



2023/2172

17.10.2023

COUNCIL DECISION (EU) 2023/2172

of 28 September 2023

on the position to be taken on behalf of the European Union within the Joint Committee established by the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems, as regards the amendment of Annex I, and the insertion of a clarification in Annex IV, to the Agreement

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems ⁽¹⁾ ('the Agreement') was signed on 23 November 2017 in accordance with Council Decision (EU) 2017/2240 ⁽²⁾.
- (2) The Agreement was concluded by Council Decision (EU) 2018/219 ⁽³⁾ and entered into force on 1 January 2020.
- (3) Pursuant to Article 12(3) of the Agreement, the Joint Committee may adopt decisions that are to, upon their entry into force, be binding on the Parties.
- (4) Article 13(2) of the Agreement provides that the Joint Committee may amend the Annexes to the Agreement.
- (5) It is appropriate to restore consistency with legal provisions applicable to the emissions trading systems of the European Union and of the Swiss Confederation following the start of the new trading period on 1 January 2021 by amending Annex I to the Agreement in order to reflect regulatory changes, including necessary clarifications in the essential criteria laid down in that Annex, and by amending Annex IV to the Agreement by inserting a clarification in order to avoid misunderstandings and confusion in respect of the meaning of sensitive information as defined in Annex IV to the Agreement.
- (6) The Joint Committee, during its sixth meeting, or earlier by means of the written procedure pursuant to Article 8(4) of the Rules of Procedure of the Joint Committee, is to adopt a Decision as regards the amendment of Annexes I and IV to the Agreement.
- (7) It is appropriate to establish the position to be taken on the Union's behalf, within the Joint Committee, with regard to the amendment of Annexes I and IV to the Agreement, as the amended Annexes will be binding on the Union.
- (8) The position of the Union within the Joint Committee should therefore be based on the attached draft Decision,

⁽¹⁾ OJ L 322, 7.12.2017, p. 3.

⁽²⁾ Council Decision (EU) 2017/2240 of 10 November 2017 on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems (OJ L 322, 7.12.2017, p. 1).

⁽³⁾ Council Decision (EU) 2018/219 of 23 January 2018 on the conclusion of the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems (OJ L 43, 16.2.2018, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union within the Joint Committee established by the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems during its sixth meeting, or earlier by means of the written procedure pursuant to Article 8(4) of the Rules of Procedure of the Joint Committee, shall be based on the draft Decision of the Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 28 September 2023.

For the Council
The President
F. GRANDE-MARLASKA GÓMEZ

DRAFT**DECISION No 1/2023 OF THE JOINT COMMITTEE ESTABLISHED BY THE AGREEMENT BETWEEN THE EUROPEAN UNION AND THE SWISS CONFEDERATION ON THE LINKING OF THEIR GREENHOUSE GAS EMISSIONS TRADING SYSTEMS****of ...****as regards the amendment of Annex I, and the insertion of a clarification in Annex IV, to the Agreement**

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems ⁽¹⁾ ('the Agreement') and in particular Article 13(2) thereof,

Whereas:

- (1) The adoption of Decision No 2/2019 of the Joint Committee ⁽²⁾ fulfilled the conditions for linking set out in the Agreement and enabled the Agreement to enter into force on 1 January 2020.
- (2) In accordance with Article 13(2) of the Agreement, the Joint Committee may amend the Annexes to the Agreement.
- (3) On 1 January 2021, a new trading period started in the emissions trading system of the European Union and the emissions trading system of Switzerland.
- (4) The new trading period introduced regulatory changes to both emissions trading systems.
- (5) In view of major developments in both emissions trading systems, as referred to in Article 13(7) of the Agreement, it is appropriate to reflect the regulatory changes by amending Annex I to the Agreement in order to include necessary clarifications in the essential criteria laid down in that Annex so that compatibility of the two emissions trading systems is maintained, market integrity is ensured, and distortion of competition is excluded.
- (6) Decision No 1/2022 of the Joint Committee of 9 December 2022 has amended Annex IV to the Agreement with respect to security markings. To avoid misunderstandings and confusion, it is appropriate to further amend that Annex in order to clarify the meaning of sensitive information with a high confidentiality and integrity rating in the context of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

Annexes I and IV to the Agreement are replaced by the text set out in Annexes I and IV in the Appendix to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

⁽¹⁾ OJ EU L 322, 7.12.2017, p. 3.

⁽²⁾ Decision No 2/2019 of the Joint Committee established by the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems of 5 December 2019 amending Annexes I and II to the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems [2020/1359] (O) EU L 314, 29.9.2020, p. 68).

Done at ..., on ...

