

Council Decision (EU) 2019/2106 of 21 November 2019 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 Annexes I and II to the Agreement

COUNCIL DECISION (EU) 2019/2106

of 21 November 2019

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 Annexes I and II to the Agreement

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⁾. Article 2(2) of that Decision provides that the instrument of approval of the Union is only to be notified when the Swiss Confederation has brought into force the requisite rules extending its ETS to aviation and section B of Annex I to the Agreement has been amended accordingly.
- (3) Article 13(2) of the Agreement provides that the Joint Committee may amend the Annexes to the Agreement.
- (4) The Joint Committee, during its meeting on 5 December 2019, is to adopt a Decision regarding the amendment of Annexes I and II to the Agreement.
- (5) 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 II to the Agreement, as the amended Annexes will be binding on the Union.
- (6) Once the Joint Committee has amended Annexes I and II to the Agreement to take account of relevant legislative developments, including the relevant Swiss rules extending the Swiss ETS to aviation, it will be considered that the conditions for linking set out in the Agreement have been fulfilled and that, therefore, the Union should notify its instrument of approval to the Swiss Confederation.

Status: Point in time view as at 21/11/2019.

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- (7) The position of the Union within the Joint Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken, on behalf of the Union, within the second meeting 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, as regards the amendment of Annexes I and II to the Agreement, shall be to support the adoption, by the Joint Committee, of the amendments to those Annexes set out in the Appendix to the draft Decision of the Joint Committee attached to this Decision.

Minor technical changes to those Annexes may be agreed to by the representatives of the Union within the Joint Committee without a further decision of the Council.

Article 2

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

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 21 November 2019.

For the Council

The President

H. KOSONEN

Status: Point in time view as at 21/11/2019.

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APPENDIX

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ANNEX I

ESSENTIAL CRITERIA

A. Essential criteria for stationary installations

This section shall be reviewed in accordance with Article 13(7) of this Agreement with a view to maintaining the current compatibility of the EU ETS and the ETS of Switzerland for the trading period 2021-2030, as proposed by the Swiss government. The Joint Committee shall ensure that the revision of this section, as a minimum, preserves the integrity of the respective domestic emission reduction commitments of the parties and the integrity and orderly functioning of their carbon markets. Carbon leakage and distortion of competition between linked systems shall be avoided.

	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 the date of entry into force of this Agreement.
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 the date of entry into force of this Agreement.
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,	— Article 18(1) and (2) of the CO ₂ Act — Article 45(1) of

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Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		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.	the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement. The linear reduction factor is 1,74 % per year up to 2020.
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.	— Article 19(5) of the CO ₂ Act — Article 48 of the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement. The Swiss legislation provides for the possibility to reduce auction volumes where there is a significant increase of allowances on the market for economic reasons. The Parties shall cooperate with a view to developing an appropriate contribution to market stability.
6	The level of market oversight of the ETS shall be at least as stringent as the ones in:	— Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and	— Federal Act on the Swiss Financial Market Supervisory Authority of 22 June 2007 — Federal Act on Financial Market Infrastructures

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		amending Directive 2002/92/ EC and Directive 2011/61/EU (MIFID II)	and Market Conduct in Securities and Derivatives Trading of 19 June 2015
	—	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)	— 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.
	—	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	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.

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		—	<p>Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (MAR)</p> <p>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)</p>	
		—	<p>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,</p>	<p>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>

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		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.	
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:	— Articles 11a and 11b of Directive 2003/87/EC — Commission Regulation (EU) No 550/2011 of 7 June 2011 on determining, pursuant to Directive 2003/87/ EC of the European Parliament and of the Council, certain restrictions applicable to the use of international credits from projects involving	— Articles 5 and 6 of the CO ₂ Act — Article 4 and Article 4a(1) of, and Annex 2 to, the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement.

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		—	industrial gases Article 58 of Commission Regulation (EU) No 389/2013 of 2 May 2013 on establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and the Council and repealing Commission Regulations (EU) No 920/2010 and (EU) No 1193/2011, as in force on the date of entry into force of this Agreement.	
9	The quantitative limits for international credits shall be at least as stringent as those set out in:	— —	Article 11a of Directive 2003/87/EC Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union	— — Article 16(2) of the CO ₂ Act Article 55b of the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement.

