and maintain a State aid surveillance system that ensures at all times a level of surveillance and enforcement equivalent to that applied in the Union, as set out in paragraph 2, including the following:

- (a) an independent surveillance authority; and
- (b) procedures to ensure the review by the surveillance authority of the compatibility of aid with the proper functioning of the internal market, including the following:
 - (i) prior notification to the surveillance authority of planned aid;
 - (ii) assessment by the surveillance authority of notified aid and its competence to review non-notified aid;
 - (iii) challenge before the competent judicial authority, with suspensive effect from the moment the act is challengeable, of aid that the surveillance authority considers to be incompatible with the proper functioning of the internal market; and
 - (iv) recovery, including interest, of aid granted and found incompatible with the proper functioning of the internal market.

4. In accordance with Switzerland's constitutional order of competences, paragraph 3, point (b), (iii) and (iv), does not apply to acts of the Swiss Federal Assembly or of the Swiss Federal Council.

5. Where the Swiss surveillance authority cannot challenge the aid of the Swiss Federal Assembly or of the Swiss Federal Council before a judicial authority due to its limitations of competence under the Swiss constitutional order, it shall challenge the application by other authorities of that aid in all specific cases. If the judicial authority finds that that aid is incompatible with the proper functioning of the internal market, the competent Swiss judicial and administrative authorities shall take that finding into account when assessing whether to apply that aid in the case before them.

ARTICLE 15

Existing aid

1. Article 14(3), point (b), shall not apply to existing aid, including aid schemes and individual aid.

2. For the purposes of this Agreement, existing aid shall include aid granted before the entry into force of this Agreement and within a period of five years thereof.

3. Within twelve months of the date of establishment of the surveillance system pursuant to Article 14(3), the surveillance authority shall gain an overview of existing aid schemes within the scope of this Agreement that are still in force and make a *prima facie* assessment of those schemes against the criteria set out in Article 13.

4. All existing aid schemes in Switzerland shall be subject to constant review by the surveillance authority as to their compatibility with the proper functioning of the internal market pursuant to paragraphs 5, 6 and 7.
5. If the surveillance authority considers that an existing aid scheme is not, or is no longer, compatible with the proper functioning of the internal market, it shall inform the competent authorities about the obligation to comply with this Part. If such an aid scheme is amended or terminated, the competent authorities shall inform the surveillance authority.
6. If the surveillance authority considers the measures taken by the competent authorities to be appropriate to ensure the compatibility of the aid scheme with the proper functioning of the internal market, it shall publish those measures.
7. Notwithstanding paragraph 1 of this Article, if the surveillance authority considers that the aid scheme remains incompatible with the proper functioning of the internal market, the surveillance authority shall publish its assessment and challenge the application of that aid scheme in all specific cases, in accordance with Article 14(3), point (b)(iii), and Article 14(5).
8. For the purposes of this Part, if an existing aid scheme is amended in such a way as to affect the compatibility of the aid with the proper functioning of the internal market, the aid shall be considered to be new aid and shall therefore be subject to Article 14(3), point (b).

ARTICLE 16

Transparency

1. With regard to aid granted in their territory, the Contracting Parties shall ensure transparency. For the Union, transparency shall be based on substantive and procedural rules that apply in the Union on State aid within the scope of this Agreement. For Switzerland, transparency shall be based on substantive and procedural rules equivalent to those that apply in the Union on State aid within the scope of this Agreement.

2. Each Contracting Party shall, in respect of its territory and unless otherwise provided in this Part, ensure the publication of:
 - (a) aid granted;

 - (b) opinions or decisions of its surveillance authorities;

 - (c) rulings of its competent judicial authorities on the compatibility of aid with the proper functioning of the internal market; and

 - (d) guidelines and communications applied by its surveillance authorities.

ARTICLE 17

Terms of cooperation

1. The Contracting Parties shall cooperate and exchange information on State aid, subject to their respective laws and available resources.
2. For the purposes of the uniform implementation, application and interpretation of the substantive rules on State aid and of harmonious development thereof:
 - (a) the Contracting Parties shall cooperate and consult each other with regard to the relevant guidelines and communications referred to in Section B of Annex IV; and
 - (b) the surveillance authorities of the Contracting Parties shall conclude arrangements for a regular exchange of information, including on the implications for the application of rules on existing aid.

ARTICLE 18

Consultations

1. At the request of a Contracting Party, the Contracting Parties shall consult each other, within the Joint Committee, on matters relating to the implementation of this Part.

2. In the event of developments concerning important interests of a Contracting Party that may affect the operation of this Part, the Joint Committee shall, at the request of a Contracting Party, meet at an appropriately high level within 30 days of that request in order to discuss the matter.

ARTICLE 19

Integration of legal acts concerning State aid

1. Notwithstanding Article 27, for the purposes of Articles 13(4) and (6) and Article 14(2) and (3), of this Agreement, and in order to guarantee legal certainty and the homogeneity of the law in the fields of the internal market in which Switzerland participates by virtue of this Agreement, Switzerland and the Union shall ensure that legal acts of the Union adopted in the fields covered by Sections C and D of Annex III as well as Section A of Annex IV are integrated into those Annexes as quickly as possible after their adoption.

2. When it adopts a legal act in the field covered by Sections C and D of Annex III or Section A of Annex IV, the Union shall inform Switzerland thereof as quickly as possible through the Joint Committee. At the request of either of the Contracting Parties, the Joint Committee shall conduct an exchange of views on the subject.

3. The Joint Committee shall act in accordance with paragraph 1 of this Article by adopting a decision as quickly as possible to amend Sections C and D of Annex III as well as Section A of Annex IV, including the necessary adaptations.

4. Subject to Article 28, decisions of the Joint Committee pursuant to paragraph 3 of this Article shall enter into force immediately, but under no circumstances before the date on which the corresponding legal act of the Union becomes applicable in the Union.

PART IV

AREAS RELATED TO THE ELECTRICITY MARKET

ARTICLE 20

Environment

1. The Contracting Parties shall ensure a high level of environmental protection in the electricity sector.
2. Switzerland shall ensure a high level of environmental protection in accordance with Article 27(3) of this Agreement and Annex V.

ARTICLE 21

Renewable energies

1. The Contracting Parties shall cooperate in the field of renewable energies, in particular with regard to their deployment and promotion.
2. The Contracting Parties commit to increasing the share of renewable energy in their energy systems. Switzerland shall apply the legal acts on renewables as set out in Annex VI and set an appropriate indicative renewable energy target.

3. The Contracting Parties shall endeavour to accelerate their planning and permitting procedures.

ARTICLE 22

Infrastructure cooperation

1. The Contracting Parties shall cooperate to facilitate the timely development and interoperability of the electricity infrastructure connecting their territories.
2. Each Contracting Party shall ensure that network development plans for its electricity transmission systems are drawn up, published and regularly updated.
3. For the purpose of the potential qualification of Swiss infrastructure projects as projects of mutual interest as defined in Article 2, point (6), and meeting the general criteria set out in Article 4(2), point (e), of Regulation (EU) 2022/869 of the European Parliament and of the Council¹, a high level of convergence of the policy framework is presumed for Switzerland. Switzerland shall facilitate a similar timeline for accelerated implementation and other policy support measures, as provided for by that Regulation.

¹ Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013 (OJ EU L 152, 3.6.2022, p. 45, ELI: <http://data.europa.eu/eli/reg/2022/869/oj>).

PART V

INSTITUTIONAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 23

Objectives of the institutional provisions

1. The objective of this Part is to guarantee for the Contracting Parties, and for economic operators and individuals, greater legal certainty, equal treatment and a level playing field in the field related to the internal market falling under the scope of this Agreement.
2. In order to achieve the objective set out in paragraph 1, this Part provides institutional solutions facilitating a continuous and balanced strengthening of economic relations between the Contracting Parties. Taking account of the principles of international law, this Part lays down, in particular, institutional solutions for this Agreement, which are common to the bilateral agreements concluded or to be concluded in the fields related to the internal market in which Switzerland participates, without changing the scope or the objectives of this Agreement, notably:
 - (a) the procedure for aligning the Agreement with legal acts of the Union relevant to this Agreement;

- (b) the uniform interpretation and application of this Agreement and of the legal acts of the Union to which reference is made in this Agreement;
- (c) the surveillance and application of this Agreement; and
- (d) the settlement of disputes in the context of this Agreement.

ARTICLE 24

Bilateral agreements in the fields related to the internal market in which Switzerland participates

1. Existing and future bilateral agreements between the Union and Switzerland in the fields related to the internal market in which Switzerland participates shall be considered as a coherent whole which ensures a balance of rights and obligations between the Union and Switzerland.
2. This Agreement constitutes a bilateral agreement in a field related to the internal market in which Switzerland participates.

ARTICLE 25

Joint Committee

1. A Joint Committee is hereby established.

The Joint Committee shall be composed of representatives of the Contracting Parties.

2. The Joint Committee shall be co-chaired by a representative of the Union and a representative of Switzerland.

3. The Joint Committee shall:

- (a) ensure the proper functioning and the effective administration and application of this Agreement;
- (b) provide a forum for mutual consultation and a continuous exchange of information between the Contracting Parties, in particular with a view to finding a solution to any difficulty of interpretation or application of this Agreement or of a legal act of the Union to which reference is made in this Agreement in accordance with Article 32;
- (c) make recommendations to the Contracting Parties in matters pertaining to this Agreement;
- (d) adopt decisions where provided for in this Agreement; and
- (e) exercise any other competence granted to it in this Agreement.

4. In the event of an amendment to Articles 1 to 6, Articles 10 to 15, Article 17 or 18 of the Protocol (No 7) on the privileges and immunities of the European Union, annexed to the Treaty on the Functioning of the European Union (hereinafter referred to as "Protocol (No 7)"), the Joint Committee shall amend the Appendix to Annex I accordingly.

5. The Joint Committee shall act by consensus.

Decisions shall be binding on the Contracting Parties, which shall take all necessary measures to implement them.

6. The Joint Committee shall meet at least once a year, in Brussels and Bern alternately, unless the co-chairs decide otherwise. It shall also meet at the request of either Contracting Party.

The co-chairs may agree that a meeting of the Joint Committee be held by videoconference or teleconference.

7. The Joint Committee shall adopt its rules of procedure and update them as necessary.

8. The Joint Committee may decide to set up any working party or group of experts that can assist it in carrying out its duties.

CHAPTER 2

ALIGNMENT OF THIS AGREEMENT WITH LEGAL ACTS OF THE UNION

ARTICLE 26

Participation in the drafting of legal acts of the Union ("decision shaping")

1. When drafting a proposal for a legal act of the Union in accordance with the TFEU in the field covered by this Agreement, the European Commission (hereinafter referred to as the "Commission") shall inform Switzerland thereof and shall informally consult Switzerland's experts in the same way that it asks for the views of experts from the Member States of the Union for the drafting of its proposals.

At the request of either Contracting Party, a preliminary exchange of views shall take place within the Joint Committee.

The Contracting Parties shall consult each other again, at the request of either of them, within the Joint Committee at important moments of the phase preceding the adoption of the legal act by the Union, in a continuous process of information and consultation.

2. When preparing, in accordance with the TFEU, delegated acts concerning basic acts of Union law in the field covered by this Agreement, the Commission shall ensure that Switzerland has the widest possible participation in the preparation of the drafts of those delegated acts and shall consult Switzerland's experts on the same basis as it consults the experts of the Member States of the Union.

3. When preparing, in accordance with the TFEU, implementing acts concerning basic acts of Union law in the field covered by this Agreement, the Commission shall ensure that Switzerland has the widest possible participation in the preparation of the drafts of those implementing acts to be submitted at a later date to the committees assisting the Commission in the exercise of its implementing powers and shall consult Switzerland's experts on the same basis as it consults the experts from the Member States of the Union.

4. Switzerland's experts shall be involved in the work of committees not covered by paragraphs 2 and 3 where this is required for the proper functioning of this Agreement.

A list of those committees and, where appropriate, of other committees with similar characteristics, shall be drawn up and updated by the Joint Committee.

5. This Article shall not apply with regard to legal acts of the Union or provisions thereof falling within the scope of an exception referred to in Article 27(8).

ARTICLE 27

Integration of legal acts of the Union

1. In order to guarantee legal certainty and the homogeneity of the law in the field related to the internal market in which Switzerland participates by virtue of this Agreement, Switzerland and the Union shall ensure that legal acts of the Union adopted in the field covered by this Agreement are integrated into this Agreement as quickly as possible after their adoption.

2. Legal acts of the Union integrated into Annexes I and VI in accordance with paragraph 5 of this Article shall be, by their integration into this Agreement, part of the legal order of Switzerland subject, as the case may be, to the adaptations decided upon by the Joint Committee.

3. Switzerland shall, with applicability in the electricity sector, adopt or maintain provisions laying down requirements that ensure at least the same level of environmental protection as that laid down in the legal acts of the Union integrated into Annex V in accordance with paragraph 5 of this Article. The provisions of Swiss law adopted or maintained in accordance with this paragraph may not be invoked to restrict the free access to the Swiss market of goods and services from the Union that comply with the requirements laid down in the legal acts of the Union referred to in Annex V.

4. When it adopts a legal act in the field covered by this Agreement, the Union shall inform Switzerland thereof as quickly as possible through the Joint Committee.

At the request of either of the Contracting Parties, the Joint Committee shall conduct an exchange of views on the subject.

5. The Joint Committee shall act in accordance with paragraph 1 of this Article by adopting a decision as quickly as possible to amend Annexes I, V and VI to this Agreement, including the necessary adaptations.

6. Without prejudice to paragraphs 1, 2 and 3 of this Article, if necessary in order to ensure coherence of this Agreement with Annexes I, V and VI, as amended pursuant to paragraph 5 of this Article, the Joint Committee may propose, for approval by the Contracting Parties in accordance with their internal procedures, the revision of this Agreement.

7. References in this Agreement to legal acts of the Union that are no longer in force shall be construed as references to the legal acts of the Union repealing those legal acts as integrated into the Annexes I, V and VI, as from the entry into force of the Joint Committee's decision on the corresponding amendment of Annexes I, V and VI, pursuant to paragraph 5 of this Article, unless otherwise provided in that decision.

8. The obligation set out in paragraph 1 of this Article shall not apply to legal acts of the Union or provisions thereof falling within the scope of the following exception:

– Article 9(3).

9. Subject to Article 28, decisions of the Joint Committee pursuant to paragraph 5 of this Article shall enter into force immediately, but under no circumstances before the date on which the corresponding legal act of the Union becomes applicable in the Union.

10. The Contracting Parties shall cooperate in good faith throughout the procedure set out in this Article in order to facilitate decision-making.

ARTICLE 28

Fulfilment of constitutional obligations by Switzerland

1. During the exchange of views referred to in Article 27(4), Switzerland shall inform the Union whether a decision referred to in Article 27(5) requires the fulfilment of constitutional obligations by Switzerland in order to become binding.

2. Where the decision referred to in Article 27(5) requires Switzerland to fulfil constitutional obligations in order to become binding, Switzerland shall have a time limit of two years maximum from the date of the information provided for in paragraph 1 of this Article, except where a referendum procedure is launched, in which case that time limit shall be extended by one year.

3. Pending the information by Switzerland that it has fulfilled its constitutional obligations, the Contracting Parties shall provisionally apply the decision referred to in Article 27(5), unless Switzerland informs the Union that the provisional application of that decision is not possible and provides the reasons therefor.

Under no circumstances can the provisional application of the decision referred to in Article 27(5) occur before the date on which the corresponding legal act of the Union becomes applicable in the Union.

4. Switzerland shall notify the Union without delay through the Joint Committee once it has fulfilled its constitutional obligations referred to in paragraph 1.

5. The decision referred to in Article 27(5) shall enter into force on the day on which the notification provided for in paragraph 4 of this Article is delivered, but under no circumstances before the date on which the corresponding legal act of the Union becomes applicable in the Union.

CHAPTER 3

INTERPRETATION AND APPLICATION OF THE AGREEMENT

ARTICLE 29

Uniform interpretation principle

1. For the purpose of achieving the objectives set out in Articles 1, 12 and 23 and in accordance with the principles of public international law, the bilateral agreements in the fields related to the internal market in which Switzerland participates and the legal acts of the Union to which reference is made in such agreements shall be uniformly interpreted and applied in the fields related to the internal market in which Switzerland participates.
2. The legal acts of the Union to which reference is made in this Agreement and, to the extent that their application involves concepts of Union law, the provisions of this Agreement shall be interpreted and applied in accordance with the case law of the Court of Justice of the European Union, prior or subsequent to the signature of this Agreement.