*Secretary
for the European Union*

For the Joint Committee

The Chair

Secretary for Switzerland

—

Appendix

1. Annex I is replaced by the following:

'ANNEX I

ESSENTIAL CRITERIA

A. Essential criteria for stationary installations

	Essential criteria	In the EU ETS	In the ETS of Switzerland
1.	Mandatory nature of the participation in the ETS	Participation in the ETS shall be mandatory for the installations carrying out the activities and emitting the greenhouse gases ("GHG") listed below.	Participation in the ETS shall be mandatory for the installations carrying out the activities and emitting the GHG listed below.
2.	The ETS shall cover at least the activities set out in:	— Annex I to Directive 2003/87/EC, as in force on the date of entry into force of this Agreement.	— Article 40(1) of and Annex 6 to the CO ₂ Ordinance, as in force on 1 January 2022.
3.	The ETS shall cover at least the GHGs set out in:	— Annex II to Directive 2003/87/EC, as in force on the date of entry into force of this Agreement.	— Article 1(1) of the CO ₂ Ordinance, as in force on 1 January 2022.
4.	A cap shall be set for the ETS, which is at least as stringent as the one in:	— Articles 9 and 9a of Directive 2003/87/EC, as in force on the date of entry into force of this Agreement. The linear reduction factor of 1,74 % per year will increase to 2,2 % per year as from 2021 and will apply to all sectors in accordance with Directive (EU) 2018/410, as in force on the date of entry into force of this Agreement.	— Article 18(1) and (2) of the CO ₂ Act — Article 45(1) of and Annex 8, point 1, to the CO ₂ Ordinance, as in force on 1 January 2022. The linear reduction factor is 2,2 % per year as from 2021.
5.	Market stability mechanism	In 2015, the EU introduced the Market Stability Reserve (Decision (EU) 2015/1814), the operation of which was reinforced by Directive (EU) 2018/410. The EU legislation provides that, by 15 May each year and starting in 2017, the Commission is to publish the total number of allowances in circulation (TNAC). This figure determines whether some of the allowances intended to be auctioned should be placed into the reserve or be released from the reserve.	— Article 19(5) of the CO ₂ Act — Article 48(1 ^{bis}) and (5) of and Annex 8, point 2, to the CO ₂ Ordinance, as in force on 1 January 2022. The Swiss legislation provides for a reduction in auction volume conditional on the total number of allowances in circulation. In addition, the emission allowances which are not assigned to an auction are cancelled at the end of the trading period.

	Essential criteria	In the EU ETS	In the ETS of Switzerland
6.	The level of market oversight of the ETS shall be at least as stringent as the ones in:	<ul style="list-style-type: none"> — Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MIFID II) — Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MIFIR) — Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (MAR) — Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (CS-MAD) — Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (AMLD), as in force on the date of the entry into force of this Agreement. 	<ul style="list-style-type: none"> — Federal Act on the Swiss Financial Market Supervisory Authority of 22 June 2007 — Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 19 June 2015 — Federal Act on Financial Institutions of 15 June 2018 — Federal Act on Combating Money Laundering and Terrorist Financing of 10 October 1997, as in force on the date of the entry into force of this Agreement. <p>Swiss financial market regulation does not define the legal nature of emission allowances. In particular, emission allowances are not qualified as securities in the Financial Markets Infrastructure Act and therefore are not tradeable on regulated trading venues. Because emission allowances do not qualify as securities, Swiss securities regulation does not apply to OTC emission allowances trading on secondary markets. Derivative contracts qualify as securities according to the Financial Markets Infrastructure Act. This also includes derivatives that have emission allowances as their underlying instrument. OTC traded derivatives on emission allowances between non-financial as well as financial counterparties is covered by the provisions in the Financial Market Infrastructure Act.</p>
7.	Cooperation regarding market oversight	The Parties shall establish appropriate cooperation arrangements regarding market oversight. Those cooperation arrangements shall concern the exchange of information and the enforcement of obligations arising under their respective market oversight regime. The Parties shall inform the Joint Committee about any such arrangements.	
8.	The qualitative limits for international credits shall be at least as stringent as those set out in:	No entitlements to use international credits are provided for in Union law from 2021 onwards.	No entitlements to use international credits are provided for in Swiss law from 2021 onwards.

	Essential criteria	In the EU ETS	In the ETS of Switzerland
9.	The quantitative limits for international credits shall be at least as stringent as those set out in:	No entitlements to use international credits are provided for in Union law from 2021 onwards.	No entitlements to use international credits are provided for in Swiss law from 2021 onwards.
10.	Free allocation shall be calculated on the basis of benchmarks and adjustment factors. Allowances which are not allocated free of charge shall be auctioned or invalidated. To that end, the ETS shall meet at least:	<ul style="list-style-type: none"> — Articles 10, 10a, 10b and 10c of Directive 2003/87/EC — Commission Implementing Regulation (EU) 2021/447 of 12 March 2021 determining revised benchmark values for free allocation of emission allowances for the period from 2021 to 2025 pursuant to Article 10a(2) of Directive 2003/87/EC of the European Parliament and of the Council, as applicable in the period from 1 January 2021 to 31 December 2025 — Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 — Commission Delegated Regulation (EU) 2019/331 of 19 December 2018-December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council — Commission Delegated Decision (EU) 2019/708 of 15 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council concerning the determination of sectors and subsectors deemed at risk of carbon leakage for the period 2021 to 2030 — any cross-sectoral correction factor in the EU ETS in 2021-2025 or 2026-2030 — Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019 laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards further arrangements for the adjustments to free allocation of emission allowances due to activity level changes, as in force on 1 January 2021. 	<ul style="list-style-type: none"> — Article 18(3) and Article 19 of the CO₂ Act — Article 45(2) to (6) and Articles 46, 46a, 46b and 48 of and Annex 9 to the CO₂ Ordinance, as in force on 1 January 2022. <p>In the period from 2021 to 2025, free allocations do not exceed the levels of free allocations given to installations in the EU ETS.</p>