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

	<p>Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and (EU) No 1193/2011 Commission Regulation (EU) No 1123/2013 of 8 November 2013 on determining international credit entitlements pursuant to Directive 2003/87/EC of the European Parliament and of the Council,</p> <p>as in force on the date of entry into force of this Agreement. No entitlements to use international credits are provided</p>	<p>These provisions only provide for the use of international credits up to 2020.</p>
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Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		for in Union law from 2021 onwards.	
10	Free allocation shall be calculated on the basis of benchmarks and adjustment factors. A maximum of five percent of the quantity of allowances over the period from 2013 to 2020 shall be set aside for new entrants. Allowances which are not allocated free of charge shall be auctioned or invalidated. To this end, the ETS shall meet at least:	— Articles 10, 10a, 10b and 10c of Directive 2003/87/EC — Commission Decision 2011/278/EU of 27 April 2011 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	— Article 18(3) and Article 19(2) to (6) of the CO ₂ Act — Article 45(2) and Articles 46, 46a, 46b, 46c and 48 of, and Annex 9 to, the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement. Free allocations do not exceed the levels of allocations given to installations in the EU ETS.
		— Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of	

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Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		<p>— Directive 2003/87/EC of the European Parliament and of the Council Commission Decision (EU) 2017/126 of 24 January 2017 amending Decision 2013/448/EU as regards the establishment of a uniform cross-sectoral correction factor in accordance with Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (Calculations for the determination of the cross-sectoral correction factor in the EU ETS from 2013 to 2020)</p>	
		<p>— Commission Decision 2014/746/EU of 27 October 2014 determining, pursuant to Directive 2003/87/EC of the European</p>	

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		<p>Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2015 to 2019</p> <p>— 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</p> <p>(Carbon leakage list for the period 2015 – 2020)</p>	
		<p>— Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide</p>	

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		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,

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		as in force on the date of entry into force of this Agreement.	
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 the date of entry into force of this Agreement.
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 Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council — Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to	— Article 20 of the CO ₂ Act — Articles 50 to 53 of, and Annexes 16 and 17 to, the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement.

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

			Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012, as in force on the date of entry into force of this Agreement.	
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 Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council Commission Implementing Regulation (EU) 2018/2067 of 19	— Articles 51 to 54 of the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement.

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		<p>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,</p> <p>as in force on the date of entry into force of this Agreement.</p>	
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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:	— 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	1. Scope of coverage 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. 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.

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		<p>whom an agreement pursuant to Article 25 of Directive 2003/87/EC has not been reached</p> <p>Articles 17, 29, 35 and 56 of, and Annex VII to, Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and (EU) No 1193/2011, as in force on the date of the entry into force of this Agreement.</p>	<p>Only CO₂ emissions shall be covered for aviation activities.</p>
		<p>As from 1 January 2020, flights from an</p>	<p>2. Limitations of coverage</p>

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

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.

General coverage mentioned in point 1 shall not include:

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

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

			<p>2 to the Convention on International Civil Aviation of 7 December 1944.</p>
			<p>5. Flights terminating at the aerodrome from which the aircraft has taken off and during which no planned intermediate landing has been made.</p> <p>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</p>

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

			<p>7. of the aircraft. Flights performed exclusively for the purpose of scientific research.</p> <p>8. Flights performed exclusively for the purpose of checking, testing or certifying aircraft or airborne or ground-based equipment.</p> <p>9. Flights performed by aircraft with a certified maximum take-off mass of less than 5 700 kilograms.</p>
			<p>10. Flights of commercial aircraft operators with total annual emissions lower than 10 000 tonnes on flights covered by the ETS of Switzerland or fewer than 243 flights per period for three consecutive</p>

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

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| | | | four-month periods within the scope of the ETS of Switzerland, if the operators are not covered by the EU ETS. |
| | | 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. |
| | | | These limitations of coverage are provided for in: |
| | | — | Article 16a of the CO ₂ Act |
| | | — | Article 46d and Article 55(2) of, and Annex 13 to, the CO ₂ Ordinance, |

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

			as in force on the date of entry into force of this Agreement.
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)	<p>Article 3c of Directive 2003/87/EC, as in force on the date of entry into force of this Agreement.</p> <p>Article 3c of Directive 2003/87/EC initially allocated allowances as follows:</p> <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,</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>