ARTICLE 30

Effective and harmonious application principle

1. The Commission and the competent Swiss authorities shall cooperate and assist each other in ensuring the surveillance of the application of this Agreement. They may exchange information on the activities of surveillance of the application of this Agreement. They may exchange views and discuss issues of mutual interest.
2. Each Contracting Party shall take appropriate measures to ensure the effective and harmonious application of this Agreement on its territory.
3. The surveillance of the application of this Agreement shall be carried out jointly by the Contracting Parties within the Joint Committee.

If the Commission or the competent Swiss authorities become aware of a case of incorrect application, the matter may be referred to the Joint Committee with a view to finding an acceptable solution.

4. The Commission and the competent Swiss authorities respectively shall monitor the application of this Agreement by the other Contracting Party. The procedure provided for in Article 32 of this Agreement applies.

To the extent that certain surveillance competences of the institutions of the Union as regards one Contracting Party are necessary to ensure the effective and harmonious application of this Agreement, such as investigation and decision powers, this Agreement must provide for them specifically.

ARTICLE 31

Exclusivity principle

The Contracting Parties undertake not to submit a dispute regarding the interpretation or application of this Agreement and of the legal acts of the Union to which reference is made in this Agreement or, where applicable, regarding the conformity with this Agreement of a decision adopted by the Commission on the basis of this Agreement to any method of settlement other than those provided for in this Part.

ARTICLE 32

Procedure in the event of difficulty of interpretation or application

1. In the event of difficulty of interpretation or application of this Agreement or of a legal act of the Union to which reference is made in the Agreement, the Contracting Parties shall consult each other within the Joint Committee in order to find a mutually acceptable solution. To that end, all useful elements of information shall be provided to the Joint Committee to enable it to make a detailed examination of the situation. The Joint Committee shall examine all possibilities that allow the proper functioning of this Agreement to be maintained.
2. If the Joint Committee is not able to find a solution to the difficulty referred to in paragraph 1 of this Article within three months of the date on which the difficulty was submitted to it, either of the Contracting Parties may request that an arbitral tribunal settle the dispute in accordance with the rules laid down in the Protocol.

3. Where the dispute raises a question concerning the interpretation or application of a provision referred to in Article 29(2), and if the interpretation of that provision is relevant to the settlement of the dispute and necessary to enable it to decide, the arbitral tribunal shall refer that question to the Court of Justice of the European Union.

Where the dispute raises a question concerning the interpretation or application of a provision that falls within the scope of an exception from the dynamic alignment obligation referred to in Article 27(8) and where the dispute does not involve the interpretation or application of concepts of Union law, the arbitral tribunal shall settle the dispute without referral to the Court of Justice of the European Union.

4. Where the arbitral tribunal refers a question to the Court of Justice of the European Union pursuant to paragraph 3:

- (a) the ruling of the Court of Justice of the European Union shall be binding on the arbitral tribunal; and
- (b) Switzerland shall enjoy the same rights as the Member States and the institutions of the Union and shall be subject to the same procedures before the Court of Justice of the European Union, *mutatis mutandis*.

5. Each Contracting Party shall take all measures necessary to comply in good faith with the arbitral tribunal's decision.

The Contracting Party that has been found by the arbitral tribunal not to have complied with this Agreement shall inform the other Contracting Party through the Joint Committee of the measures it has taken to comply with the arbitral tribunal's decision.

ARTICLE 33

Compensatory measures

1. If the Contracting Party that has been found by the arbitral tribunal not to have complied with this Agreement does not inform the other Contracting Party, within a reasonable time period set in accordance with Article IV.2(6) of the Protocol, of the measures it has taken to comply with the arbitral tribunal's decision, or if the other Contracting Party considers that the measures communicated do not comply with the arbitral tribunal's decision, that other Contracting Party may adopt proportionate compensatory measures within the framework of this Agreement or of any other bilateral agreement in the fields related to the internal market in which Switzerland participates (hereinafter referred to as "compensatory measures") in order to remedy a potential imbalance. That other Contracting Party shall notify the Contracting Party that has been found by the arbitral tribunal not to have complied with this Agreement of the compensatory measures, which shall be specified in the notification. Those compensatory measures shall take effect three months from the date of the notification.
2. If, within one month of the date of the notification of the intended compensatory measures, the Joint Committee has not taken a decision to suspend, amend or annul those compensatory measures, either Contracting Party may submit to arbitration the question of the proportionality of those compensatory measures, in accordance with the Protocol.
3. The arbitral tribunal shall decide within the time limits laid down in Article III.8(4) of the Protocol.
4. Compensatory measures shall not have retroactive effect. In particular, the rights and obligations already acquired by individuals and economic operators before the compensatory measures take effect shall be preserved.

ARTICLE 34

Cooperation between jurisdictions

1. To promote homogeneous interpretation, the Swiss Federal Supreme Court and the Court of Justice of the European Union shall agree on a dialogue and the modalities thereof.
2. Switzerland shall have the right to lodge statements of case or written observations with the Court of Justice of the European Union where a court of a Member State of the Union refers to the Court of Justice of the European Union a question concerning the interpretation of this Agreement or of a provision of a legal act of the Union referred to therein for a preliminary ruling.

ARTICLE 35

References to territories

Whenever the legal acts of the Union integrated into this Agreement contain references to the territory of the "European Union", of the "Union", of the "common market" or of the "internal market", the references shall for the purposes of this Agreement be understood to be references to the territories referred to in Article 43.

ARTICLE 36

References to nationals of Member States of the Union

Whenever the legal acts of the Union integrated into this Agreement contain references to nationals of Member States of the Union, the references shall for the purposes of this Agreement be understood to be references to nationals of the Member States of the Union and of Switzerland.

ARTICLE 37

Entry into force and implementation of the legal acts of the Union

Provisions of the legal acts of the Union integrated into this Agreement on their entry into force or implementation are not relevant for the purposes of this Agreement.

The time limits and dates for Switzerland for bringing into force and implementing the decisions integrating legal acts of the Union into this Agreement follow from Article 27(9) and Article 28(5), as well as from provisions on transitional arrangements.

ARTICLE 38

Addressees of the legal acts of the Union

Provisions of the legal acts of the Union integrated into this Agreement indicating that they are addressed to the Member States of the Union are not relevant for the purposes of this Agreement.

PART VI

OTHER PROVISIONS

ARTICLE 39

General adaptations

This Part provides for general adaptations applicable to the legal acts of the Union referred to in Annexes I and VI, unless otherwise provided for in the relevant annex.

ARTICLE 40

Exchange of information

1. Where a Member State of the Union or its competent authority is to submit information to the Commission, Switzerland or its competent authority shall submit such information to the Commission via the Joint Committee.
2. Where a Member State of the Union or its competent authority is to submit information to one or more other Member States of the Union, it shall also submit that information directly to Switzerland and inform the Commission of the transmission thereof. Where Switzerland or its competent authority is to submit information to one or more other Member States of the Union or their competent authorities, it shall do it directly and inform the Commission via the Joint Committee.

3. The Joint Committee may agree on appropriate solutions providing for direct exchange of information in areas where rapid transfer of information is called for.
4. Paragraphs 1 and 2 are without prejudice to the sector-specific rules and arrangements applicable to the exchange of information by means of information systems.
5. Save as provided in paragraph 1, where an exchange of information between ACER or Union institutions and a Swiss authority is necessary during the preparation of a decision or a report, an opinion, a recommendation or another similar document, that exchange shall take place directly between the relevant entities, unless the Joint Committee determines that such an exchange should take place via the Joint Committee.
6. Where the Commission or ACER, in order to exercise the competences assigned to them by this Agreement, need to exchange information with undertakings in Switzerland, they may exchange that information directly with those undertakings, unless the Joint Committee determines another procedure to apply for such cases.
7. Where Member States of the Union, their authorities or undertakings are consulted during the elaboration of a Union decision, Switzerland, its authorities and its undertakings shall be consulted in the same way.

ARTICLE 41

Non-binding documents

1. Where the Commission, ACER or Union institutions issue reports, opinions, declarations, recommendations or other similar documents to the Member States of the Union or their authorities, they may also do so in relation to Switzerland or its authorities. Where Member States of the Union, their authorities or undertakings are consulted during the elaboration of those documents, Switzerland, its authorities and its undertakings shall be consulted in the same way.
2. Unless they are published, the Commission shall deliver the documents referred to in paragraph 1 via the Joint Committee. However, the Joint Committee may provide for direct exchange. ACER and other institutions shall deliver the documents directly.

ARTICLE 42

Publication of information

1. Where a Member State of the Union is to publish certain information, Switzerland shall also, under this Agreement, publish the relevant information in a corresponding manner.
2. Where, in accordance with an act referred to in the Annexes, information is to be published in the *Official Journal of the European Union*, the relevant Union institution shall publish corresponding information regarding Switzerland therein as well.

PART VII

FINAL PROVISIONS

ARTICLE 43

Territorial scope

This Agreement shall apply, of the one part, to the territory in which the Treaty on European Union and the TFEU apply and under the conditions laid down in those Treaties, and, of the other part, to the territory of Switzerland.

ARTICLE 44

Evolutionary clause for an extended cooperation

The Contracting Parties shall consider deepening cooperation in the energy sector beyond electricity, in particular in the fields of hydrogen or renewable gases.

ARTICLE 45

Classified information and sensitive non-classified information

1. Nothing in this Agreement shall be construed as requiring a Contracting Party to make available classified information.

2. Classified information or material provided by, or exchanged between, the Contracting Parties under this Agreement shall be handled and protected in compliance with the Agreement between the European Union and the Swiss Confederation on the security procedures for the exchange of classified information, done at Brussels on 28 April 2008, and any security arrangement implementing it.

3. The Joint Committee shall adopt, by means of a decision, handling instructions to ensure the protection of sensitive non-classified information exchanged between the Contracting Parties.

ARTICLE 46

Professional secrecy

Representatives, experts and other agents of the Contracting Parties shall be required, even after their duties have ceased, not to disclose information, obtained in the framework of this Agreement, which is covered by the obligation of professional secrecy.

ARTICLE 47

Annexes and Protocols

The Annexes and Protocols to this Agreement shall form an integral part thereof.

ARTICLE 48

Implementation

1. The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from this Agreement and shall refrain from taking any measure which could jeopardise the achievement of its objectives.
2. The Contracting Parties shall take all measures necessary to guarantee the intended result of the legal acts of the Union to which reference is made in this Agreement and shall refrain from taking any measure that could jeopardise the achievement of their aims.

ARTICLE 49

Financial contribution

1. Switzerland shall contribute to the financing of the activities of the Union agencies, information systems and other activities listed in Article 1 of Annex VII to which it has access, in accordance with this Article and Annex VII.

The Joint Committee may adopt a decision to amend Annex VII.

2. The Union may suspend the participation of Switzerland in the activities referred to in paragraph 1 of this Article at any time if Switzerland fails to meet the payment deadline in accordance with the terms of payment set out in Article 2 of Annex VII.

Where Switzerland fails to meet a payment deadline, the Union shall send Switzerland a formal letter of reminder. Where no full payment is made within 30 days of the date of reception of that formal letter of reminder, the Union may suspend the participation of Switzerland in the relevant activity.

3. The financial contribution shall take the form of the sum of:

(a) an operational contribution; and

(b) a participation fee.

4. The financial contribution shall take the form of an annual financial contribution and shall be due at the dates specified in the calls for funds issued by the Commission.

5. The operational contribution shall be based on a contribution key defined as the ratio of the gross domestic product (hereinafter referred to as "GDP") of Switzerland at market prices to the GDP of the Union at market prices.

For that purpose, the figures for GDP at market prices of the Contracting Parties shall be the latest such figures available as of 1 January of the year in which the annual payment is made as provided by the Statistical Office of the European Union, with due regard to the Agreement between the European Community and the Swiss Confederation on cooperation in the field of statistics, done at Luxembourg on 26 October 2004. If that agreement ceases to apply, the GDP of Switzerland shall be the one established on the basis of data provided by the Organisation for Economic Co-operation and Development.

6. The operational contribution for each Union agency shall be calculated by applying the contribution key to its annual voted budget inscribed on the relevant Union budget subsidy line(s) of the year in question, taking into account for each agency any adjusted operational contribution as defined in Article 1 of Annex VII.

The operational contribution for the information systems and other activities shall be calculated by applying the contribution key to the relevant budget of the year in question as set out in documents implementing the budget, such as work programmes or contracts.

All reference amounts shall be based on commitment appropriations.

7. The annual participation fee shall be 4 % of the annual operational contribution as calculated in accordance with paragraphs 5 and 6.

8. The Commission shall provide Switzerland with adequate information in relation to the calculation of its financial contribution. That information shall be provided having due regard to the Union's confidentiality and data protection rules.

9. All financial contributions by Switzerland or payments from the Union, and the calculation of amounts due or to be received, shall be made in euro.

10. Where the entry into force of this Agreement does not coincide with the beginning of a calendar year, Switzerland's operational contribution for the year in question shall be subject to adjustment, according to the methodology and terms of payment defined in Article 4 of Annex VII.

11. Detailed provisions for the application of this Article are set out in Annex VII.

12. Three years following the entry into force of this Agreement, and every three years subsequently, the Joint Committee shall review the conditions of Switzerland's participation as defined in Article 1 of Annex VII and, where appropriate, adapt them.

ARTICLE 50

Entry into force

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their own procedures. The Contracting Parties shall notify each other of the completion of the internal procedures necessary to the entry into force of this Agreement.

2. This Agreement shall enter into force on the first day of the second month following the last notification regarding the following instruments:

- (a) Institutional Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons;
- (b) Amending Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons;
- (c) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;

- (d) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;
- (e) State Aid Protocol to the Agreement between the European Community and the Swiss Confederation on air transport;
- (f) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (g) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (h) State Aid Protocol to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road;
- (i) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products;
- (j) Institutional Protocol to the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment;
- (k) Amending Protocol to the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment;
- (l) Agreement between the European Union and the Swiss Confederation on Switzerland's regular financial contribution towards reducing economic and social disparities in the European Union;

- (m) Agreement between the European Union and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, on the participation of the Swiss Confederation in Union programmes;
- (n) Agreement between the European Union and the Swiss Confederation on the terms and conditions for the participation of the Swiss Confederation in the European Union Agency for the Space Programme.

ARTICLE 51

Amendment and termination

1. This Agreement may be amended at any time by mutual agreement of the Contracting Parties.
2. The Union or Switzerland may terminate this Agreement by notifying the other Contracting Party. This Agreement shall cease to be in force six months from the receipt of that notification.
3. Where this Agreement ceases to be in force, the rights and obligations that individuals and economic operators have already acquired by virtue of this Agreement before the date of the cessation of this Agreement shall be preserved. The Contracting Parties shall settle by mutual agreement what action is to be taken in respect of rights in the process of being acquired.

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

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Agreement.

Done at ... this day of ... in the year ...

For the European Union

For the Swiss Confederation

ELECTRICITY

Unless otherwise provided for in technical adaptations:

- rights and obligations provided for in the legal acts of the Union integrated into this Annex for Member States of the Union shall be understood to be provided for for Switzerland;
- references to natural or legal persons residing or established in the Member States of the Union in those acts shall be read as including references to natural or legal persons residing or established in Switzerland.

This shall be applied in full compliance with the institutional provisions contained in Part V of this Agreement.

ACTS REFERRED TO

1. 32019 R 0941: Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (OJ L 158, 14.6.2019, p. 1, ELI: <http://data.europa.eu/eli/reg/2019/941/oj>)

The provisions of Regulation (EU) 2019/941 shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) in Article 3(1), the words "As soon as possible and in any event by 5 January 2020, each Member State" are replaced by the words

"At the latest three years from the entry into force of the Agreement, Switzerland";
- (b) in Article 7(1), the words "Within four months of the identification of the regional electricity crisis scenarios in accordance with Article 6(1)" are replaced by the words

"At the latest three years and four months from the entry into force of the Agreement";
- (c) in Article 7(4), the words "Within four months of identification of regional electricity crisis scenarios in accordance with Article 6(1)," are replaced by the words

"At the latest three years and four months from the entry into force of this Agreement";
- (d) Articles 10 and 14 shall apply at the latest three years from the entry into force of this Agreement.