	Essential criteria	In the EU ETS	In the ETS of Switzerland
11.	The ETS shall provide for penalties in the same circumstances and of the same magnitude as those set out in:	— Article 16 of Directive 2003/87/EC, as in force on the date of entry into force of this Agreement.	— Article 21 of the CO ₂ Act — Article 56 of the CO ₂ Ordinance, as in force on 1 January 2022.
12.	Monitoring and reporting in the ETS shall at least be as stringent as in:	— Article 14 of and Annex IV to Directive 2003/87/EC — Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012, as in force on 1 January 2021.	— Article 20 of the CO ₂ Act — Articles 50 to 53 of and Annexes 16, point 1, and 17, point 1, to the CO ₂ Ordinance, as in force on 1 January 2022.
13.	Verification and accreditation in the ETS shall at least be as stringent as in:	— Article 15 of and Annex V to Directive 2003/87/EC — Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council, as in force on the date of entry into force of this Agreement.	— Articles 51 to 54 of the CO ₂ Ordinance, as in force on 1 January 2022.

B. Essential criteria for aviation

	Essential criteria	For the EU	For Switzerland
1.	Mandatory nature of the participation in the ETS	Participation in the ETS shall be mandatory for aviation activities in accordance with the criteria listed below.	Participation in the ETS shall be mandatory for aviation activities in accordance with the criteria listed below.
2.	Coverage of aviation activities and GHG and attribution of flights and their respective emissions according to the departing flight principle as set out in:	<ul style="list-style-type: none"> — Directive 2003/87/EC, as amended by Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 to temporarily derogate enforcement in respect of flights to and from countries with whom an agreement pursuant to Article 25 of Directive 2003/87/EC has not been reached — Commission Delegated Decision (EU) 2020/1071 of 18 May 2020 amending Directive 2003/87/EC of the European Parliament and of the 	<p>1. Scope of coverage</p> <p>Flights which arrive at, or depart from, an aerodrome situated in the territory of Switzerland, except flights which depart from an aerodrome situated in the territory of the EEA.</p> <p>Any temporary derogations as regards the scope of the ETS, such as derogations in the sense of Article 28a of Directive 2003/87/EC, may apply with regard to the ETS of Switzerland in accordance with those introduced in the EU ETS. Only CO₂ emissions shall be covered for aviation activities.</p>

	Essential criteria	For the EU	For Switzerland
		<p>Council, as regards the exclusion of incoming flights from Switzerland from the EU emissions trading system</p> <p>— Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry as in force on 1 January 2021.</p> <p>As from 1 January 2020, flights from an aerodrome situated in the territory of the European Economic Area (“EEA”) to aerodromes situated in the territory of Switzerland shall be covered by the EU ETS, while flights from aerodromes situated in the territory of Switzerland to aerodromes situated in the territory of the EEA shall be excluded from the EU ETS, pursuant to Article 25a of Directive 2003/87/EC.</p>	<p>2. Limitations of coverage</p> <p>General coverage mentioned in point 1 shall not include:</p> <ol style="list-style-type: none"> 1. Flights performed exclusively for the transport on an official mission of a reigning monarch and his/her immediate family, heads of State, heads of Government and Government ministers, where this is substantiated by an appropriate status indicator in the flight plan. 2. Military, customs and police flights. 3. Flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights. 4. Flights performed exclusively under visual flight rules as defined in Annex 2 to the Convention on International Civil Aviation of 7 December 1944. 5. Flights terminating at the aerodrome from which the aircraft has taken off and during which no planned intermediate landing has been made. 6. Training flights performed exclusively in order to acquire or maintain a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan, provided that the flight does not serve for the transport of passengers and/or cargo or for the positioning or ferrying of the aircraft. 7. Flights performed exclusively for the purpose of scientific research. 8. Flights performed exclusively for the purpose of checking, testing or certifying aircraft or airborne or ground-based equipment. 9. Flights performed by aircraft with a certified maximum take-off mass of less than 5 700 kilograms. 10. Flights of commercial aircraft operators with total annual emissions lower than 10 000 tonnes on