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		and applies the 2,2 % linear reduction factor from 1 January 2021.	
			<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. 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:</p> <ul style="list-style-type: none"> — Article 18 of the CO₂ Act — Article 46e of, and Annex 15 to, the CO₂ Ordinance, <p>as in force of the date of the entry into force of this Agreement.</p>
5	Allocation of allowances for aviation through	— Article 3d and Article 28a(3) of Directive	Swiss emission allowances to be auctioned shall be auctioned by the

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

	<p>auctioning of allowances</p>	<p>2003/87/EC, as in force on the date of the entry into force of this Agreement.</p>	<p>Swiss competent authority. Switzerland is entitled to the revenues generated from the auctioning of Swiss allowances. This is provided for in:</p> <ul style="list-style-type: none"> — Article 19a(2) and (4) of the CO₂ Act — Article 48 of, and Annex 15 to, the CO₂ Ordinance, <p>as in force of the date of the entry into force of this Agreement.</p>
6	<p>Special reserve for certain aircraft operators</p>	<p>— Article 3f of Directive 2003/87/EC, as in force on the date of the entry into force of this Agreement.</p>	<p>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:</p> <ul style="list-style-type: none"> — Article 18(3) of the CO₂ Act — Article 46e of, and Annex 15 to, the CO₂ Ordinance, <p>as in force of the date of the entry into force of this Agreement.</p>
7	<p>Benchmark for free allocation of allowances to aircraft operators</p>	<p>— Article 3e of Directive 2003/87/EC,</p>	<p>The benchmark shall be no higher than the one in the EU ETS. Up to 2020, the annual</p>

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Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		as in force on the date of the entry into force of this Agreement. The annual benchmark is 0,000642186914222035 allowances per tonne-kilometre.	benchmark shall be 0,000642186914222035 allowances per tonne-kilometre. This benchmark is provided for in: — Article 46f(1) and (2) of, and Annex 15 to, the CO ₂ Ordinance, as in force of the date of the entry into force of this Agreement.
8	Free allocation of emission allowances for aircraft operators	— Article 3e of Directive 2003/87/EC, as in force on the date of the entry into force of this Agreement. 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.	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. This free allocation is provided for in: — Article 19a(3) and (4) of the CO ₂ Act — Article 46f(1) and (2) of, and Annex 15 to, the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement.
9	The qualitative limits for international credits shall be at least as stringent as those set out in:	— Articles 11a and 11b of Directive 2003/87/EC — Commission Regulation (EU) No 389/2013 of	— Articles 5 and 6 of the CO ₂ Act — Article 4 and Article 4a(1) of, and Annex 2

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

			<p>2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and (EU) No 1193/2011, as in force on the date of entry into force of this Agreement.</p>	<p>to, the CO₂ Ordinance, as in force on the date of entry into force of this Agreement.</p>
10	Quantitative limits for the use of international credits	— —	<p>Article 11a of Directive 2003/87/EC Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council,</p>	<p>The use of international credits shall be 1,5 % of verified emissions up to 2020. This is provided for in: — Article 55d of the CO₂ Ordinance, as in force on the date of entry into force of this Agreement.</p>

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		<p>Decisions No 280/2004/ EC and No 406/2009/ EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and (EU) No 1193/2011 — Commission Regulation (EU) No 1123/2013 of 8 November 2013 on determining international credit entitlements 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.</p>	
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 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. Up to 2020 and in accordance with the</p>

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

			<p>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 — 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.
12	Monitoring and reporting	<ul style="list-style-type: none"> — Article 14 of, and Annex IV to, Directive 2003/87/EC — Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and 	<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

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		<p>reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council 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</p>	<p>Annexes 16 and 17 to, the CO₂ Ordinance, as in force on the date of entry into force of this Agreement.</p>
		<p>Commission Delegated Regulation (EU) 2019/1603 of 18 July 2019 supplementing Directive 2003/87/EC of the European Parliament</p>	

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

			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 the date of the entry into force of this Agreement.	
13	Verification and accreditation	—	Article 15 of, and Annex V to, Directive 2003/87/EC — Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive	Verification and accreditation provisions shall reflect the same level of stringency as in the EU ETS. This is provided for in: — Article 52(4) and (5) of, and Annex 18 to, the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement.