2. 32019 R 0942: Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ L 158, 14.6.2019, p. 22, ELI: <http://data.europa.eu/eli/reg/2019/942/oj>), as amended by:
- 32024 R 1787: Regulation (EU) 2024/1787 of the European Parliament and of the Council of 13 June 2024 on the reduction of methane emissions in the energy sector and amending Regulation (EU) 2019/942 (OJ L, 2024/1787, 15.7.2024, ELI: <http://data.europa.eu/eli/reg/2024/1787/oj>)
 - 32024 R 1789: Regulation (EU) 2024/1789 of the European Parliament and of the Council of 13 June 2024 on the internal markets for renewable gas, natural gas and hydrogen, amending Regulations (EU) No 1227/2011, (EU) 2017/1938, (EU) 2019/942 and (EU) 2022/869 and Decision (EU) 2017/684 and repealing Regulation (EC) No 715/2009 (recast) (OJ L, 2024/1789, 15.7.2024, ELI: <http://data.europa.eu/eli/reg/2024/1789/oj>)

The provisions of Regulation (EU) 2019/942 shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) Regulation (EU) 2019/942 shall only apply to matters falling within the scope of this Agreement;

(b) notwithstanding the introductory part of this Annex, the terms "Member State" and "Member States" contained in Regulation (EU) 2019/942 shall be read to include Switzerland. The term "regulatory authority" contained in Regulation (EU) 2019/942 shall be understood to include, in addition to its meaning in that Regulation, the regulatory authority of Switzerland;

(c) in Article 3, the following paragraph is added:

"3. In relation to Switzerland, ACER shall have the competences assigned to it in accordance with Articles 3 to 10 and 12 of Regulation (EU) 2019/942, unless otherwise provided for in this Agreement. Before ACER takes a decision relating to Switzerland, it shall consult the competent Swiss authority.";

(d) in Article 5(4), the following subparagraphs are added:

"For Article 9(6)(b) of Regulation (EU) 2015/1222 the following procedure shall apply:

In so far as the amendment of capacity calculation regions concerns the allocation of Swiss borders to a specific region, Switzerland shall have the right to request that the Joint Committee decide on the approval of the allocation of Swiss borders to a specific region.

If a decision of the Joint Committee is not adopted within six months of the request, ACER shall decide on the capacity calculation regions in accordance with the first subparagraph of this paragraph, taking into account the concerns of Switzerland.

If the Joint Committee decides not to approve the allocation of the Swiss borders to a specific region, ACER shall prepare a new decision taking into account the concerns of Switzerland.";

(e) in Article 21, the following paragraph is added:

"3. The Swiss NRA shall participate fully in the Board of Regulators as well as in all other preparatory bodies of ACER, including working groups, committees and task forces, with regard to matters falling within the scope of the Agreement between the European Union and the Swiss Confederation on Electricity. The Swiss NRA shall not have the right to vote in the Board of Regulators. The internal rules of procedure of the Board of Regulators and the internal rules of procedure for the functioning of the working groups shall give full effect to the participation of the Swiss NRA.";

(f) in Article 31, the following paragraph is added:

"6. Switzerland shall participate in the financing of ACER. For that purpose, the procedures laid down in Article 49 of this Agreement shall apply.";

(g) Switzerland shall grant to ACER and its staff, within the framework of their official functions for ACER, the privileges and immunities provided for in the Appendix to this Annex, which are based on Articles 1 to 6, Articles 10 to 15, Articles 17 and 18 of Protocol (No 7). References to the corresponding articles of the Protocol are indicated between brackets for information;

(h) in Article 39, the following paragraph is inserted:

"1a. By way of derogation from Article 12(2)(a) of the Conditions of Employment of Other Servants of the European Union (laid down in Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385), including any subsequent amendment), ACER may, if it so decides, engage under contract Swiss nationals that enjoy their full rights as citizens. ACER may accept the secondment of experts by Switzerland.";

(i) in Article 41(1), the following subparagraph is added:

"Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 (OJ L 145, 31.5.2001, p. 43) regarding public access to European Parliament, Council and Commission documents shall, for the purposes of the application of this Regulation, apply to any documents of ACER regarding Switzerland as well.";

3. 32020 D 2152: Commission Decision (EU) 2020/2152 of 17 December 2020 on fees due to the European Union Agency for the Cooperation of Energy Regulators for collecting, handling, processing and analysing of information reported under Regulation (EU) No 1227/2011 of the European Parliament and of the Council (OJ L 428, 18.12.2020, p. 68, ELI: <http://data.europa.eu/eli/dec/2020/2152/oj>)

4. 32019 R 943: Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity. (OJ L 158, 14.6.2019, p. 54, ELI: <http://data.europa.eu/eli/reg/2019/943/oj>), as amended by:
- 32022 R 0869: Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013 (OJ EU L 152, 3.6.2022, p. 45, ELI: <http://data.europa.eu/eli/reg/2022/869/oj>)
 - 32024 R 1747: Regulation (EU) 2024/1747 of the European Parliament and of the Council of 13 June 2024 amending Regulations (EU) 2019/942 and (EU) 2019/943 as regards improving the Union's electricity market design (OJ L, 2024/1747, 26.6.2024, ELI: <http://data.europa.eu/eli/reg/2024/1747/oj>)

The provisions of Regulation (EU) 2019/943 shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) in Article 14(8), the following subparagraph is added:

"In so far as the Commission intends to amend a bidding zone that covers Swiss territory, it shall submit the draft decision to the Joint Committee for approval. The Joint Committee shall decide within six months of the submission. If the Joint Committee does not approve the amendment of the bidding zone covering Swiss territory, the Commission shall prepare a new decision taking into account the concerns of Switzerland.";

- (b) in Article 15(5), the following subparagraph is added:

"Insofar as the Commission intends to amend a bidding zone that covers Swiss territory, it shall submit the draft decision to the Joint Committee for approval. The Joint Committee shall decide within six months of the submission. If the Joint Committee does not approve the amendment of the bidding zone that covers Swiss territory, the Commission shall prepare a new decision taking into account the concerns of Switzerland.";

- (c) capacity mechanisms introduced by Switzerland shall be approved by the competent Swiss authority. Accordingly, for those capacity mechanisms, in Article 21(8), the word "Commission" is replaced by "the competent Swiss authority";

- (d) in Article 24(1), point (a) is replaced by the following:

"(a) make assumptions taking into account the particularities of national electricity demand and supply, including such particularities resulting from the fact that Switzerland is not a Member State of the Union, or from elements that may be particularly relevant for security of supply in Switzerland, such as possible reduced availability of nuclear power and gas for power generation in neighbouring countries, provided that such concerns are considered in a proportionate and reasonable manner";

- (e) the Commission shall have the competences pursuant to Articles 34, 63 and 64 in cases relating to Switzerland;

- (f) in Article 65(2), the following subparagraph is added:

"In the event that the Commission intends to request information for the purposes of this Article from an undertaking situated in Switzerland, the Commission shall provide the Swiss NRA with a request for information including a time limit by which the undertaking concerned is required to provide that information. The Swiss NRA shall immediately request that information from the undertaking concerned and include in its request the information pursuant to paragraph 3. The Swiss NRA shall forward the response of the undertakings concerned to the Commission immediately upon receipt.

If an undertaking does not provide the information requested pursuant to the third subparagraph within the time limit set by the Commission or supplies incomplete information, the Commission may request the Swiss NRA to adopt decisions pursuant to paragraph 5.";

- (g) in Article 65(5), the following subparagraph is added:

"If so requested by the Commission pursuant to paragraph 2, the Swiss NRA shall require the undertaking concerned by decision to provide the requested information.";

- (h) in Article 66(2), the following subparagraph is added:

"If the conditions of this paragraph are met regarding a reply to an information request by the Swiss NRA pursuant to Article 65(2), the Commission may request that the Swiss NRA adopt a decision pursuant to this paragraph with regard to the undertakings concerned.";

- (i) the following Article is inserted:

"Article 66a

Decisions adopted by the Swiss NRA pursuant to Articles 65 and 66 shall be subject to judicial control of Swiss courts.";

- (j) Article 7b, Article 12(2) to (7), Article 19a(3) to (9), Articles 19e, 19f, 50 and 63 shall be implemented, at the latest, three years from the entry into force of this Agreement.

5. 32010 R 0838: Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging (OJ L 250, 24.9.2010, p. 5, ELI: <http://data.europa.eu/eli/reg/2010/838/oj>)

For the purposes of this Agreement, the Commission shall have the competences pursuant to Part A, points 3.3 and 5.1, of the Annex to Regulation (EU) No 838/2010.

6. 32013 R 0543: Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council (OJ EU L 163, 15.6.2013, p. 1, ELI: <http://data.europa.eu/eli/reg/2013/543/oj>), as amended by:
- 32019 R 943: Regulation (EU) 2019/943 of 5 June 2019 (OJ EU L 158, 14.6.2019, p. 54)

7. 32015 R 1222: Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ EU L 197, 25.7.2015, p. 24, ELI: <http://data.europa.eu/eli/reg/2015/1222/oj>), as amended by:
- 32021 R 0280: Commission Implementing Regulation (EU) 2021/280 of 22 February 2021 amending Regulations (EU) 2015/1222, (EU) 2016/1719, (EU) 2017/2195 and (EU) 2017/1485 in order to align them with Regulation (EU) 2019/943 (OJ EU L 62, 23.2.2021, p. 24, ELI: http://data.europa.eu/eli/reg_impl/2021/280/oj)

The provisions of Regulation (EU) 2015/1222 shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) in Article 1, the following paragraph is added:

"6. The Swiss TSO and market operators shall participate in single day-ahead and single intraday coupling under the same conditions as TSOs and market operators from the Union, once the technical and regulatory conditions under this Regulation are fulfilled. The Commission shall, in its decision pursuant to Article 1(5), take into account that the implementation of the Agreement between the European Union and the Swiss Confederation on electricity is deemed to fulfil the conditions referred to in Article 1(4). All actors involved shall swiftly take the necessary steps to allowing for Switzerland to join the market coupling within nine months of the entry into force of that Agreement.";

- (b) with regard to the terms and conditions or methodologies ("TCMs") whose adoption is provided for in Regulation (EU) 2015/1222:
- (i) the Swiss TSO, Nominated Electricity market Operators ("NEMOs") and the Swiss NRA shall participate in the elaboration of any new or amended TCMs, and their comments shall be taken into account when deciding about the TCMs;
 - (ii) for the purposes of voting and therefore determining whether the thresholds for a qualified majority are attained with regard to Member States or populations, Switzerland and its population shall be taken into account;
 - (iii) the references to "regions composed of more than five Member States" in Article 9(3), first subparagraph, and to "regions composed of five Member States or less" in Article 9(3), third subparagraph, shall be read as "regions composed of more than four Union Member States and Switzerland" or as "regions composed of four Union Member States and Switzerland or less";
 - (iv) when the allocation of Swiss borders to a capacity calculation region is amended pursuant to Article 9(6)(b) of Regulation (EU) 2015/1222, the procedure set out under Article 5(4) of Regulation (EU) 2019/942 applies;
 - (v) the TCMs which were already adopted at the date of signature of this Agreement shall apply in Switzerland; and

(vi) new or amended TCMs which are adopted by ACER in accordance with the procedure established in Regulation (EU) 2015/1222 shall be integrated within one month of the adoption into the Swiss regulatory order by the Swiss NRA. The TCMs shall be provisionally applicable in Switzerland as from the date of their application in the Union. Any provisional application shall end upon their integration into the Swiss regulatory order by the Swiss NRA.

8. 32016 R 1719: Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (OJ L 259, 27.9.2016, p. 42,

ELI: <http://data.europa.eu/eli/reg/2016/1719/oj>), as amended by:

- 32021 R 0280: Commission Implementing Regulation (EU) 2021/280 of 22 February 2021 amending Regulations (EU) 2015/1222, (EU) 2016/1719, (EU) 2017/2195 and (EU) 2017/1485 in order to align them with Regulation (EU) 2019/943 (OJ EU L 62, 23.2.2021, p. 24, ELI: http://data.europa.eu/eli/reg_impl/2021/280/oj)

The provisions of Regulation (EU) 2016/1719 shall, for the purposes of this Agreement, be read with the following adaptations:

(a) in Article 1, the following paragraph is added:

"6. The Swiss TSO and market operators shall participate in the single allocation platform under the same conditions as TSOs and market operators from the Union, once the technical and regulatory conditions under this Regulation are fulfilled. The Commission shall, in its decision pursuant to paragraph 5, take into account that the implementation of the Agreement between the European Union and the Swiss Confederation on electricity is deemed to fulfil the conditions referred to in paragraph 4. All actors involved shall swiftly take the necessary steps to allow for Switzerland joining the single allocation platform within nine months of the entry into force of that Agreement.";

(b) with regard to the terms and conditions or methodologies ("TCMs") whose adoption is provided for in Regulation (EU) 2016/1719:

(i) the Swiss TSO and the Swiss NRA participate in the elaboration of any new or amended TCMs, and their comments shall be taken into account when deciding about the TCMs;

(ii) for the purpose of voting and therefore determining whether the thresholds for a qualified majority are attained in a vote with regard to Member States or populations, Switzerland and its population shall be taken into account;

- (iii) the references to "regions composed of more than five Member States" in Article 4(3), first subparagraph, and to "regions composed of five Member States or less" in Article 4(3), third subparagraph, shall be read as "regions composed of more than four Union Member States and Switzerland" or as "regions composed of four Union Member States and Switzerland or less";
- (iv) the TCMs which were already adopted at the date of signature of this Agreement shall apply in Switzerland; and
- (v) new or amended TCMs which are adopted by ACER in accordance with the procedure established in Regulation (EU) 2016/1719 shall be integrated within one month of the adoption into the Swiss regulatory order by the Swiss NRA. The TCMs shall be provisionally applicable in Switzerland as from the date of their application in the Union. Any provisional application shall end upon the integration into the Swiss regulatory order by the Swiss NRA.

9. 32017 R 2195: Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (OJ EU Lt 312, 28.11.2017, p. 6, ELI: <http://data.europa.eu/eli/reg/2017/2195/oj>), as amended by:

- 32021 R 0280: Implementing Regulation (EU) 2021/280 of 22 February 2021 amending Regulations (EU) 2015/1222, (EU) 2016/1719, (EU) 2017/2195 and (EU) 2017/1485 in order to align them with Regulation (EU) 2019/943 (OJ EU L 62, 23.2.2021, p. 24, ELI: http://data.europa.eu/eli/reg_impl/2021/280/oj)

The provisions of Regulation (EU) 2017/2195 shall, for the purposes of this Agreement, be read with the following adaptations:

(a) in Article 1, the following paragraph is added:

"9. The Swiss TSO and market operators shall participate in the European platforms for the exchange of standard products for balancing energy under the same conditions as TSOs and market operators from the Union, once the technical and regulatory conditions under this Regulation are fulfilled. The Commission shall, in its decision pursuant to paragraph 7, take into account that the implementation of the Agreement between the European Union and the Swiss Confederation on electricity is deemed to fulfil the conditions according to paragraph 6. All actors involved shall swiftly take the necessary steps to allow for Switzerland joining European platforms for the exchange of standard products for balancing energy within nine months of the entry into force of the Agreement.";

(b) with regard to the terms and conditions or methodologies ("TCMs") whose adoption is provided for in Regulation (EU) 2017/2195:

- (i) the Swiss TSO and the Swiss NRA participate in the elaboration of any new or amended TCMs, and their comments shall be taken into account when deciding about the TCMs;
- (ii) for the purpose of voting and therefore determining whether the thresholds for a qualified majority are attained with regard to Member States or populations, Switzerland and its population shall be taken into account;

- (iii) the references to "regions composed of more than five Member States" in Article 4(4) and to "regions composed of five Member States or less" in Article 4(4), shall be read as "regions composed of more than four Union Member States and Switzerland" or as "regions composed of four Union Member States and Switzerland or less";
- (iv) the TCMs which were already adopted at the date of signature of this Agreement shall apply in Switzerland; and
- (v) new or amended TCMs which are adopted by ACER in accordance with the procedure established in Regulation (EU) 2017/2195 shall be integrated within one month of the adoption into the Swiss regulatory order by the Swiss NRA. The TCMs shall be provisionally applicable in Switzerland as from the date of their application in the Union. Any provisional application shall end upon the integration into the Swiss regulatory order by the Swiss NRA.

10. 32017 R 2196: Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration (OJ EU L 312, 28.11.2017, p. 54, ELI: <http://data.europa.eu/eli/reg/2017/2196/oj>)
11. 32016 R 1388: Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a network code on demand connection (OJ EU L 223, 18.8.2016, p. 10, ELI: <http://data.europa.eu/eli/reg/2016/1388/oj>)

For the purposes of this Agreement, the Commission shall have the competences set out in Article 51 of that Commission Regulation.