	Essential criteria	For the EU	For Switzerland
			<p>flights covered by the ETS of Switzerland or fewer than 243 flights per period for three consecutive four-month periods within the scope of the ETS of Switzerland, if the operators are not covered by the EU ETS.</p> <p>11. Flights of non-commercial aircraft operators covered by the ETS of Switzerland with total annual emissions lower than 1 000 tonnes in accordance with the respective derogation applied in the EU ETS, if the operators are not covered by the EU ETS.</p> <p>These limitations of coverage are provided for in:</p> <ul style="list-style-type: none"> — Article 16a of the CO₂ Act — Article 46d and Article 55(2) of and Annex 13 to the CO₂ Ordinance, as in force on 1 January 2022.
3.	Exchange of relevant data regarding the application of the limitations of coverage of aviation activities	The two parties shall cooperate regarding the application of the limitations of coverage in the ETS of Switzerland and the EU ETS for commercial and non-commercial operators in accordance with this Annex. In particular, both parties shall ensure the timely transfer of all relevant data to enable correct identification of the flights and aircraft operators that are covered by the ETS of Switzerland and the EU ETS.	
4.	Cap (total quantity of allowances to be allocated to aircraft operators)	<ul style="list-style-type: none"> — Article 3c of Directive 2003/87/EC, as in force on the date of entry into force of this Agreement. — Article 3c of Directive 2003/87/EC initially allocated allowances as follows: <ul style="list-style-type: none"> — 15 % auctioned — 3 % set aside in a special reserve — 82 % allocated free of charge. <p>Allocations were amended by Regulation (EU) No 421/2014 whereby the allocation of free allowances was reduced in proportion to the reduction of the surrender obligation (Article 28a(2) of Directive 2003/87/EC). Regulation (EU) 2017/2392, as in force on the date of entry into force of this Agreement, has extended this approach until 2023, and applies the 2,2 % linear reduction factor from 1 January 2021.</p>	<p>The cap shall reflect a similar level of stringency as the one in the EU ETS, in particular with regard to the reduction percentage rate between years and trading periods. The allowances in the cap shall be allocated as follows:</p> <ul style="list-style-type: none"> — 15 % shall be auctioned — 3 % shall be set aside in a special reserve — 82 % shall be allocated free of charge. <p>This allocation may be reviewed in accordance with Articles 6 and 7 of this Agreement.</p> <p>Up to 2020, the quantity of allowances within the cap shall be calculated bottom-up on the basis of the allowances to be allocated free of charge in accordance with the cap distribution as mentioned above. Any temporary derogations as regards the scope of the ETS shall require the corresponding proportional adjustments to the amounts to be allocated.</p>

	Essential criteria	For the EU	For Switzerland
			As of 2021, the quantity of allowances within the cap shall be determined by the cap in 2020, taking into account a possible reduction percentage rate in accordance with the EU ETS. This is provided for in: — Article 18 of the CO ₂ Act — Article 46e of and Annex 15 to the CO ₂ Ordinance, as in force on 1 January 2022.
5.	Allocation of allowances for aviation through auctioning of allowances	— Article 3d and Article 28a(3) of Directive 2003/87/EC, as in force on the date of the entry into force of this Agreement.	Swiss emission allowances to be auctioned shall be auctioned by the Swiss competent authority. Switzerland is entitled to the revenues generated from the auctioning of Swiss allowances. This is provided for in: — Article 19a(2) and (4) of the CO ₂ Act — Article 48 of and Annex 15 to the CO ₂ Ordinance, as in force on 1 January 2022.
6.	Special reserve for certain aircraft operators	— Article 3f of Directive 2003/87/EC, as in force on the date of the entry into force of this Agreement.	Allowances shall be set aside in a special reserve for new entrants and fast growers, except that up to 2020, given that the reference year for the acquisition of data for Swiss aviation activities shall be 2018, Switzerland will not have a special reserve. This special reserve is provided for in: — Article 18(3) of the CO ₂ Act — Article 46e of and Annex 15 to the CO ₂ Ordinance, as in force on 1 January 2022.
7.	Benchmark for free allocation of allowances to aircraft operators	— Article 3e of Directive 2003/87/EC, as in force on the date of the entry into force of this Agreement. The annual benchmark is 0,000642186914222035 allowances per tonne-kilometre.	The benchmark shall be no higher than the one in the EU ETS. The annual benchmark is 0,000642186914222035 allowances per tonne-kilometre. This benchmark is provided for in: — Article 46f(1) of and Annex 15 to the CO ₂ Ordinance, as in force on 1 January 2022.

	Essential criteria	For the EU	For Switzerland
8.	Free allocation of emission allowances for aircraft operators	<p>— Article 3e of Directive 2003/87/EC, as in force on the date of the entry into force of this Agreement.</p> <p>Adjustments shall be made pursuant to Article 25a of Directive 2003/87/EC, to the issuance of allowances in proportion to the corresponding reporting and surrendering obligations resulting from the actual coverage under the EU ETS of flights between the EEA and Switzerland.</p>	<p>The number of emission allowances allocated free of charge to aircraft operators is calculated by multiplying its reported tonne-kilometre data performed in the reference year by the applicable benchmark.</p> <p>This free allocation is provided for in:</p> <ul style="list-style-type: none"> — Article 19a(3) and (4) of the CO₂ Act — Article 46f(1) and (3) of and Annex 15 to the CO₂ Ordinance, as in force on 1 January 2022.
9.	The qualitative limits for international credits shall be at least as stringent as those set out in:	No entitlements to use international credits are provided for in Union law from 2021 onwards.	No entitlements to use international credits are provided for in Swiss law from 2021 onwards.
10.	Quantitative limits for the use of international credits	No entitlements to use international credits are provided for in Union law from 2021 onwards.	No entitlements to use international credits are provided for in Swiss law from 2021 onwards.
11.	Acquisition of tonne-kilometre data for reference year	<p>— Article 3e of Directive 2003/87/EC, as in force on the date of entry into force of this Agreement.</p>	<p>Without prejudice to the provision below, the acquisition of new tonne-kilometre data shall be done at the same time and using the same approach as the acquisition of tonne-kilometre data for the EU ETS.</p> <p>Until a new tonne-kilometre data acquisition is done, and in accordance with the Ordinance on the Acquisition of Tonne-Kilometre Data and the Preparation of Monitoring Plans relating to Distances covered by Aircraft, as in force on the date of entry into force of this Agreement, the reference year for the acquisition of data for Swiss aviation activities shall be 2018.</p> <p>This is provided for in:</p> <ul style="list-style-type: none"> — Article 19a(3) and (4) of the CO₂ Act — Article 46f(1) of and Annex 15 to the CO₂ Ordinance, as in force on 1 January 2022.