12. 32016 R 0631: Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators (OJ EU L 112, 27.4.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/631/oj>)

For the purposes of this Agreement, the Commission shall have the competences set out in Article 61 of that Commission Regulation.

13. 32016 R 1447: Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high-voltage direct current system and direct current-connected power park modules (OJ EU L 241, 8.9.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/1447/oj>)

For the purposes of this Agreement, the Commission shall have the competences set out in Article 78 of that Commission Regulation.

14. 32017 R 1485: Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ EU L 220, 25.8.2017, p. 1, ELI: <http://data.europa.eu/eli/reg/2017/1485/oj>), as amended by:

- 32021 R 0280: Implementing Regulation (EU) 2021/280 of 22 February 2021 (OJ EU L 62, 23.2.2021, p. 24)

The provisions of Regulation (EU) 2017/1485 shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) with regard to the terms and conditions or methodologies ("TCMs") whose adoption is foreseen under Regulation (EU) 2017/1485:
 - (i) the Swiss TSO and the Swiss NRA participate in the elaboration of any new or amended TCMs, and their comments shall be taken into account when deciding about the TCMs;
 - (ii) for the purposes of voting and therefore determining whether the thresholds for a qualified majority are attained with regard to Member States or populations, Switzerland and its population shall be taken into account;
 - (iii) the references to "regions composed of more than five Member States" in Article 5(5) and to "regions composed of five Member States or less" in Article 5(5) shall be read as "regions composed of more than four Union Member States and Switzerland" or as "regions composed of four Union Member States and Switzerland or less";
 - (iv) the TCM which were already adopted at the date of signature of this Agreement shall apply in Switzerland; and

- (v) new or amended TCMs which are adopted by ACER in accordance with the procedure established in Regulation (EU) 2017/1485 shall be integrated within one month of the adoption into the Swiss regulatory order by the Swiss NRA. The TCMs shall be provisionally applicable in Switzerland as from the date of their application in the EU. Any provisional application shall end upon the integration into the Swiss regulatory order by the Swiss NRA.

15. 32024 L 01366: Commission Delegated Regulation (EU) 2024/1366 of 11 March 2024 supplementing Regulation (EU) 2019/943 of the European Parliament and of the Council by establishing a network code on sector-specific rules for cybersecurity aspects of cross-border electricity flows (OJ EU L, 2024/1366, 24.5.2024, ELI: http://data.europa.eu/eli/reg_del/2024/1366/oj)

The provisions of Regulation (EU) 2024/1366 shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) the following Article is inserted:

"Article 1a

1. By the date of the entry into force of the Agreement, Switzerland shall establish or designate the following authorities and bodies:
 - (a) a national governmental or regulatory authority responsible for carrying out the tasks assigned to the "competent authority" in this Regulation; regarding Switzerland, references in this Regulation to "competent authority" shall be read as referring to that designated authority;

- (b) one or more computer security incident response teams (CSIRTs) responsible for incident handling within the scope of this Regulation in accordance with a well-defined process; those teams may establish cooperation relationships with national CSIRTs of Member States of the Union insofar as required for the application of this Regulation; as part of such cooperation relationships, Switzerland shall facilitate effective, efficient and secure information exchange with those national CSIRTs, using relevant information-sharing protocols, including the traffic light protocol. Regarding Switzerland, references in this Regulation to "CSIRT" shall be read as referring to the team or teams designated according to the first subparagraph.

Switzerland shall designate one of its CSIRTs as a coordinator for the purposes of coordinated vulnerability disclosure (hereinafter referred to as "coordinating CSIRT"). The coordinating CSIRT shall act as a trusted intermediary, facilitating, where necessary, the interaction between the natural or legal person reporting a vulnerability and the manufacturer or provider of the potentially vulnerable information and communication technology (ICT) products or ICT services, upon the request of either of these parties. The tasks of the coordinating CSIRT shall include:

- (i) identifying and contacting the entities concerned;
- (ii) assisting the natural or legal persons reporting a vulnerability; and
- (iii) negotiating disclosure timelines and managing vulnerabilities that affect multiple entities.

Switzerland shall ensure that natural or legal persons are able to report, anonymously where they so request, a vulnerability to the coordinating CSIRT. The coordinating CSIRT shall ensure that diligent follow-up action is carried out with regard to the reported vulnerability and shall ensure the anonymity of the natural or legal person reporting the vulnerability. Where a reported vulnerability could have a significant impact on entities not only in Switzerland but also in one or more Member States of the Union, the coordinating CSIRT of Switzerland shall, where appropriate, cooperate with other coordinating CSIRTs within the CSIRTs network;

- (c) one or more competent authorities responsible for the management of large-scale cybersecurity incidents and crises within the scope of this Regulation, which shall define a national large-scale cybersecurity incident and crisis response plan for electricity where the objectives of and arrangements for the management of large-scale cybersecurity incidents and crises are set out. Regarding Switzerland, references in this Regulation to "cyber crisis management authorities", "NIS cyber crisis management authorities" or "national cyber crisis management authorities" shall be read as referring to that designated authority;
- (d) a point of contact exercising a liaison function to ensure cross-border cooperation within the scope of this Regulation between the Swiss authorities and the relevant authorities of the Member States of the Union, and, where appropriate, with the Commission and the European Union Agency for Cybersecurity (hereinafter referred to as "ENISA"), as well as to ensure cross-sectoral cooperation with other competent authorities within Switzerland. Regarding Switzerland, references in this Regulation to "national single point of contact" shall be read as referring to that designated point of contact;

(e) a competent authority responsible for cybersecurity. Regarding Switzerland, references in this Regulation to "competent authorities responsible for cybersecurity" or "CS-NCAs" shall be read as referring to that designated authority.

2. By the date of the entry into force of the Agreement between the European Union and the Swiss Confederation on electricity, Switzerland shall notify the Commission, ACER, ENTSO-E and the EU DSO entity, the name and the contact details of the respective authorities referred to in paragraph 1.";

(b) with regard to the terms and conditions or methodologies ("TCMs") or plans whose adoption is provided for in Regulation (EU) 2024/1366:

(i) the Swiss TSO, the Swiss distribution system operators (DSO), via the EU DSO entity and competent authority, participate in the elaboration of any new or amended TCMs or plans, and their comments shall be taken into account when deciding about the TCMs;

(ii) for the purpose of voting and therefore determining whether the thresholds for a qualified majority are attained in a vote on TCMs or plans with regard to Member States or populations, Switzerland and its population shall be taken into account;

(iii) the references to "the system operation region concerned is composed of more than five Member States" in Article 7(3), shall be read as "the system operation region concerned is composed of more than four Member States of the European Union and Switzerland";

- (iv) the TCMs and plans which were already adopted at the date of signature of this Agreement shall apply in Switzerland;
- (v) new or amended TCMs and plans which are adopted in the Union in accordance with the procedure established in Regulation (EU) 2024/1366 shall be integrated within one month of the adoption into the Swiss regulatory order by the Swiss competent authority. The TCMs shall be provisionally applicable in Switzerland as from the date of their application in the Union. Any provisional application shall end upon the integration into the Swiss regulatory order by the Swiss competent authority;
- (c) in Article 2(6) and Article 33(2)(a)(i), the reference to Regulation (EU) 2016/679 shall be understood, regarding Switzerland, as a reference to relevant national legislation;
- (d) Article 5, last sentence, Article 38(8), Article 41(2), second sentence, Articles 41(3), 41(7) and 43(4) shall not apply;
- (e) in Article 37, paragraph 4 is replaced by the following:

"4. If the competent authority becomes aware of an unpatched vulnerability, without evidence of yet being actively exploited, it shall without undue delay coordinate with the coordinating CSIRT for the purposes of coordinated vulnerability disclosure as laid down in Article 1a(1)(b) of this Regulation.";

(f) in Article 40, paragraph 3 is replaced by the following:

"3. Where the cyber-attack qualifies or is expected to qualify as a large-scale cybersecurity incident and affects Switzerland, the ad hoc cross-border crisis coordination group shall immediately inform the national cyber crisis management authorities in Switzerland and in the Member States of the Union affected by the incident, as well as the Commission and the European cyber crisis liaison organization network ("EU CyCLONe"). In such a situation, the ad hoc cross-border crisis coordination group shall support the EU CyCLONe concerning sectoral specificities.";

(g) in Article 42, paragraph 3 is replaced by the following:

"3. The CSIRTs shall disseminate the information received from ENISA to the entities concerned without delay.".

16. 32019 L 0944: Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ EU L 158, 14.6.2019, p. 125, ELI: <http://data.europa.eu/eli/dir/2019/944/oj>), as amended by:

– 32022 R 0869: Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013 (OJ L 152, 3.6.2022, p. 45, ELI: <http://data.europa.eu/eli/reg/2022/869/oj>)

- 32024 L 1711: Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union's electricity market design (OJ EU L, 2024/1711, 26.6.2024, ELI: <http://data.europa.eu/eli/dir/2024/1711/oj>)

The provisions of Directive (EU) 2019/944 shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) the Commission shall have the competences set out in Article 44(1), Article 63 and Article 66(1) in cases relating to Switzerland;
- (b) Article 6a, Article 7(1) to (2) and (4) and (5), Article 8, Article 12(1), Article 15, Article 15a(1) to (8), Articles 16 and 23, Article 24(1) and (3), Articles 28 and 28a, Article 29(1), Articles 32, 38 and 66a shall be implemented, at the latest, three years from the date of the entry into force of this Agreement;
- (c) Article 35(1) and (2) shall be implemented regarding the unbundling of distribution system operators organized under Swiss public law, at the latest, three years from the date of the entry into force of this Agreement;
- (d) the Swiss NRA shall exercise the tasks relating to connection and access to national networks, including transmission and distribution tariffs, pursuant to Article 59(1)(a) and (7)(a), at the latest, five years from the date of the entry into force of this Agreement;
- (e) the Joint Committee shall have the competence set out in Article 65.

17. 32023 R 1162: Commission Implementing Regulation (EU) 2023/1162 of 6 June 2023 on interoperability requirements and non-discriminatory and transparent procedures for access to metering and consumption data (OJ EU L 154, 15.6.2023, p. 10, ELI: http://data.europa.eu/eli/reg_impl/2023/1162/oj)

18. 32011 R 1227: Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ EU L 326, 8.12.2011, p. 1, ELI: <http://data.europa.eu/eli/reg/2011/1227/oj>), as amended by:
 - 32024 R 1106: Regulation (EU) 2024/1106 of the European Parliament and of the Council of 11 April 2024 amending Regulations (EU) No 1227/2011 and (EU) 2019/942 as regards improving the Union's protection against market manipulation on the wholesale energy market (OJ EU L, 2024/1106, 17.4.2024, ELI: <http://data.europa.eu/eli/reg/2024/1106/oj>)

The provisions of Regulation (EU) No 1227/2011 shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) in Article 1, paragraph 2, the following subparagraph is added:

"For electricity derivatives that are not covered by Article 2(4) and are admitted to trading on a trading venue or a distributed ledger technology trading facility which has its registered office in Switzerland, Switzerland shall continue applying rules prohibiting market manipulation and insider trading which ensure a standard of protection comparable to that of the Union.";

(b) in Article 1, the following paragraph is added:

"6. In Switzerland, this Regulation only applies to wholesale trading with electricity but not to the gas sector";

(c) in Article 9, the following paragraph is inserted:

"1a. Market participants that are registered with both the Swiss NRA and a NRA of a Member State of the Union at the moment of the entry into force of this Agreement, shall bring their registration obligations in line with this Article.";

(d) in Article 13, the following paragraph is inserted:

"8a. With regard to Switzerland, the Agency shall conduct cross-border investigations pursuant to Article 13(5) to (8) in close and active cooperation with the Swiss NRA.

Within the context of such cross-border investigations, the competent Swiss authorities, in particular the Swiss NRA, shall carry out, in close cooperation with the Agency, investigative measures pursuant to Article 13a, Article 13b(2) and Article 13c on Swiss territory.

The Agency may invite the Swiss NRA to carry out concrete investigative measures and the competent Swiss authorities shall carry out those measures. The Agency shall participate in the carrying out of the measures at its request.

The Swiss NRA shall collect the information necessary for the Agency to conduct its investigation effectively and share this information with the Agency without undue delay following the finalization of the respective investigative measure.

When the Agency intends to communicate with persons on Swiss territory, including for the purpose of requests for information under Article 13b(1), the relevant information shall be communicated to those persons and to the Agency respectively by the Swiss NRA.

The investigation report referred to in Article 13(11) shall be drawn up by the Agency. The measures referred to in Article 13(11) shall be taken by the Swiss NRA.";

- (e) for the purpose of measures taken by the competent Swiss authorities pursuant to Article 13(8a), the term "Agency" in Article 13g(1) and (4) shall be read as "competent Swiss authority";
- (f) the following Article is inserted:

"Article 13k

Measures taken by the competent Swiss authorities pursuant to Article 13(8a) and Article 13g shall be subject to the judicial control of Swiss courts.".

19. 32014 R 1348: Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (OJ EU L 363, 18.12.2014, p. 121, ELI: http://data.europa.eu/eli/reg_impl/2014/1348/oj)

20. 32012 D 1117(01): Commission Decision of 15 November 2012 setting up the Electricity Coordination Group (OJ EU C 353, 17.11.2012, p. 2)

PRIVILEGES AND IMMUNITIES

ARTICLE 1

(corresponding to Article 1 of Protocol (No 7))

The premises and buildings of the Agency shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Agency shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice of the European Union.

ARTICLE 2

(corresponding to Article 2 of Protocol (No 7))

The archives of the Agency shall be inviolable.

ARTICLE 3

(corresponding to Articles 3 and 4 of Protocol (No 7))

1. The Agency, its assets, revenues and other property shall be exempt from all direct taxes.

2. Goods and services exported to the Agency for its official use from Switzerland or provided to the Agency in Switzerland shall not be subject to any indirect duties and taxes.
3. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or corresponding document totals at least one hundred Swiss francs (inclusive of tax). The Agency shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use; articles so imported shall not be disposed of, whether or not in return for payment, in Switzerland, except under conditions approved by the government of Switzerland.
4. The exemption from VAT, excise duty and any other indirect taxes shall be granted by way of remit on presentation to the goods or services supplier of the Swiss forms provided for the purpose.
5. No exemption shall be granted in respect of taxes and dues, which amount merely to charges for public utility services.

ARTICLE 4

(corresponding to Article 5 of Protocol (No 7))

For its official communications and the transmission of all its documents, the Agency shall enjoy in Switzerland the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the Agency shall not be subject to censorship.

ARTICLE 5

(corresponding to Article 6 of Protocol (No 7))

The *laissez-passer* of the Union issued to members and servants of the Agency shall be recognised as valid travel documents within the territory of Switzerland. Those *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union (Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385), including any subsequent amendments).

ARTICLE 6

(corresponding to Article 10 of Protocol (No 7))

Representatives of Member States of the Union taking part in the work of the Agency, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting in Switzerland, enjoy the customary privileges, immunities and facilities.

ARTICLE 7

(corresponding to Article 11 of Protocol (No 7))

In the territory of Switzerland and whatever their nationality, officials and other servants of the Agency shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;
- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;
- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in Switzerland, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of Switzerland;

- (e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of Switzerland.

ARTICLE 8

(corresponding to Article 12 of Protocol (No 7))

Officials and other servants of the Agency shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Agency, in accordance with the conditions and procedure laid down by Union law.

They shall be exempt from Swiss federal, cantonal and communal taxes on salaries, wages and emoluments paid by the Agency.

ARTICLE 9

(corresponding to Article 13 of Protocol (No 7))

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Switzerland and Member States of the Union, officials and other servants of the Agency whose domicile for tax purposes is not in Switzerland and who, solely by reason of the performance of their duties in the service of the Agency, establish their residence in the territory of Switzerland, shall be considered, both in Switzerland and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a Member State of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the first paragraph and situated in Switzerland shall be exempt from death duties in Switzerland; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

ARTICLE 10

(corresponding to Article 14 of Protocol (No 7))

Union law shall lay down the scheme of social security benefits for officials and other servants of the Union.

Officials and other servants of the Agency shall therefore not be obliged to be members of the Swiss social security system provided they are already covered by the scheme of social security benefits for officials and other servants of the Union. Members of the family of staff members of the Agency forming part of their household shall be covered by the scheme of social security benefits for officials and other servants of the Union provided that they are not employed by another employer than the Agency and provided that they do not receive social security benefits from a Member State of the Union or from Switzerland.

ARTICLE 11

(corresponding to Article 15 of Protocol (No 7))

Union law shall determine the categories of officials and other servants of the Agency to whom the provisions of Articles 7, 8, and 9 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to Switzerland.

ARTICLE 12

(corresponding to Article 17 of Protocol (No 7))

Privileges, immunities and facilities shall be accorded to officials and other servants of the Agency solely in the interests of the Agency.

The Agency shall be required to waive the immunity accorded to an official or other servants wherever that Agency considers that the waiver of such immunity is not contrary to the interests of the Agency.

ARTICLE 13

(corresponding to Article 18 of Protocol (No 7))

The Agency shall, for the purpose of applying this Appendix, cooperate with the responsible authorities of Switzerland or of the Member States of the Union concerned.

TRANSITIONAL REGIME FOR EXISTING
LONG TERM CAPACITY RESERVATIONS
ON INTERCONNECTORS AT THE SWISS BORDERS

SECTION A

PRINCIPLES FOR FINANCIAL COMPENSATION

ARTICLE 1

General principles and scope

1. This Annex establishes the principles for a transitional mechanism of financial compensation for the holders of contracts listed in Section B.
2. The financial compensation shall be calculated on the basis of the economic value of the capacity reservations for contract holders, as calculated pursuant to Article 2.
3. The financial compensation shall be granted for the transitional period set out in Article 8(2) of this Agreement.

4. Prior to the participation of Switzerland in single day-ahead coupling, contract holders that want to receive the financial compensation shall acquire the necessary cross-border capacity through an auction performed by the Joint Allocation Office (hereinafter referred to as "JAO"), in accordance with the applicable rules and procedures set out by the JAO. Contract holders shall not be entitled to compensation if they did not succeed in acquiring the necessary capacity through the auction process.

5. Once Switzerland has joined single day-ahead coupling, the contract holders who want to receive financial compensation shall demonstrate that their bid was accepted in the single day-ahead process in accordance with the applicable rules and procedures as defined in the Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24, ELI: <http://data.europa.eu/eli/reg/2015/1222/oj>).

ARTICLE 2

Calculation of the financial compensation

1. The financial compensation shall be calculated based on a compensation volume (in MW for a given hour) as defined in paragraphs 2 and 3, multiplied by a compensation price (in euro/MWh), as defined in paragraph 4.

2. The compensation volume for each contract shall be:
 - (a) during the period prior to Switzerland joining the single day-ahead coupling, the capacity (in MW for a given hour) allocated to the contract holder in the auction process; when claiming the compensation, the contract holders shall deliver proof that a capacity up to the volume of the contract at the border has been acquired and used and of the availability of the generation installation in the respective market time unit;
 - (b) after Switzerland has joined the single day-ahead coupling, the volume (in MW for a given hour) of the successful bid in the single day-ahead coupling process in the respective bidding zone, up to the maximum volume of the contracts; when claiming the financial compensation, the contract holders shall deliver proof of the volume of the successful bid and the availability of the generation installation in the respective market time unit.

3. In any given year, the compensation volume pursuant to paragraph 2 shall be reduced to the following percentages:
 - 74,3 % for the direction from France to Switzerland in winter (1 October to 30 April) and 68,5 % in summer (1 May to 30 September);
 - 93,9 % for the direction from Switzerland to France in winter (1 October to 30 April) and 100 % in summer (1 May to 30 September).

4. The compensation price shall be calculated *ex post* as the positive price difference between the day-ahead market clearing prices of Switzerland and France, considering the direction of the historical capacity reservation, resulting from the market result in the day-ahead timeframe, calculated for each market time unit separately. In the event that the price difference is negative, no compensation shall be paid.

5. The amount of the compensation calculated pursuant to paragraphs 1 to 4 shall be further reduced by 20 % to account for the contribution of contract holders to the maintenance and capital costs of the grid.

6. In the event that the total compensation payments to contract holders as calculated pursuant to paragraphs 1 to 5 exceed the congestion income from or assigned to the French-Swiss border, the compensation payments shall be reduced proportionally for all contract holders to ensure that the total compensation payments do not exceed the available congestion income.

7. The total financial compensation for each contract holder calculated pursuant to this Article shall be paid to the contract holders *ex post* on a monthly basis.

ARTICLE 3

Financing of the compensation

The financial compensation pursuant to Article 2 shall be financed by the congestion income generated by the allocation of capacity on the French-Swiss border, either as received from an auction of capacity at that border performed by the JAO or assigned to the border by application of the Congestion Income Distribution methodology.

ARTICLE 4

Implementation, monitoring, and dispute resolution

1. The French and the Swiss NRAs shall, where necessary, agree on procedures to implement the rules laid down in this Annex within three months of the date of entry into force of this Agreement. They shall notify a draft of the procedures to ACER, the Commission and the Joint Committee two months from the date of entry into force of this Agreement.
2. The French and the Swiss NRAs shall be responsible for verifying the compliance of TSOs and contract holders with the procedures developed pursuant to paragraph 1, including that the compensation granted to contract holders is limited to the contracts listed in Section B of this Annex. They shall send a yearly report on the application of the transitional mechanism to ACER and the Joint Committee by 1 March of the following year.
3. In the event that the French and the Swiss NRAs fail to reach a consensus on the procedures pursuant to paragraph 1 within three months of the date of entry into force of this Agreement, Switzerland may refer the issue to the Joint Committee which shall decide on the implementation procedures within six months of the date of that referral.
4. Notwithstanding paragraphs 1 to 3, the contract holders shall have the right to receive the financial compensation from the date of entry into force of this Agreement until the end of the transitional period.

SECTION B

LONG TERM CAPACITY RESERVATION CONTRACTS WITH FINANCIAL COMPENSATION

Direction	Contract Name	Technology	Maximal End Date
FR => CH	EOS CNP Cattenom 3 / 4	Nuclear	End of generation activity of the units
FR => CH	NOK 94 / EDF 95	Nuclear	30.9.2036
FR => CH	EDL Cattenom 3 / 4	Nuclear	End of generation activity of the units
FR => CH	EDL 2000	Nuclear	31.12.2039
FR => CH	Participation Bugey 2	Nuclear	End of generation activity of the unit
FR => CH	Participation Bugey 3	Nuclear	End of generation activity of the unit
FR => CH	EOS Cleuson Dixence	Hydro	30.4.2030
CH => FR	EOS Cleuson Dixence	Hydro	30.4.2030
FR => CH	Emosson Pompage	Hydro	End of generation activity of the unit
CH => FR	Emosson Turbine	Hydro	End of generation activity of the unit

SECTION C

HYDRO POWER PLANTS PRESERVING CAPACITY RESERVATIONS NOT EXCEEDING 65 MW

Direction	Name of power plant	Maximal Capacity Reservation [MW]	Maximal End Date
FR => CH	Kembs	35	End of concession (31.12.2035)
FR => CH	FM Châtelot	15	End of concession (31.12.2028)
CH => FR	FM Châtelot	30	End of concession (31.12.2028)
AT => CH	GKW Inn	13,3	End of concession (after 2050)
CH => IT	Kraftwerke Hinterrhein	65	End of concession (31.12.2042)
FR => CH	Bagnes Martigny (Champsec)	2	End of concession (31.12.2041)
CH => FR	Forces Motrices de Mauvoisin	41	End of concession (31.12.2041)

STATE AID

EXEMPTIONS AND CLARIFICATIONS

SECTION A

MEASURES COMPATIBLE WITH THE PROPER FUNCTIONING
OF THE INTERNAL MARKET,
AS REFERRED TO IN ARTICLE 13(2), POINT (c)

- (1) The following existing Swiss measures shall be compatible with the proper functioning of the internal market and shall not be subject to Article 14(3), point (b), of this Agreement:
- (a) investment grants for electricity generation from renewable energy sources pursuant to Articles 25 to 29 of the Energy Act¹ (hereinafter referred to as "EnG"), including temporary exemption from water royalties pursuant to Article 50a of the Act on Hydropower²;
 - (b) contracts for difference for electricity generation from renewable energy sources pursuant to Articles 29a to 29e EnG;
 - (c) operating cost contribution for biomass pursuant to Article 33a EnG;

¹ Energiegesetz, 30 September 2016 (EnG, SR 730.0), version applicable on 1 January 2025.

² Bundesgesetz über die Nutzbarmachung der Wasserkräfte, 22 December 1916 (WRG, SR 721 80), version applicable on 1 January 2023.

- (d) geothermal guarantees pursuant to Article 33 EnG;
 - (e) compensation for residual flow measures pursuant to Article 80(2) of the Water Protection Act¹; and
 - (f) compensation for ecological restoration measures related to hydropower (hydropeaking, sediment transport and fishing migration) pursuant to Article 34 EnG.
- (2) The Swiss authorities commit that, as from the entry into force of this Agreement, installations which are not provided with a derogation pursuant to Article 5(2), point (b), or Article 5(4) of Regulation (EU) 2019/943² can only be granted a new aid for electricity production under the measures mentioned in point 1 if they are:
- required to sell their electricity production on the market;
 - not incentivised to offer their output below their marginal costs and not receiving operating aid for production in any periods in which the market value of that production is negative.
- (3) Point 1, (a) and (b), shall cease to apply 10 years from the entry into force of this Agreement, and point 1, (c) to (f), shall cease to apply six years from the entry into force of this Agreement. After expiry of those time limits, the Swiss Surveillance Authority shall include those measures in its constant review under Article 15(4).

¹ Bundesgesetz über den Schutz der Gewässer, 24 January 1991 (GschG, SR 814 20), version applicable on 1 February 2023.

² Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, OJ L 158, 14.6.2019, p. 54, as applicable in accordance with the Annex.

SECTION B

CATEGORIES OF AID THAT MAY BE CONSIDERED TO BE COMPATIBLE WITH THE PROPER FUNCTIONING OF THE INTERNAL MARKET, AS REFERRED TO IN ARTICLE 13(3), POINT (e)

The following categories of aid may be considered to be compatible with the proper functioning of the internal market:

[...]

SECTION C

BLOCK EXEMPTIONS, AS REFERRED TO IN ARTICLE 13(4)

Aid shall be presumed compatible with the proper functioning of the internal market and shall be exempted from the notification requirements under Article 14 of this Agreement, if it is granted in accordance with the substantive conditions set out in the following provisions:

- (1) Chapters I and III of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ EU L 187, 26.6.2014, p. 1,
ELI: <http://data.europa.eu/eli/reg/2014/651/oj>), as last amended by Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ EU L 167, 30.6.2023, p. 1,
ELI: <http://data.europa.eu/eli/reg/2023/1315/oj>);
- (2) Articles 1 to 6 of Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3,
ELI: [http://data.europa.eu/eli/dec/2012/21\(1\)/oj](http://data.europa.eu/eli/dec/2012/21(1)/oj)).

SECTION D

DE MINIMIS AID, AS REFERRED TO IN ARTICLE 13(6)

"*De minimis* aid" shall have the meaning that it has in Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ EU L, 2023/2831, 15.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2831/oj>).

For aid granted to undertakings entrusted with the operation of services of general economic interest, "*de minimis* aid" shall have the meaning that it has in Commission Regulation (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ EU L, 2023/2832, 15.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2832/oj>).

STATE AID

GENERAL AND SECTORAL ACTS APPLICABLE IN THE EUROPEAN UNION
AS REFERRED TO IN ARTICLE 14(2)

SECTION A

GENERAL AND SECTORAL ACTS

- (1) For the purposes of Part III and pursuant to Article 14(2) of this Agreement, the following acts shall be applied by the Union:
 - (a) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ EU L 248, 24.9.2015, p. 9, ELI: <http://data.europa.eu/eli/reg/2015/1589/oj>);
 - (b) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ EU L 140, 30.4.2004, p. 1, ELI: <http://data.europa.eu/eli/reg/2004/794/oj>), as last amended by Commission Regulation (EU) 2016/2105 of 1 December 2016 amending Annex I to Regulation (EC) No 794/2004 as regards the form to be used for the notification of State aid to the fishery and aquaculture sector (OJ EU L 327, 2.12.2016, p. 19, ELI: <http://data.europa.eu/eli/reg/2016/2105/oj>);

- (c) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ EU L 187, 26.6.2014, p. 1, ELI: <http://data.europa.eu/eli/reg/2014/651/oj>), as last amended by Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ EU L 167, 30.6.2023, p. 1, ELI: <http://data.europa.eu/eli/reg/2023/1315/oj>);
- (d) Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ EU L 7, 11.1.2012, p. 3, ELI: [http://data.europa.eu/eli/dec/2012/21\(1\)/oj](http://data.europa.eu/eli/dec/2012/21(1)/oj));
- (e) Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ EU L, 2023/2831, 15.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2831/oj>);
- (f) Commission Regulation (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ EU L, 2023/2832, 15.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2832/oj>).

- (2) For the purposes of Part III and pursuant to Article 14(3) of this Agreement, Switzerland shall establish and maintain a State aid surveillance system that ensures at all times a level of surveillance and enforcement equivalent to that applied by the Union, as set out in Article 14(2) and point (1) of this Section.

SECTION B

GUIDELINES, COMMUNICATIONS AND DECISIONAL PRACTICE OF THE COMMISSION

- (1) For the purposes of Part III and pursuant to Article 14(3) of this Agreement, the Swiss surveillance authority and the competent judicial authorities in Switzerland shall take due account of, and follow to the extent possible, the relevant guidelines and communications binding on the Commission, as well as its decisional practice, in order to ensure a level of surveillance and enforcement equivalent to that of the Union.
- (2) The Commission shall notify to the Joint Committee, and publish, the guidelines and communications it considers relevant under this Agreement.

ENVIRONMENT

The relevant legal acts of the Union on environmental protection referred to in Article 20 and Article 27(3) of this Agreement are the following:

1. 32011 L 0092: Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ EU L 26, 28.1.2012, p. 1, ELI: <http://data.europa.eu/eli/dir/2011/92/oj>), as amended by:
 - 32014 L 0052: Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ EU L 124, 25.4.2014, p. 1, ELI: <http://data.europa.eu/eli/dir/2014/52/oj>).
2. 32001 L 0042: Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ EU L 197, 21.7.2001, p. 30, ELI: <http://data.europa.eu/eli/dir/2001/42/oj>).
3. 32016 L 0802: Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (OJ EU L 132, 21.5.2016, p. 58, ELI: <http://data.europa.eu/eli/dir/2016/802/oj>).

4. 32010 L 0075: Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ EU L 334, 17.12.2010, p. 17, ELI: <http://data.europa.eu/eli/dir/2010/75/oj>).
5. 32009 L 0147: Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ EU L 20, 26.1.2010, p. 7, ELI: <http://data.europa.eu/eli/dir/2009/147/oj>), as amended by:
 - 32013 L 0017: Council Directive 2013/17/EU of 13 May 2013 adapting certain directives in the field of environment, by reason of the accession of the Republic of Croatia (OJ EU L 158, 10.6.2013, p. 193, ELI: <http://data.europa.eu/eli/dir/2013/17/oj>),
 - 32019 R 1010: Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment, and amending Regulations (EC) No 166/2006 and (EU) No 995/2010 of the European Parliament and of the Council, Directives 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU of the European Parliament and of the Council, Council Regulations (EC) No 338/97 and (EC) No 2173/2005, and Council Directive 86/278/EEC (OJ EU L 170, 25.6.2019, p. 115, ELI: <http://data.europa.eu/eli/reg/2019/1010/oj>).

6. 32004 L 0035: Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EU L 143, 30.4.2004, p. 56,
ELI: <http://data.europa.eu/eli/dir/2004/35/oj>), as amended by:
- 32006 L 0021: Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC (OJ EU L 102, 11.4.2006, p. 15,
ELI: <http://data.europa.eu/eli/dir/2006/21/oj>),
 - 32009 L 0031: Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ EU L 140, 5.6.2009, p. 114, ELI: <http://data.europa.eu/eli/dir/2009/31/oj>),
 - 32013 L 0030: Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ EU L 178, 28.6.2013, p. 66,
ELI: <http://data.europa.eu/eli/dir/2013/30/oj>),

- 32019 R 1010: Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment, and amending Regulations (EC) No 166/2006 and (EU) No 995/2010 of the European Parliament and of the Council, Directives 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU of the European Parliament and of the Council, Council Regulations (EC) No 338/97 and (EC) No 2173/2005, and Council Directive 86/278/EEC (OJ EU L 170, 25.6.2019, p. 115, ELI: <http://data.europa.eu/eli/reg/2019/1010/oj>).