	Essential criteria	For the EU	For Switzerland
12.	Monitoring and reporting	<ul style="list-style-type: none"> — Article 14 of and Annex IV to Directive 2003/87/EC — Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012 — Commission Delegated Regulation (EU) 2019/1603 of 18 July 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards measures adopted by the International Civil Aviation Organisation for the monitoring, reporting and verification of aviation emissions for the purpose of implementing a global market-based measure, as in force on 1 January 2021. 	<p>Monitoring and reporting provisions shall reflect the same level of stringency as in the EU ETS.</p> <p>This is provided for in:</p> <ul style="list-style-type: none"> — Article 20 of the CO₂ Act — Articles 50 to 52 of and Annexes 16 and 17 to the CO₂ Ordinance, as in force on 1 January 2022.
13.	Verification and accreditation	<ul style="list-style-type: none"> — Article 15 of and Annex V to Directive 2003/87/EC — Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council, as in force on the date of the entry into force of this Agreement. 	<p>Verification and accreditation provisions shall reflect the same level of stringency as in the EU ETS.</p> <p>This is provided for in:</p> <ul style="list-style-type: none"> — Article 52(4) and (5) of and Annex 18 to the CO₂ Ordinance, as in force on 1 January 2022.
14.	Administration	<p>The criteria laid down in Article 18a of Directive 2003/87/EC shall apply. To this effect and pursuant to Article 25a of Directive 2003/87/EC, Switzerland shall be considered as an Administering Member State as regards the attribution of the administration of aircraft operators to Switzerland and EU (EEA) Member States. Pursuant to Article 25a of Directive 2003/87/EC, the competent authorities of the EU (EEA) Member States shall be responsible for all the tasks related to the administration of aircraft operators attributed to them, including the tasks relating to the ETS of Switzerland (e.g. the reception of verified emission reports covering both EU and Swiss aviation</p>	<p>Switzerland shall be responsible for the administration of aircraft operators:</p> <ul style="list-style-type: none"> — with a valid operating licence granted by Switzerland, or — with the greatest estimated attributed aviation emissions in Switzerland under the linked ETS. <p>Swiss competent authorities shall be responsible for all the tasks related to the administration of aircraft operators attributed to Switzerland, including the tasks relating to the EU ETS (e.g. the reception of verified emission reports covering both EU and Swiss aviation activities, administration of aircraft operators and accounts, compliance and enforcement).</p>

	Essential criteria	For the EU	For Switzerland
		<p>activities, administration of aircraft operators and accounts, compliance and enforcement).</p> <p>The European Commission shall agree bilaterally with the Swiss competent authorities on handing over the relevant documentation and information.</p> <p>In particular, the European Commission shall ensure the transfer to aircraft operators administered by Switzerland of the amount of free allocation of EU allowances.</p> <p>In case of a bilateral agreement regarding the administration of flights operating in relation to the EuroAirport Basel-Mulhouse-Freiburg not involving any amendment to Directive 2003/87/EC, the European Commission shall, as appropriate, facilitate the implementation of such agreement, provided that this does not result in double counting.</p>	<p>The Swiss competent authorities shall agree bilaterally with the European Commission on handing over the relevant documentation and information.</p> <p>In particular, the Swiss competent authorities shall transfer to aircraft operators administered by the EU (EEA) Member States the amount of free allocation of Swiss allowances.</p> <p>This is provided for in:</p> <ul style="list-style-type: none"> — Article 39(1bis) of the CO₂ Act — Article 46d of and Annex 14 to the CO₂ Ordinance, as in force on 1 January 2022.
15.	Surrendering	<p>When assessing compliance of aircraft operators on the basis of the amount of surrendered allowances, the competent authorities of the EU (EEA) Member States shall first account for emissions covered by the ETS of Switzerland and use the remaining amount of surrendered allowances to account for emissions covered by the EU ETS.</p>	<p>When assessing compliance of aircraft operators on the basis of the amount of surrendered allowances, the competent authorities of Switzerland shall first account for emissions covered by the EU ETS and use the remaining amount of surrendered allowances to account for emissions covered by the ETS of Switzerland.</p> <p>This is provided for in:</p> <ul style="list-style-type: none"> — Article 55 (2^{bis}) of the CO₂ Ordinance, as in force on 1 January 2022.
16.	Legal enforcement	<p>Parties shall enforce the provisions of their respective ETS in relation to aircraft operators that do not fulfil the obligations in the respective ETS, regardless of whether the operator is administered by an EU (EEA) competent authority or by a Swiss competent authority, in case enforcement by the authority administering the operator requires additional action.</p>	