RENEWABLE ENERGIES

Unless otherwise provided for in technical adaptations:

- rights and obligations provided for in the legal acts set out in this Annex for Member States of the Union shall be understood to be provided for for Switzerland;
- references to natural or legal persons residing or established in the Member States of the Union in those acts shall be read as including references to natural or legal persons residing or established in Switzerland.

This shall be applied in full compliance with the institutional provisions contained in Part V of this Agreement.

ACTS REFERRED TO

1. 32018 L 2001: Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ EU L 328, 21.12.2018, p. 82, ELI: <http://data.europa.eu/eli/dir/2018/2001/oj>), as amended by:
 - 32023 L 2413: Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 (OJ EU L, 2023/2413, 31.10.2023, ELI: <http://data.europa.eu/eli/dir/2023/2413/oj>),
 - 32022 R 0759: Commission Delegated Regulation (EU) 2022/759 of 14 December 2021 amending Annex VII to Directive (EU) 2018/2001 of the European Parliament and of the Council as regards a methodology for calculating the amount of renewable energy used for cooling and district cooling (OJ EU L 139, 18.5.2022, p. 1, ELI: http://data.europa.eu/eli/reg_del/2022/759/oj),
 - 32024 L1711: Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union's electricity market design (OJ EU L, 2024/1711, 26.6.2024, ELI: <http://data.europa.eu/eli/dir/2024/1711/oj>).

The provisions of Directive (EU) 2018/2001 shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) in Article 2, the following subparagraph is added:

"The definition of a term shall apply only if that term is used in a provision that has been incorporated in Annex VI to the Agreement between the European Union and the Swiss Confederation on electricity.";

- (b) Article 3 is adapted as follows:

- (i) paragraph 1 shall not apply;

- (ii) paragraph 2 is replaced by the following:

"2. Switzerland shall set an indicative target of a 48,4 % share of renewable energy in its gross final consumption of energy in 2030. The Joint Committee shall adapt that target for the periods after 2030, taking into account the applicable target in the Union. Switzerland shall publish information and inform the Joint Committee established by the Agreement between the European Union and the Swiss Confederation on electricity on the progress made towards that target and on the implementation of Articles 19 and Articles 26 to 31a of Directive (EU) 2018/2001 as set out in Annex VI to that Agreement at least every two years.";

(iii) in paragraph 3c, point (a) is replaced by the following:

"(a) the use of saw logs, veneer logs, industrial grade roundwood, stumps and roots to produce electricity."

(iv) paragraph 3c, point (b), and paragraphs 4, 5 and 6 shall not apply;

(v) paragraph 4a is adapted as follows:

"4a. Switzerland shall establish a framework, which may include support schemes and measures facilitating the uptake of renewables power purchase agreements, enabling the deployment of renewable electricity to a level that is consistent with the national target referred to in paragraph 2. In particular, that framework shall tackle remaining barriers to a high level of renewable electricity supply, and to the development of the necessary transmission, distribution and storage infrastructure, including co-located energy storage. When designing that framework, Switzerland shall take into account the additional renewable electricity required to meet demand in the transport, industry, building, heating and cooling sectors and for the production of renewable fuels of non-biological origin";

(c) Article 5 shall not apply;

(d) Articles 8 to 14 shall not apply;

- (e) Article 15 and Articles 15b to 16f shall not apply; instead, Switzerland shall maintain and establish comparable rules in order to reach the goal to increase its share of electricity from renewable energies. Those rules shall include:
 - (i) assignment of areas where plants for the production of electricity from renewable energies can be built,
 - (ii) public participation,
 - (iii) swift and efficient permit-granting procedures,
 - (iv) appropriate status of public interest for renewables;
- (f) Article 15a shall not apply;
- (g) Articles 17 shall not apply;
- (h) Article 18(1), (2) and (4) to (6) shall not apply;
- (i) in Article 18, paragraph 3 is replaced by the following:

"3. Switzerland shall set up a framework to ensure a sufficient number of trained and qualified installers of:

 - (a) all forms of renewable heating and cooling systems in buildings, industry and agriculture;

- (b) solar photovoltaic systems, including energy storage; and
- (c) recharging points enabling demand response to service the growth of renewable energy required to achieve the target set out in accordance with Article 3(2).";
- (j) Switzerland shall not apply Article 19 to energy produced from saw logs, veneer logs, industrial grade roundwood, stumps and roots, other than electricity produced from such materials;
- (k) Article 20 and Article 20a(3) and (4) shall not apply;
- (l) Article 20a(1), (2) and (5) shall apply three years from the date of entry into force of this Agreement;
- (m) Articles 21 and 22 shall not apply; instead, Switzerland shall maintain and establish comparable rules on renewable self-consumers and renewable energy communities in the field of electricity;
- (n) Articles 22a to 25 shall not apply;
- (o) in Article 26, paragraph 2, the following subparagraph is added:

"Switzerland may set its share of biofuels, bioliquids and biomass fuels produced from food and feed crops at 0 %.";
- (p) Article 27(1) to (5) shall not apply;

- (q) Article 28(6) and (7) shall not apply;
- (r) Article 29(7a) and (7b) shall not apply.
- (s) Article 29a(2) shall not apply;
- (t) Article 30 is amended as follows:
 - (i) in paragraph 1, first subparagraph, the introductory phrase is replaced by the following:

"Where renewable fuels are to be counted towards the targets referred to in Article 3(2), Member States shall require economic operators to show, by means of mandatory independent and transparent audits, in accordance with the implementing act adopted pursuant to paragraph 8 of this Article, that the sustainability and greenhouse gas emissions saving criteria laid down in Article 29(2) to (7) and (10) and Article 29a(1) for renewable fuels have been fulfilled. To that end, they shall require economic operators to use a mass balance system which:";

(ii) paragraph 2 is replaced by the following:

"2. Where a consignment is processed, information on the sustainability and greenhouse gas emissions saving characteristics of the consignment shall be adjusted and assigned to the output in accordance with the following rules:

- (a) when the processing of a consignment of raw material yields only one output that is intended for the production of biofuels, bioliquids or biomass fuels, or renewable fuels of non-biological origin, the size of the consignment and the related quantities of sustainability and greenhouse gas emissions saving characteristics shall be adjusted applying a conversion factor representing the ratio between the mass of the output that is intended for such production and the mass of the raw material entering the process;
- (b) when the processing of a consignment of raw material yields more than one output that is intended for the production of biofuels, bioliquids or biomass fuels, or renewable fuels of non-biological origin, for each output a separate conversion factor shall be applied and a separate mass balance shall be used.";

(iii) in paragraph 3, first subparagraph, the first sentence is replaced by the following:

"1. Member States shall take measures to ensure that economic operators submit reliable information regarding the compliance with the sustainability and greenhouse gas emissions saving criteria laid down in Article 29(2) to (7) and (10) and Article 29a(1), and that economic operators make available to the relevant Member State, upon request, the data used to develop that information.";

- (iv) in paragraph 3, second subparagraph, the first sentence is replaced by the following:

"The obligations laid down in this paragraph shall apply regardless of whether renewable fuels are produced within or are imported into the Union.";

- (v) in paragraph 10, the introductory phrase is replaced by the following:

"10. At the request of Switzerland, which may be based on the request of an economic operator, the Commission shall, on the basis of all available evidence, examine whether the sustainability and greenhouse gas emissions saving criteria laid down in Article 29(2) to (7) and (10) and Article 29a(1) in relation to a source of renewable fuels have been met.";

- (vi) in paragraph 10, points (a) and (b) are replaced by the following:

"(a) take into account the renewable fuels from that source for the purposes referred to in Article 29(1), first subparagraph, points (a), (b) and (c); or

(b) by way of derogation from paragraph 9, require suppliers of the source of renewable fuels to provide further evidence of compliance with those sustainability and greenhouse gas emissions saving criteria and those greenhouse gas emissions savings thresholds.";

(u) Article 31a(1) is replaced by the following:

"Article 31a

1. By 21 November 2024, the Commission shall ensure that a Union database is set up to enable the tracing of liquid and gaseous renewable fuels (the 'Union database').";

(v) Articles 32 to 39 shall not apply;

(w) Annexes I, IA, IV and VIII shall not apply;

(x) Part A, points (a) and (p), of Annex IX shall not apply;

(y) Annexes X and XI shall not apply.

2. 32019 R807: Commission Delegated Regulation (EU) 2019/807 of 13 March 2019 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council as regards the determination of high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed and the certification of low indirect land-use change-risk biofuels, bioliquids and biomass fuels (OJ EU L 133, 21.5.2019, p. 1, ELI: http://data.europa.eu/eli/reg_del/2019/807/oj)
3. 32023 R 1184: Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin (OJ EU L 157, 20.6.2023, p.11, ELI: http://data.europa.eu/eli/reg_del/2023/1184/oj)

4. 32024 R 1408: Commission Delegated Regulation (EU) 2024/1408 of 14 March 2024 amending Commission Delegated Regulation (EU) 2023/1184 as regards aligning a technical term with Directive (EU) 2018/2001 of the European Parliament and of the Council (OJ EU L, 2024/1408, 21.5.2024, ELI: http://data.europa.eu/eli/reg_del/2024/1408/oj)
5. 32023 R 1640: Commission Delegated Regulation (EU) 2023/1640 of 5 June 2023 on the methodology to determine the share of biofuel and biogas for transport, produced from biomass being processed with fossil fuels in a common process (OJ EU L 205, 18.8.2023, p. 1, ELI: http://data.europa.eu/eli/reg_del/2023/1640/oj)
6. 32023 R 1185: Commission Delegated Regulation (EU) 2023/1185 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a minimum threshold for greenhouse gas emissions savings of recycled carbon fuels and by specifying a methodology for assessing greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels (OJ EU L 157, 20.6.2023, p. 20, http://data.europa.eu/eli/reg_del/2023/1185/oj)

The provisions of Delegated Regulation (EU) 2023/1185 shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) the provisions of Delegated Regulation (EU) 2023/1185 on the calculation of the targets for fuels and electricity from renewable energies supplied to the transport sector and of the targets for advanced biofuels and biogas referring to Article 25(2) of Directive (EU) 2018/2001 shall not apply;
- (b) the provisions of Delegated Regulation (EU) 2023/1185 related to recycled carbon fuels shall not apply.

7. 32022 R 2448: Commission Implementing Regulation (EU) 2022/2448 of 13 December 2022 on establishing operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass laid down in Article 29 of Directive (EU) 2018/2001 of the European Parliament and of the Council (OJ EU L 320, 14.12.2022, p. 4, ELI: http://data.europa.eu/eli/reg_impl/2022/2448/oj)
8. 32022 D 599: Commission Implementing Decision (EU) 2022/599 of 8 April 2022 on the recognition of the Biomass Biofuels Sustainability voluntary scheme (2BSvs) for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 173, ELI: http://data.europa.eu/eli/dec_impl/2022/599/oj)
9. 32022 D 600: Commission Implementing Decision (EU) 2022/600 of 8 April 2022 on the recognition of the "Bonsucro EU" voluntary scheme for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 176, ELI: http://data.europa.eu/eli/dec_impl/2022/600/oj)
10. 32022 D 601: Commission Implementing Decision (EU) 2022/601 of 8 April 2022 on the recognition of the "Better Biomass" voluntary scheme for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 179, ELI: http://data.europa.eu/eli/dec_impl/2022/601/oj)

11. 32022 D 602: Commission Implementing Decision (EU) 2022/602 of 8 April 2022 on the recognition of the "International Sustainability & Carbon Certification – ISCC EU" voluntary scheme for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 182, ELI: http://data.europa.eu/eli/dec_impl/2022/602/oj)
12. 32022 D 604: Commission Implementing Decision (EU) 2022/604 of 8 April 2022 on the recognition of the "Red Tractor Farm Assurance Crops and Sugar Beet Scheme" voluntary scheme for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 188, ELI: http://data.europa.eu/eli/dec_impl/2022/604/oj)
13. 32022 D 605: Commission Implementing Decision (EU) 2022/605 of 8 April 2022 on the recognition of the "REDcert-EU" voluntary scheme for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 191, ELI: http://data.europa.eu/eli/dec_impl/2022/605/oj)
14. 32022 D 606: Commission Implementing Decision (EU) 2022/606 of 8 April 2022 on the recognition of the "Round Table on Responsible Soy with EU RED Requirements (RTRS EU RED)" voluntary scheme for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 194, ELI: http://data.europa.eu/eli/dec_impl/2022/606/oj)

15. 32022 D 607: Commission Implementing Decision (EU) 2022/607 of 8 April 2022 on the recognition of the "Roundtable on Sustainable Biomaterials (RSB) EU RED" voluntary scheme for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 197, ELI: http://data.europa.eu/eli/dec_impl/2022/607/oj)
16. 32022 D 608: Commission Implementing Decision (EU) 2022/608 of 8 April 2022 on the recognition of the "Scottish Quality Crops Farm Assurance Scheme (SQC)" for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 200, ELI: http://data.europa.eu/eli/dec_impl/2022/608/oj)
17. 32022 D 609: Commission Implementing Decision (EU) 2022/609 of 8 April 2022 on the recognition of the "SURE" voluntary scheme for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 203, ELI: http://data.europa.eu/eli/dec_impl/2022/609/oj)
18. 32022 D 610: Commission Implementing Decision (EU) 2022/610 of 8 April 2022 on the recognition of the "Trade Assurance Scheme for Combinable Crops (TASCC)" for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 206, ELI: http://data.europa.eu/eli/dec_impl/2022/610/oj)

19. 32022 D 611: Commission Implementing Decision (EU) 2022/611 of 8 April 2022 on the recognition of the "Universal Feed Assurance Scheme (UFAS)" for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 114, 12.4.2022, p. 209, ELI: http://data.europa.eu/eli/dec_impl/2022/611/oj)
20. 32022 D 2461: Commission Implementing Decision (EU) 2022/2461 of 14 December 2022 recognising the "KZR IniG" scheme for demonstrating compliance with the requirements set out in Directive (EU) 2018/2001 of the European Parliament and of the Council as regards biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels and repealing Commission Implementing Decision (EU) 2022/603 (OJ EU L 321, 15.12.2022, p. 38, ELI: http://data.europa.eu/eli/dec_impl/2022/2461/oj)
21. 32022 D 1657: Commission Implementing Decision (EU) 2022/1657 of 26 September 2022 on the recognition of the Sustainable Biomass Program voluntary scheme for demonstrating compliance with the requirements of Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 249, 27.9.2022, p. 53, ELI: http://data.europa.eu/eli/dec_impl/2022/1657/oj)
22. 32022 D 1656: Commission Implementing Decision (EU) 2022/1656 of 26 September 2022 on recognition of the Austrian agricultural certification scheme (AACS) for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels (OJ EU L 249, 27.9.2022, p. 50, ELI: http://data.europa.eu/eli/dec_impl/2022/1656/oj)

23. 32022 R 996: Commission Implementing Regulation (EU) 2022/996 of 14 June 2022 on rules to verify sustainability and greenhouse gas emissions saving criteria and low indirect land-use change-risk criteria (OJ EU L 168, 27.6.2022, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2022/996/oj)
 24. 32022 D 1655: Commission Implementing Decision (EU) 2022/1655 of 26 September 2022 recognising the report including information on the typical greenhouse gas emissions from the cultivation of soybean in Argentina under Article 31(3) and (4) of Directive (EU) 2018/2001 of the European Parliament and of the Council (OJ EU L 249, 27.09.2022, p. 47, ELI: http://data.europa.eu/eli/dec_impl/2022/1655/oj)
 25. 32024 D 861: Commission Implementing Decision (EU) 2024/861 of 15 March 2024 on the recognition of the report including information on the typical greenhouse gas emissions from the cultivation of canola oilseed (rapeseed) in Canada under Article 31(3) and (4) of Directive (EU) 2018/2001 of the European Parliament and of the Council (OJ EU L, 2024/861, 19.3.2024, ELI: http://data.europa.eu/eli/dec_impl/2024/861/oj)
 26. 32023 D 1760: Commission Implementing Decision (EU) 2023/1760 of 11 September 2023 on the recognition of the report including information on the typical greenhouse gas emissions from the cultivation of canola oilseed (rapeseed) in Australia under Article 31(3) and (4) of Directive (EU) 2018/2001 of the European Parliament and of the Council (OJ EU L 224, 12.9.2023, p. 105, ELI: http://data.europa.eu/eli/dec_impl/2023/1760/oj)
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ANNEX ON THE APPLICATION OF ARTICLE 49 OF THIS AGREEMENT

ARTICLE 1

List of the activities of the Union agencies, information systems
and other activities to which Switzerland is to contribute financially

Switzerland shall contribute financially to the following:

(a) agencies:

- European Union Agency for the Cooperation of Energy Regulators, as established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ L 158, 14.6.2019, p. 22, as applicable in accordance with Annex I of the Agreement), taking into account the scope of this Agreement, for 85 % of the Union subsidy budget line of the year in question;

- (b) information systems:
- the Union database, as established by Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82, as applicable in accordance with Annex VI to the Agreement);
- (c) other activities:
- none.

ARTICLE 2

Terms of payment

1. Payments due pursuant to Article 49 of this Agreement shall be made in accordance with this Article.
2. When issuing the call for funds of the financial year, the Commission shall communicate the following information to Switzerland:
 - (a) the amount of the operational contribution; and
 - (b) the amount of the participation fee.

3. The Commission shall communicate to Switzerland, as soon as possible and at the latest on 16 April of each financial year, the following information in relation to Switzerland's participation:

- (a) the amounts in commitment appropriations of the annual Union voted budget inscribed on the relevant Union budget subsidy line(s) of the year in question for each Union agency, taking into account for each agency any adjusted operational contribution as defined in Article 1 of this Annex, and the amounts in commitment appropriations in relation to the Union voted budget of the year in question for the relevant budget of the information systems and other activities, covering the participation of Switzerland in accordance with Article 1 of this Annex;
- (b) the amount of the participation fee referred to in Article 49(7) of this Agreement; and
- (c) as regards agencies, in year N+1, the amounts in budgetary commitments made on commitment appropriations authorised in year N on the relevant Union budget subsidy line(s) in relation to the annual Union budget inscribed on the relevant Union budget subsidy line(s) of year N.

4. On the basis of its draft budget, the Commission shall provide an estimate of information under points (a) and (b) of paragraph 3 as soon as possible and, at the latest, by 1 September of the financial year.

5. The Commission shall issue to Switzerland, at the latest on 16 April and, if applicable to the relevant agency, information system or other activity, at the earliest on 22 October and at the latest on 31 October of each financial year, a call for funds that corresponds to the contribution of Switzerland under this Agreement for each of the agencies, information systems and other activities in which Switzerland participates.

6. The call(s) for funds referred to in paragraph 5 shall be structured in instalments as follows:

(a) the first instalment of each year, in relation to the call for funds to be issued by 16 April, shall correspond to an amount up to the equivalent of the estimate of the annual financial contribution of the agency, information system or other activity in question referred to in paragraph 4;

Switzerland shall pay the amount indicated in this call for funds at the latest 60 days after the call for funds is issued;

(b) where applicable, the second instalment of the year, in relation to the call for funds to be issued at the earliest on 22 October and at the latest on 31 October, shall correspond to the difference between the amount referred to in paragraph 4 and the amount referred to in paragraph 5 where the amount referred to in paragraph 5 is higher;

Switzerland shall pay the amount indicated in this call for funds at the latest by 21 December.

For each call for funds, Switzerland may make separate payments for each agency, information system or other activity.

7. For the first year of implementation of this Agreement, the Commission shall issue a single call for funds, within 90 days of the entry into force of this Agreement.

Switzerland shall pay the amount indicated in the call for funds at the latest 60 days after the call for funds is issued.

8. Any delay in the payment of the financial contribution shall give rise to the payment of default interest by Switzerland on the outstanding amount as from the due date until the day on which that outstanding amount is paid in full.

The interest rate for amounts receivable not paid on the due date shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first day of the month in which the due date falls, or 0 %, whichever is higher, plus 3,5 percentage points.

ARTICLE 3

Adjustment of Switzerland's financial contribution to Union agencies in the light of implementation

The adjustment of Switzerland's financial contribution to Union agencies shall be made in year N+1 when the initial operational contribution shall be adjusted upwards or downwards by the difference between the initial operational contribution and an adjusted contribution calculated by applying the contribution key of year N to the amount of budgetary commitments made on commitment appropriations authorised in year N under the relevant Union subsidy budget line(s). Where applicable, the difference shall take into account for each agency the percentage-based adjusted operational contribution as defined in Article 1.

ARTICLE 4

Transitional arrangements

In the event that the date of entry into force of this Agreement is not 1 January, this Article shall apply by way of derogation from Article 2.

For the first year of implementation of the Agreement, in relation to the operational contribution due for the year in question applicable to the relevant agency, information system or other activity, as established in accordance with Article 49 of the Agreement and Articles 1, 2 and 3 of this Annex, the operational contribution shall be reduced on a *pro rata temporis* basis by multiplying the amount of the annual operational contribution due to the ratio of the following:

- (a) the number of calendar days from the date of entry into force of the Agreement until 31 December of the year in question, and
- (b) the total number of calendar days of the year in question.

PROTOCOL

PROTOCOL ON THE ARBITRAL TRIBUNAL

CHAPTER I

PRELIMINARY PROVISIONS

ARTICLE I.1

Scope

If one of the Contracting Parties (hereinafter referred to as the "parties") submits a dispute for arbitration in accordance with Article 32(2) or Article 33(2) of this Agreement, the rules set out in this Protocol shall apply.

ARTICLE I.2

Registry and secretarial services

The International Bureau of the Permanent Court of Arbitration at the Hague (hereinafter referred to as the "International Bureau") shall fulfil the functions of registry and provide the necessary secretarial services.

ARTICLE I.3

Notices and calculation of time limits

1. Notices, including communications or proposals, may be sent by any means of communication that certifies their transmission, or enables them to be certified.
2. Such notices may be sent electronically only if an address has been designated or authorised by a party specifically for this purpose.
3. Such notices served on the parties shall be sent, for Switzerland, to Switzerland's Europe Division of the Federal Department of Foreign Affairs and, for the Union, to the Commission's Legal Service.
4. Any time limit laid down in this Protocol shall run from the day after an event occurs or an action takes place. If the last day for delivery of a document falls on a non-working day of the institutions of the Union or of the government of Switzerland, the time period for the delivery of the document shall end on the first following working day. Non-working days that fall within the time period shall be counted.

ARTICLE I.4

Notice of arbitration

1. The party taking the initiative to use arbitration (hereinafter referred to as the "applicant") shall send to the other party (hereinafter referred to as the "defendant") and to the International Bureau a notice of arbitration.

2. Arbitration proceedings shall be deemed to commence on the day after that on which the notice of arbitration is received by the defendant.
3. The notice of arbitration shall include the following information:
 - (a) the demand that the dispute be referred to arbitration;
 - (b) the names and contact details of the parties;
 - (c) the name and address of the applicant's agent(s);
 - (d) the legal basis of the proceedings (Article 32(2) or Article 33(2) of this Agreement) and:
 - (i) in the cases referred to in Article 32(2) of this Agreement, the question causing the dispute as officially entered, for resolution, on the agenda of the Joint Committee in accordance with Article 32(1) of this Agreement; and
 - (ii) in the cases referred to in Article 33(2) of this Agreement, the decision of the arbitral tribunal, any implementation measures mentioned in Article 32(5) of this Agreement and the disputed compensatory measures;
 - (e) the designation of any rule causing the dispute or related to it;
 - (f) a brief description of the dispute; and
 - (g) the designation of an arbitrator or, if five arbitrators are to be appointed, the designation of two arbitrators.

4. In the cases referred to in Article 32(3) of this Agreement, the notice of arbitration may also contain information concerning the need for a referral to the Court of Justice of the European Union.

5. Any claims on the sufficiency of the notice of arbitration shall not prevent the constitution of the arbitral tribunal. The dispute shall be decided definitively by the arbitral tribunal.

ARTICLE I.5

Response to the notice of arbitration

1. Within 60 days of receiving the notice of arbitration, the defendant shall send a response to the notice of arbitration to the applicant and the International Bureau, which shall include the following information:

- (a) the names and contact details of the parties;
- (b) the name and address of the defendant's agent(s);
- (c) a response to the information given in the notice of arbitration in accordance with points (d), (e) and (f) of Article I.4(3); and
- (d) the designation of an arbitrator or, if five arbitrators are to be appointed, the designation of two arbitrators.

2. In the cases referred to in Article 32(3) of this Agreement, the response to the notice of arbitration may also contain a response to the information given in the notice of arbitration in accordance with Article I.4(4) of this Protocol and information concerning the need for a referral to the Court of Justice of the European Union.
3. The lack of, or an incomplete or late, response from the defendant to the notice of arbitration shall not prevent the constitution of an arbitral tribunal. The dispute shall be decided definitively by the arbitral tribunal.
4. If the defendant requests that the arbitral tribunal consist of five arbitrators in its response to the notice of arbitration, the applicant shall designate an additional arbitrator within 30 days of receipt of the response to the notice of arbitration.

ARTICLE I.6

Representation and assistance

1. The parties shall be represented before the arbitral tribunal by one or more agents. The agents may be assisted by advisers or lawyers.
2. Any change to the agents or their addresses shall be notified to the other party, the International Bureau and the arbitral tribunal. The arbitral tribunal may, at any time, on its own initiative or at the request of a party, request evidence of the powers conferred on the agents of the parties.

CHAPTER II

COMPOSITION OF THE ARBITRAL TRIBUNAL

ARTICLE II.1

Number of arbitrators

The arbitral tribunal shall be composed of three arbitrators. If the applicant in its notice of arbitration or the defendant in its response to the notice of arbitration so request, the arbitral tribunal shall be composed of five arbitrators.

ARTICLE II.2

Appointment of arbitrators

1. If three arbitrators are to be appointed, each of the parties shall designate one of them. The two arbitrators appointed by the parties shall select the third arbitrator, who shall be the chair of the arbitral tribunal.
2. If five arbitrators are to be appointed, each of the parties shall designate two of them. The four arbitrators appointed by the parties shall select the fifth arbitrator, who shall be the chair of the arbitral tribunal.

3. If, within 30 days of the designation of the last arbitrator appointed by the parties, the arbitrators have not reached agreement on the selection of the chair of the arbitral tribunal, the chair shall be appointed by the Secretary-General of the Permanent Court of Arbitration.

4. To assist in the selection of arbitrators to compose the arbitral tribunal, an indicative list of persons possessing the qualifications referred to in paragraph 6, which shall be common to all bilateral agreements in the fields related to the internal market in which Switzerland participates as well as the Agreement between the European Union and the Swiss Confederation on health(hereinafter referred to as the "Agreement on health"), the Agreement between the European Community and the Swiss Confederation on trade in agricultural products, done at Luxembourg on 21 June 1999 (hereinafter referred to as the "Agreement on trade in agricultural products") and the Agreement between the European Union and the Swiss Confederation on Switzerland's regular financial contribution towards reducing economic and social disparities in the European Union (hereinafter referred to as the "Agreement on Switzerland's regular financial contribution"), shall be established and updated when necessary. The Joint Committee shall adopt and update that list by a decision for the purposes of the Agreement.

5. Where a party fails to designate an arbitrator, the Secretary-General of the Permanent Court of Arbitration shall appoint that arbitrator from the list referred to in paragraph 4. In the absence of such a list, the arbitrator shall be appointed by lot by the Secretary-General of the Permanent Court of Arbitration from the individuals who have been formally proposed by one party or both parties for the purposes of paragraph 4.

6. The persons constituting the arbitral tribunal shall be highly qualified persons, with or without ties to the parties, whose independence and lack of conflicts of interest is guaranteed, along with a wide range of experience. In particular, they shall have demonstrated expertise in law and the matters covered by this Agreement; they shall not take instructions from either party; and they shall serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute. The chair of the arbitral tribunal shall also have experience in dispute settlement procedures.

ARTICLE II.3

Arbitrators' declarations

1. When a person is being considered for appointment as an arbitrator, that person shall report all circumstances likely to give rise to legitimate doubts as to his or her impartiality or independence. From the appointment and throughout the entire arbitration proceedings, an arbitrator shall report such circumstances to the parties and to the other arbitrators without delay, if the arbitrator has not already done so.
2. Any arbitrator may be dismissed if circumstances exist that could give rise to legitimate doubts about his or her impartiality or independence.
3. A party may only request the dismissal of an arbitrator that it has appointed for a reason that becomes known to it after that appointment.
4. If an arbitrator fails to act or if it is impossible *de jure* or *de facto* for an arbitrator to fulfil his or her role, the procedure for the dismissal of arbitrators laid down in Article II.4 shall apply.

ARTICLE II.4

Dismissal of arbitrators

1. Any party wishing to dismiss an arbitrator shall make a request for dismissal within 30 days of the date on which it is notified of the appointment of that arbitrator or within 30 days of the date on which it becomes aware of the circumstances referred to in Article II.3.
2. The request for dismissal shall be sent to the other party, to the dismissed arbitrator, to the other arbitrators and to the International Bureau. It shall set out the reasons for the request for dismissal.
3. When a request for dismissal has been made, the other party may accept the request for dismissal. The arbitrator in question may also step aside. The acceptance or stepping aside does not imply acknowledgement of the reasons for the request for dismissal.
4. If, within 15 days of the date of the notification of the request for dismissal, the other party does not accept the request for dismissal or the arbitrator in question does not step aside, the party requesting the dismissal may ask the Secretary-General of the Permanent Court of Arbitration to take a decision on the dismissal.
5. Unless the parties agree otherwise, the decision referred to in paragraph 4 shall indicate the reasons for that decision.

ARTICLE II.5

Replacement of an arbitrator

1. Subject to paragraph 2 of this Article, if it is necessary to replace an arbitrator during the arbitration proceedings, a replacement shall be appointed or selected in accordance with the procedure laid down in Article II.2 applicable to the appointment or selection of the arbitrator to be replaced. That procedure shall apply even if one party had not exercised its right to appoint or to participate in the appointment of the arbitrator to be replaced.
2. In the event of replacement of an arbitrator, the procedure shall resume at the stage where the replaced arbitrator ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

ARTICLE II.6

Exclusion of liability

Except in cases of intentional wrongdoing or gross negligence, the parties renounce, to the maximum extent permitted by the applicable law, any action against the arbitrators for any act or omission related to the arbitration.

CHAPTER III

ARBITRATION PROCEEDINGS

ARTICLE III.1

General provisions

1. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator has accepted his or her appointment.
2. The arbitral tribunal shall ensure that the parties are treated equally and that, at an appropriate stage of the proceedings, each of them has sufficient possibility to assert their rights and present their case. The arbitral tribunal shall conduct the proceedings in such a way as to avoid delays and unnecessary expenditure and to ensure the dispute between the parties is settled.
3. A hearing shall be organised, unless the arbitral tribunal decides otherwise, having heard the parties.
4. When a party sends a communication to the arbitral tribunal, it shall do so through the International Bureau and shall send a copy to the other party at the same time. The International Bureau shall send a copy of that communication to each of the arbitrators.

ARTICLE III.2

Place of arbitration

The place of arbitration is The Hague. The arbitral tribunal may, if exceptional circumstances so require, meet at any other place that it considers appropriate for its deliberations.

ARTICLE III.3

Language

1. The languages of the proceedings shall be French and English.
2. The arbitral tribunal may order all documents enclosed with the statement of claim or the statement of defence and all further documents produced during the proceedings, submitted in their original language, to be accompanied by a translation in one of the languages of the proceedings.

ARTICLE III.4

Statement of claim

1. The applicant shall send its statement of claim in writing to the defendant and to the arbitral tribunal through the International Bureau, within the time limit set by the arbitral tribunal. The applicant may decide to deem its notice of arbitration referred to in Article I.4 a statement of claim, provided that it also meets the conditions in paragraphs 2 and 3 of this Article.

2. The statement of claim shall include the following information:
 - (a) the information set out in points (b) to (f) of Article I.4(3);
 - (b) a statement of facts submitted in support of the claim; and
 - (c) the legal arguments put forward in support of the claim.

3. The statement of claim shall, as far as possible, be accompanied by any documents and other evidence mentioned by the applicant or shall refer to them. In the cases referred to in Article 32(3) of this Agreement, the statement of claim shall also, as far as possible, contain information concerning the need for a referral to the Court of Justice of the European Union.

ARTICLE III.5

Statement of defence

1. The defendant shall send the statement of defence in writing to the applicant and to the arbitral tribunal through the International Bureau, within the time limit set by the arbitral tribunal. The defendant may decide to deem the response to the notice of arbitration referred to in Article I.5 a statement of defence, provided that the response to the notice of arbitration also meets the conditions in paragraph 2 of this Article.