	Essential criteria	For the EU	For Switzerland
17.	Administrative attribution of aircraft operators	<p>Pursuant to Article 25a of Directive 2003/87/EC, the aircraft operator's list published by the European Commission, in accordance with Article 18a(3) of Directive 2003/87/EC, shall specify the administering State, including Switzerland, for each aircraft operator.</p> <p>Aircraft operators attributed to Switzerland for the first time after the entry into force of this Agreement shall be administered by Switzerland after 30 April of the year of attribution and once the provisional registry link is operational.</p> <p>The two parties shall cooperate on sharing relevant documentation and information.</p> <p>The attribution of an aircraft operator shall not affect the coverage of that aircraft operator by the respective ETS (i.e. an operator covered by the EU ETS that is administered by the Swiss competent authority shall have the same level of obligations under the EU ETS alongside its coverage under the ETS of Switzerland, and vice versa).</p>	
18.	Modalities for implementation	<p>Any further modalities needed for the organisation of the work and cooperation within the one-stop shop for aviation account holders shall be developed and adopted by the Joint Committee after signature of this Agreement, in accordance with Articles 12, 13 and 22 of this Agreement. These modalities shall apply from the date that this Agreement applies.</p>	
19.	Assistance from Eurocontrol	<p>For the aviation part of this Agreement, the European Commission shall include Switzerland within the mandate given to Eurocontrol in relation to the EU ETS.</p>	

C. Essential Criteria for Registries

The ETS of each Party shall include a registry and a transaction log, which shall meet the following essential criteria in relation to security mechanisms and procedures and in relation to the opening and management of accounts:

Essential Criteria in relation to Security Mechanisms and Procedures

The registries and the transaction logs shall protect the confidentiality, the integrity, the availability and the authenticity of the data stored in the system. To that end, the following security mechanisms shall be implemented by the Parties:

Essential Criteria

To access accounts, a two-factor authentication mechanism for all users accessing the account is required.

A transaction signature mechanism is required for both initiation and approval of transactions. The confirmation code shall be sent out-of-band to the users.

Any of the following operations shall be initiated by one person and approved by another person (4-eye principle):

- all operations undertaken by an administrator, unless justified exceptions as defined in the LTS apply
 - all transfers of units unless justified by an alternative measure providing the same level of security.
-

A system of notifications that alert the users when operations are performed involving their accounts and holdings shall be in place.

 Essential Criteria

A minimum of 24-hour delay applies between the initiation of a transfer and its execution to all the users to receive information and stop any suspected illegitimate transfer, unless a system of trusted accounts provides for the same level of security.

The Swiss administrator and the Union central administrator shall take steps to inform users of their responsibilities with regard to the security of their systems (e.g. PC, network) and with regard to handling data/navigating on the internet.

As regards compliance, and subject to the respective laws and regulations of the Parties, emissions may only be covered by allowances issued in the same period or before.

 Essential Criteria in relation to the Opening and Management of Accounts

 Essential Criteria

Opening of an Operator Account/Operator Holding Account

The application by the operator or competent authority to request the opening of an operator account/operator holding account shall be addressed to the national administrator (Federal Office of the Environment, FOEN, for Switzerland). The application shall contain sufficient information to identify the ETS installation and an appropriate installation ID.

Opening of an Aircraft Operator Account/Aircraft Operator Holding Account

Each aircraft operator covered by the ETS of Switzerland and/or the EU ETS shall have one aircraft operator account/aircraft operator holding account. For aircraft operators administered by the Swiss competent authority such an account shall be held in the Swiss registry. The application by the aircraft operator or an authorised representative of the aircraft operator shall be addressed to the national administrator (FOEN for Switzerland) within 30 working days from the approval of the monitoring plan of the aircraft operator or its transferral from an EU (EEA) Member State to the Swiss authorities. The application shall contain the unique aircraft code(s) of the aircraft operated by the applicant which fall under the ETS of Switzerland and/or the EU ETS.

Opening of a Trading Account/Personal Holding Account

The application to request the opening of a trading account/personal holding account shall be addressed to the national administrator (FOEN for Switzerland). It shall include sufficient information to identify the account holder/applicant, and it shall include at least:

- for a natural person: proof of ID and contact details
 - for a legal person:
 - copy of the commercial register, or
 - a document proving the registration of the legal entity and, if appropriate, the instrument establishing the legal entity
 - criminal records of the natural person or, if appropriate, for a legal person of its directors.
-

Authorised/Account representatives

Each account shall have at least one authorised/account representative who is nominated by the prospective account holder. The authorised/account representatives shall initiate transactions and other processes on behalf of the account holder.

When nominating the authorised/account representative, the following information about the authorised/account representative shall be transmitted:

- name and contact details
 - document supporting ID
 - criminal record.
-

Checking of documents

Any copy of a document submitted as evidence for the opening of a trading account/personal holding account or the nomination of an authorised/account representative must be certified as a true copy. Regarding documents issued outside the State requesting a copy, the copy must be legalised, except otherwise provided for by national law. The date of the certification and, where relevant, of the legalisation must not be more than three months prior to the date of the application.

Essential Criteria

Refusal to open or update an account or to nominate an authorised/account representative

A national administrator (FOEN for Switzerland) may refuse to open or to update an account or to nominate an authorised/account representative, provided that the refusal is reasonable and justifiable. The refusal shall be justified on at least one of the following grounds:

- the information and documents provided are incomplete, out-of-date or otherwise inaccurate, or false
 - the prospective representative is under investigation or has been convicted in the preceding five years for fraud involving allowances or Kyoto units, money laundering, terrorist financing or other serious crimes for which the account may be an instrument
 - grounds set out in national or Union law.
-

Regular review of account information

The account holders shall report any change to the account or user data to the national administrator (FOEN for Switzerland) within 10 working days, supported by information as required by the national administrator who is responsible for the approval of the update of the information in a timely manner.

At least once every three years, the national administrator shall review whether the information related to an account remains complete, up-to-date, accurate and true, and shall request that the account holder notify any changes as appropriate. For Operator Accounts/Operator Holding Accounts, Aircraft Operator Accounts/Aircraft Operator Holding Accounts and verifiers, the review shall take place at least once every five years.

Suspension of Access to Account

Where any provision under Article 3 of this Agreement relating to registries is contravened or an investigation concerning a possible contravention of those provisions is pending, access to accounts may be suspended.

Confidentiality and disclosure of information

Information, including the holdings of all accounts, all transactions made, the unique unit identification code of the allowances and the unique numeric value of the unit serial number of the Kyoto units held or affected by a transaction, held in the EUTL or the SSTL, the Union Registry, the Swiss registry and any other Kyoto Protocol registry shall be considered confidential.

Such confidential information may be provided to relevant public entities upon their request if such requests pursue a legitimate objective and are justified, necessary and proportionate for the purposes of investigation, detection, prosecution, tax administration, enforcement, auditing and financial supervision to prevent and combat fraud, money laundering, terrorism financing, other serious crime, market abuse or other breaches of Union or national law of an EEA Member State or Switzerland to ensure the good functioning of the EU ETS and the ETS of Switzerland.

D. Essential Criteria for Auctioning Platforms and Auction Activities

Entities conducting auctions of allowances in the ETS of the Parties shall meet the following essential criteria and shall conduct the auctions accordingly:

	Essential Criteria
1.	The entity conducting the auction shall be selected through a process which ensures transparency, proportionality, equal treatment, non-discrimination and competition between different potential auction platforms on the basis of Union or national procurement law.
2.	The entity conducting the auction shall be authorised for this activity and shall provide the necessary safeguards in the conduct of their operations; those safeguards include, among others, arrangements to identify and manage the potential adverse consequences of any conflict of interest, to identify and manage risks to which the market is exposed, to have transparent and non-discretionary rules and procedures for fair and orderly auctioning and sufficient financial resources to facilitate the orderly functioning.

	Essential Criteria
3.	Access to the auctions shall be subject to minimum requirements as regards adequate customer diligence checks to ensure that participants do not undermine the operation of the auctions.
4.	The auction process shall be predictable, in particular as regards the timing and sequencing of sales and the estimated volumes to be made available. The main elements of the auctioning method, including the schedule, dates and estimated volumes of sales, shall be published on the website of the entity conducting the auction at least one month before the start of the auction. Any significant adjustment shall be announced as early as practicable in advance as well.
5.	The auctioning of allowances shall be performed with the objective of minimising any impact on the ETS of each Party. The entity in charge of auctioning shall ensure that the auction clearing prices do not deviate significantly from the relevant price for allowances in the secondary market over the auctioning period, a situation which would indicate a deficiency of the auctions. The methodology determining the deviation referred to in the previous sentence should be notified to the competent authorities exercising market oversight functions.
6.	All non-confidential information pertinent to the auctions, including all legislation, guidance and forms, shall be published in an open and transparent manner. The results of each auction conducted shall be published as soon as is reasonably practicable and include the relevant non-confidential information. Reports on the results of the auctions shall be published at least annually.
7.	The auctioning of allowances shall be subject to adequate rules and procedures to mitigate the risk of anti-competitive behaviour, market abuse, money-laundering and terrorist financing in auctions. Such rules and procedures shall be, to the extent possible, not less stringent than those applicable to financial markets in the respective legal regimes of the Parties. In particular, the entity conducting the auction shall be responsible for putting in place measures, procedures and processes ensuring the integrity of the auctions. It shall also monitor the behaviour of market participants and notify the competent public authorities in the event of anti-competitive behaviour, market abuse, money laundering or terrorist financing.
8.	<p>The entity conducting the auctions and the auctioning of allowances shall be subject to adequate supervision by competent authorities. Designated competent authorities shall have necessary legal competences and technical arrangements to supervise:</p> <ul style="list-style-type: none"> — the organisation and conduct of operators of auction platforms — the organisation and conduct of professional intermediaries acting on behalf of clients — the behaviour and transactions of market participants, in order to prevent insider dealing and market manipulation — the transactions of market participants, in order to prevent money laundering and terrorist financing. <p>To the extent possible, the supervision shall not be less stringent than the supervision on financial markets in the respective legal regimes of the Parties.</p>

Switzerland shall endeavour to make use of a private entity for the auctioning of its allowances, in accordance with public procurement rules.