2. The statement of defence shall respond to the points in the statement of claim indicated in accordance with points (a), (b) and (c) of Article III.4(2) of this Protocol. It shall, as far as possible, be accompanied by any documents and other evidence mentioned by the defendant or shall refer to them. In the cases referred to in Article 32(3) of this Agreement, the statement of defence shall also, as far as possible, contain information concerning the need for a referral to the Court of Justice of the European Union.
3. In the statement of defence, or at a later stage in the arbitration proceedings if the arbitral tribunal decides that a delay is justified by circumstances, the defendant may make a counterclaim provided that the arbitral tribunal has jurisdiction in respect of it.
4. Article III.4(2) and (3) shall apply to a counterclaim.

ARTICLE III.6

Arbitral jurisdiction

1. The arbitral tribunal shall rule on whether it has jurisdiction on the basis of Article 32(2) or Article 33(2) of this Agreement.
2. In the cases referred to in Article 32(2) of this Agreement, the arbitral tribunal shall have a mandate to examine the question causing the dispute as officially entered, for resolution, on the agenda of the Joint Committee in accordance with Article 32(1) of this Agreement.

3. In the cases referred to in Article 33(2) of this Agreement, the arbitral tribunal that heard the main case shall have a mandate to examine the proportionality of the disputed compensatory measures, including where those measures have in whole or in part been taken in another bilateral agreement in the fields related to the internal market in which Switzerland participates.

4. A preliminary objection of lack of jurisdiction of the arbitral tribunal shall be made at the latest in the statement of defence or, in the case of a counterclaim, in the reply. The fact that a party has appointed an arbitrator or has taken part in their appointment shall not deprive it of the right to make such a preliminary objection. The preliminary objection that the dispute would exceed the arbitral tribunal's powers shall be made as soon as the question alleged to exceed its powers is raised during the arbitration proceedings. In any event, the arbitral tribunal may allow a preliminary objection made after the time limit laid down has elapsed if it believes that the delay was for a valid reason.

5. The arbitral tribunal may rule on the preliminary objection referred to in paragraph 4 either by treating it as a preliminary question or in the decision on the substance of the case.

ARTICLE III.7

Other written submissions

The arbitral tribunal shall, after having consulted the parties, decide what other written submissions, in addition to the statement of claim and statement of defence, the parties shall or may submit and shall set the time limit for their submission.

ARTICLE III.8

Time limits

1. The time limits set by the arbitral tribunal for the communication of the written documents, including the statement of claim and the statement of defence, shall not exceed 90 days, unless the parties agree otherwise.
2. The arbitral tribunal shall take its final decision within 12 months of the date of its establishment. In exceptional circumstances of particular difficulty, the arbitral tribunal may extend that period by up to three additional months.
3. The time limits laid down in paragraphs 1 and 2 shall be halved in the following cases:
 - (a) upon request by the applicant or the defendant, if, within 30 days of that request the arbitral tribunal rules, after hearing the other party, that the case is urgent; or
 - (b) if the parties so agree.
4. In the cases referred to in Article 33(2) of this Agreement, the arbitral tribunal shall take its final decision within six months of the date on which the compensatory measures have been notified in accordance with Article 33(1) of this Agreement.

ARTICLE III.9

Referrals to the Court of Justice of the European Union

1. In application of Article 29 and Article 32(3) of this Agreement, the arbitral tribunal shall make a referral to the Court of Justice of the European Union.

2. The arbitral tribunal may make a referral to the Court of Justice of the European Union at any time in the proceedings, provided that the arbitral tribunal is able to define precisely enough the legal and factual background of the case, and the legal questions it raises.

The proceedings before the arbitral tribunal shall be suspended until the Court of Justice of the European Union has delivered its ruling.

3. Each party may send a reasoned request to the arbitral tribunal to make a referral to the Court of Justice of the European Union. The arbitral tribunal shall reject such a request if it considers the conditions for a referral to the Court of Justice of the European Union referred to in paragraph 1 not to be met. If the arbitral tribunal rejects a party's request for a referral to the Court of Justice of the European Union, it shall give reasons for its decision in the decision on the substance of the case.

4. The arbitral tribunal shall make a referral to the Court of Justice of the European Union by means of a notice. The notice shall contain at least the following information:

- (a) a brief description of the dispute;
- (b) the legal act(s) of the Union and/or the provision(s) of this Agreement at issue; and

- (c) the concept of Union law to be interpreted in accordance with Article 29(2) of this Agreement.

The arbitral tribunal shall give notice of the referral to the Court of Justice of the European Union to the parties.

5. The Court of Justice of the European Union shall apply, by analogy, the internal rules of procedure applicable to the exercise of its jurisdiction to make a preliminary ruling on the interpretation of the Treaties and acts made by the Union's institutions, bodies, offices and agencies.
6. The agents and lawyers authorised to represent the parties before the arbitral tribunal pursuant to Articles I.4, I.5, III.4 and III.5 shall be authorised to represent the parties before the Court of Justice of the European Union.

ARTICLE III.10

Interim measures

1. In the cases referred to in Article 33(2) of this Agreement, either party may, at any stage of the arbitration procedure, apply for interim measures consisting of the suspension of the compensatory measures.
2. An application pursuant to paragraph 1 shall state the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measures applied for. It shall contain all the evidence and offers of evidence available to justify the grant of the interim measures.

3. The party requesting the interim measures shall send its application in writing to the other party and to the arbitral tribunal through the International Bureau. The arbitral tribunal shall set a short time limit within which that other party may submit written or oral observations.
4. The arbitral tribunal shall, within one month of the submission of the application referred to in paragraph 1, adopt a decision on the suspension of the contested compensatory measures if the following conditions are met:
 - (a) the arbitral tribunal is *prima facie* satisfied of the merit of the case submitted by the party requesting the interim measures in its application;
 - (b) the arbitral tribunal considers that, pending its final decision, the party requesting the interim measures would suffer serious and irreparable harm absent the suspension of the compensatory measures; and
 - (c) the harm caused to the party requesting the interim measures by the immediate application of the contested compensatory measures outweighs the interest in the immediate and effective application of those measures.
5. The suspension of proceedings referred to in the second subparagraph of Article III.9(2) shall not apply in proceedings pursuant to this Article.
6. A decision taken by the arbitral tribunal in accordance with paragraph 4 shall have only an interim effect and shall be without prejudice to the decision of the arbitral tribunal on the substance of the case.

7. Unless the decision taken by the arbitral tribunal in accordance with paragraph 4 of this Article sets an earlier date for the end of the suspension, the suspension shall lapse when the final decision pursuant to Article 33(2) of this Agreement is taken.

8. For the avoidance of doubt, for the purposes of this Article, it is understood that, in considering the respective interests of the party requesting the interim measures and the other party, the arbitral tribunal shall take into account those of the individuals and economic operators of the parties, but that consideration shall not amount to granting any standing to such individuals or economic operators before the arbitral tribunal.

ARTICLE III.11

Evidence

1. Each party shall provide evidence of the facts forming the grounds of its claim or its defence.

2. On request of a party, or on its own initiative, the arbitral tribunal may seek from the parties relevant information it considers necessary and appropriate. The arbitral tribunal shall set a time limit for the parties to respond to its request.

3. On request of a party, or on its own initiative, the arbitral tribunal may seek from any source any information it considers appropriate. The arbitral tribunal may also seek the opinion of experts as it considers appropriate and subject to any terms and conditions agreed by the parties, where applicable.

4. Any information obtained by the arbitral tribunal under this Article shall be made available to the parties, and the parties may submit comments on that information to the arbitral tribunal.

5. After seeking the views of the other party, the arbitral tribunal shall adopt appropriate measures to address any questions raised by a party with regard to the protection of personal data, professional secrecy and the legitimate interests of confidentiality.
6. The arbitral tribunal shall be the judge of the admissibility, relevance and strength of the evidence submitted.

ARTICLE III.12

Hearings

1. When a hearing must take place, the arbitral tribunal, having consulted the parties, shall notify the parties sufficiently far in advance of the date, time and place of the hearing.
2. The hearing shall be public, unless the arbitral tribunal, of its own motion or on application by the parties, decides otherwise for serious reasons.
3. Minutes of each hearing shall be drawn up and signed by the chair of the arbitral tribunal. Only those minutes shall be authentic.
4. The arbitral tribunal may decide to hold the hearing virtually in accordance with the practice of the International Bureau. The parties shall be informed of this practice in a timely manner. In such cases, paragraph 1, *mutatis mutandis*, and paragraph 3 shall apply.

ARTICLE III.13

Default

1. If, within the time limit set by this Protocol or by the arbitral tribunal, without showing sufficient cause, the applicant has not submitted its statement of claim, the arbitral tribunal shall order the closure of the arbitration proceedings, unless there are outstanding questions on which a ruling may be necessary and if the arbitral tribunal considers it appropriate to do so.

If, within the time limit set by this Protocol or by the arbitral tribunal, without showing sufficient cause, the defendant has not submitted its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order the continuation of the proceedings, without considering that default of itself to constitute acceptance of the applicant's allegations.

The second subparagraph also applies where the applicant fails to submit a reply to a counterclaim.

2. If a party, duly convened in accordance with Article III.12(1), does not appear at a hearing and does not demonstrate sufficient cause for its failure to do so, the arbitral tribunal may continue the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce further evidence, fails to do so within the time limits set without showing sufficient cause for its failure to do so, the arbitral tribunal may rule on the basis of the evidence it has available.

ARTICLE III.14

Closure of the procedure

1. Where it is demonstrated that the parties have reasonably had the possibility of presenting their arguments, the arbitral tribunal may declare the closure of the proceedings.
2. The arbitral tribunal may, if it considers it necessary because of exceptional circumstances, decide on its own initiative or at the request of a party to reopen the proceedings at any time before it has taken its decision.

CHAPTER IV

DECISION

ARTICLE IV.1

Decisions

The arbitral tribunal shall strive to take its decisions by consensus. If, however, it proves impossible to take a decision by consensus, the arbitral tribunal's decision shall be taken by a majority of the arbitrators.

ARTICLE IV.2

Form and effect of the decision of the arbitral tribunal

1. The arbitral tribunal may take separate decisions on different questions at different times.
2. All decisions shall be issued in writing and shall state the reasons on which they are based. They shall be final and binding on the parties.
3. The decision of the arbitral tribunal shall be signed by the arbitrators, shall contain the date on which it was taken and state the place of arbitration. A copy of the decision signed by the arbitrators shall be communicated to the parties by the International Bureau.

4. The International Bureau shall make the decision of the arbitral tribunal public.

When making the decision of the arbitral tribunal public, the International Bureau shall respect the relevant rules on the protection of personal data, professional secrecy and the legitimate interests of confidentiality.

The rules referred to in the second subparagraph shall be identical for all bilateral agreements in the fields of the internal market in which Switzerland participates as well as for the Agreement on health, the Agreement on trade in agricultural products and the Agreement on Switzerland's regular financial contribution. The Joint Committee shall adopt and update those rules by a decision for the purposes of the Agreement.

5. The parties shall comply with all decisions of the arbitral tribunal without delay.

6. In the cases referred to in Article 32(2) of this Agreement, having obtained the opinion of the parties, the arbitral tribunal shall set a reasonable time limit in the decision on the substance of the case to comply with its decision in accordance with Article 32(5) of this Agreement taking account of the parties' internal procedures.

ARTICLE IV.3

Applicable law, rules of interpretation, mediator

1. The applicable law consists of this Agreement, the legal acts of the Union to which reference is made therein, as well as any other rule of international law relevant to the application of those instruments.

2. The arbitral tribunal shall decide in accordance with the rules of interpretation referred to in Article 29 of this Agreement.
3. Prior decisions taken by a dispute settlement body with regard to the proportionality of compensatory measures under another bilateral agreement among those referred to in Article 33(1) of this Agreement shall be binding upon the arbitral tribunal.
4. The arbitral tribunal shall not be permitted to decide as mediator or *ex aequo et bono*.

ARTICLE IV.4

Mutually agreed solution or other reasons for closure of the proceedings

1. The parties may, at any time, mutually agree a solution to their dispute. They shall jointly communicate any such solution to the arbitral tribunal. If the solution requires approval pursuant to the relevant domestic procedures of either party, the notification shall refer to that requirement, and the arbitration procedure shall be suspended. If such approval is not required, or upon notification of the completion of any such domestic procedures, the arbitration procedure shall be closed.
2. If, in the course of proceedings, the applicant informs the arbitral tribunal in writing that it does not wish to further pursue the proceedings, and if, at the date on which that communication is received by the arbitral tribunal, the defendant has not yet taken any step in the proceedings, the arbitral tribunal shall issue an order officially recording the closure of the proceedings. The arbitral tribunal shall decide on the costs, which shall be borne by the applicant, if this appears justified by the conduct of that party.

3. If, before the decision of the arbitral tribunal is taken, the arbitral tribunal concludes that the continuation of the proceedings has become pointless or impossible for any reason other than those referred to in paragraphs 1 and 2, the arbitral tribunal shall inform the parties of its intention to issue an order closing the proceedings.

The first subparagraph does not apply where there are outstanding questions on which it may be necessary to rule and if the arbitral tribunal judges it appropriate to do so.

4. The arbitral tribunal shall communicate to the parties a copy of the order closing the arbitration proceedings or of the decision taken by agreement between the parties, signed by the arbitrators. Article IV.2(2) to (5) shall apply to arbitration decisions taken by agreement between the parties.

ARTICLE IV.5

Correction of the decision of the arbitral tribunal

1. Within 30 days of receiving the decision of the arbitral tribunal, a party may, by giving notice to the other party and to the arbitral tribunal through the International Bureau, ask the arbitral tribunal to correct in the text of the decision of the arbitral tribunal any errors in computation, any clerical or typographical errors, or any errors or omissions of a similar nature. If it considers the request to be justified, the arbitral tribunal shall make the correction within 45 days of receiving the request. The request shall not have a suspensive effect on the time limit provided for in Article IV.2(6).

2. The arbitral tribunal may, within 30 days of communicating its decision, make the corrections referred to in paragraph 1 on its own initiative.
3. The corrections referred to in paragraph 1 of this Article shall be done in writing and form an integral part of the decision. Article IV.2(2) to (5) shall apply.

ARTICLE IV.6

Arbitrators' fees

1. The fees referred to in Article IV.7 shall be reasonable, taking account of the complexity of the case, the time spent on it by the arbitrators and all other relevant circumstances.
2. A list of daily compensation and maximum and minimum hours, which shall be common to all bilateral agreements in the fields related to the internal market in which Switzerland participates as well as the Agreement on health, the Agreement on trade in agricultural products and the Agreement on Switzerland's regular financial contribution, shall be established and updated when necessary. The Joint Committee shall adopt and update that list by a decision for the purposes of the Agreement.

ARTICLE IV.7

Costs

1. Each party shall bear its own costs and half of the costs of the arbitral tribunal.
2. The arbitral tribunal shall set its costs in its decision on the substance of the case. Those costs shall include only:
 - (a) the arbitrators' fees, to be stated separately for each arbitrator and to be set by the arbitral tribunal itself in accordance with Article IV.6;
 - (b) the travel and other expenses incurred by the arbitrators; and
 - (c) the fees and expenses of the International Bureau.
3. The costs referred to in paragraph 2 shall be reasonable, taking account of the amount in dispute, the complexity of the dispute, the time that the arbitrators and any experts appointed by the arbitral tribunal have spent on it and any other relevant circumstances.

ARTICLE IV.8

Deposit of costs

1. At the start of the arbitration, the International Bureau may ask the parties to deposit an equal amount as an advance for the costs referred to in Article IV.7(2).

2. During the arbitration proceedings, the International Bureau may request from the parties deposits supplementary to those referred to in paragraph 1.

3. All amounts deposited by the parties in application of this Article shall be paid to the International Bureau and paid out by it to cover the costs actually incurred, including, in particular, the fees paid to the arbitrators and to the International Bureau.

CHAPTER V

FINAL PROVISIONS

ARTICLE V.1

Amendments

The Joint Committee may adopt, by decision, amendments to this Protocol.

JOINT DECLARATION
ACCOMPANYING THE AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE SWISS CONFEDERATION ON ELECTRICITY

If the European Commission grants financial support, in any form whatsoever, which is not subject to State aid rules under this Agreement between the European Union and the Swiss Confederation on Electricity and which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between the Contracting Parties within the scope of the Agreement, Switzerland may request consultations to discuss the matter.