Until such an entity is contracted, and provided that the number of allowances to be auctioned in a year is below a fixed threshold, Switzerland may continue to use the current arrangements for auctioning, namely the auctions operated by the FOEN, under the following conditions:

1. The threshold shall be 1 000 000 allowances, including allowances to be auctioned for aviation activities.
2. The essential criteria 1 to 8 shall apply, with the exception of criteria 1 and 2, while the last sentence of criterion 5, and criteria 7 and 8 only apply to the FOEN to the extent possible.

The essential criterion 3 shall apply, together with the following provision: admission to bid in auctions of Swiss allowances under the arrangements for auctioning which were in place at the time this Agreement was signed, shall be guaranteed for all entities in the EEA which are admitted to bid in auctions in the Union.

Switzerland may mandate entities conducting the auction which are located in the EEA.'

2. Annex IV is replaced by the following:

‘ANNEX IV

DEFINITION OF ETS SENSITIVITY LEVELS

A.1 – Confidentiality and Integrity rating

“Confidentiality” means the reserved nature of information or of all or part of an information system (such as algorithms, programmes and documentation) to which access is limited to authorised persons, bodies and procedures.

“Integrity” means the guarantee that the information system and the processed information can be altered only by deliberate and legitimate action and that the system will produce the expected result accurately and in full.

For each piece of ETS information that is considered to be sensitive, the confidentiality aspect has to be considered from the potential impact at business level where this information is disclosed and the integrity aspect has to be considered from the potential impact at business level where this information is unwillingly modified, partially or totally destroyed.

The level of confidentiality of information and the level of integrity of an information system shall be rated following an assessment based on the criteria contained in section A.2. Those ratings allow the global sensitivity level of the information to be evaluated by means of the mapping table provided in section A.3.

A.2 – Confidentiality and Integrity rating

A.2.1 – “Low rating”

A low rating shall be given to any information relating to the ETS the disclosure to unauthorised persons, and/or loss of integrity of which would cause moderate damage to the Parties or other institutions which, in turn, would be likely to:

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

A.2.2 – “Medium rating”

A medium rating shall be given to any information relating to the ETS the disclosure to unauthorised persons, and/or loss of integrity of which would cause damage to the Parties or other institutions which, in turn, would be likely to:

- cause embarrassment to political or diplomatic relations;
- cause damage to the image or reputation of the Parties or other institutions;
- cause distress to individuals;
- cause consequential reduction in staff morale/productivity;
- embarrass the Parties or other institutions in commercial or policy negotiations with others;

- cause financial loss or facilitate improper gain or advantage for individuals or companies;
- affect the investigation of crime;
- breach legal or contractual obligations on confidentiality of information;
- affect the development or operation of the Parties' policies;
- affect the proper management of the Parties and their operations.

A.2.3 – “High rating” ⁽¹⁾

A high rating shall be given to any information relating to the ETS the disclosure to unauthorised persons, and/or loss of integrity of which would cause catastrophic and/or unacceptable damage to the Parties or other institutions which, in turn, would be likely to:

- adversely affect diplomatic relations;
- cause substantial distress to individuals;
- make it more difficult to maintain the operational effectiveness or security of Parties or other contributors' forces;
- cause financial loss or facilitate improper gain or advantage for individuals or companies;
- breach proper undertakings to maintain the confidentiality of information provided by third parties;
- breach statutory restrictions on disclosure of information;
- prejudice the investigation or facilitate the commission of crime;
- disadvantage the Parties in commercial or policy negotiations with others;
- impede the effective development or operation of the Parties' policies;
- undermine the proper management of the Parties and their operations.

A.3 – ETS Sensitive information level assessment

Based on the ratings for Confidentiality and for Integrity pursuant to section A.2 and in accordance with the sensitivity levels pursuant to Annex III to this Agreement, the global information sensitivity level is established using the following mapping table:

Confidentiality rating Integrity rating	Low	Medium	High
Low	Marking EU: SENSITIVE: ETS Joint Procurement Marking CH: LIMITED: ETS	Marking EU/CH: SENSITIVE: ETS (or ^(*)) Marking EU: SENSITIVE: ETS Joint Procurement Marking CH: LIMITED: ETS	Marking EU/CH: SPECIAL HANDLING: ETS Critical

⁽¹⁾ As a matter of clarification, the wording under this point, A.2.3., only concerns “sensitive information” within the meaning of Articles 8 and 9 of this Agreement, even if it is almost identical with the wording used to define classified information in Commission Decision (EU, Euratom) 2019/1962 of 17 October 2019 on implementing rules for handling RESTREINT UE/EU RESTRICTED information (OJ EU L 311, 2.12.2019, p. 21).

Medium	Marking EU/CH: SENSITIVE: ETS (or (*) Marking EU: SENSITIVE: ETS Joint Procurement Marking CH: LIMITED: ETS)	Marking EU/CH: SENSITIVE: ETS (or (*) Marking EU/CH: SPECIAL HANDLING: ETS Critical)	Marking EU/CH: SPECIAL HANDLING: ETS Critical
High	Marking EU/CH: SPECIAL HANDLING: ETS Critical	Marking EU/CH: SPECIAL HANDLING: ETS Critical	Marking EU/CH: SPECIAL HANDLING: ETS Critical

(*) Possible variation to be assessed on a case-by-case basis.'