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		2003/87/ EC of the European Parliament and of the Council	
		— 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.	
14	Administration	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.	In accordance with the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement, Switzerland shall be responsible for the administration of aircraft operators: — with a valid operating licence granted by Switzerland, or — with the greatest estimated attributed aviation emissions in Switzerland

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

			under the linked ETS.
		<p>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 activities, the allocation, issuance and transfer of allowances, compliance and enforcement). The European Commission shall agree bilaterally with the Swiss competent authorities on handing over the relevant documentation and information.</p>	<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, the allocation, issuance and transfer of allowances, compliance and enforcement). The Swiss competent authorities shall agree bilaterally with the European Commission 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. In case of a bilateral agreement regarding the administration of flights operating in relation to the EuroAirport Basel-Mulhouse-Freiburg</p>	<p>In particular, the Swiss competent authorities shall transfer to aircraft operators administered by the EU (EEA) Member States of the amount of free allocation of Swiss allowances. This is provided for in:</p> <ul style="list-style-type: none"> — Article 39(1bis) of the CO₂ Act — Article 46d of, and

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		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.	Annex 14 to, the CO ₂ Ordinance, as in force on the date of entry into force of this Agreement.
15	Surrendering	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.	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.
16	Legal enforcement	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.	
17	Administrative attribution of aircraft operators	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. 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 before 1 August of the year of attribution.	

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

		The two parties shall cooperate on sharing relevant documentation and information. 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 <i>vice versa</i>).
18	Modalities for implementation	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.
19	Assistance from Eurocontrol	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.

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 this 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.

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

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

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.

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 allowances, emissions for the year 2020 may only be covered by allowances issued in the period 2013 – 2020.

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 Personal Account/Person Holding Account

The application to request the opening of a personal account/person 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:

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- for a natural person: proof of ID and contact details

 - for a legal person:

 - copy of the commercial register, or

 - the instruments establishing the legal entity and a document proving the registration of the legal entity

 - criminal records of the natural person or 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

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

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 personal account/person 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. 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.

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 immediately report any change to the account or user data to the national administrator (FOEN for Switzerland), 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.

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,

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

auditing and financial supervision to prevent and combat fraud, money laundering, terrorism financing, other serious crime, market manipulation or other breaches of Union or national law of an EEA Member State or Switzerland, and 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.
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

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

	<p>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.</p>
6	<p>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.</p>
7	<p>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.</p>
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

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects for the Council Decision (EU) 2019/2106. (See end of Document for details)

— the transactions of market participants, in order to prevent money laundering and terrorist financing.
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.

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.

ANNEX II

LINKING TECHNICAL STANDARDS

To operationalise the link between the EU ETS and the ETS of Switzerland, a provisional solution shall be in place by May 2020 or as soon as possible thereafter. Parties shall cooperate to replace the provisional solution with a permanent registry link as soon as possible.

The Linking Technical Standards (LTS) shall specify:

- the architecture of the communication link
- the security of data transfer
- the list of functions (transactions, reconciliation ...)
- the definition of the web services
- the data logging requirements
- the operational arrangements (call desk, support)
- the communication activation plan and the testing procedure
- the security testing procedure.

The LTS shall specify that the administrators are to take all reasonable steps to ensure that the SSSL, the EUTL and the link are operational 24 hours a day and 7 days a week, and that any interruptions to the operation of the SSSL, the EUTL and the link are to be kept to the minimum.

Status: Point in time view as at 21/11/2019.

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The LTS shall specify that the communications between the SSTL and the EUTL consist of secure exchanges of webservices messages based on the following technologies⁽⁷⁾:

- web services using Simple Object Access Protocol (SOAP) or equivalent
- hardware-based Virtual Private Network (VPN)
- XML (Extensible Markup Language)
- digital signature, and
- network time protocols.

The LTS shall set out additional security requirements for the Swiss registry, the SSTL, the Union registry and the EUTL and shall be documented in a ‘security management plan’. In particular, the LTS shall specify that:

- if there is a suspicion that the security of the Swiss registry, the SSTL, the Union registry or the EUTL has been compromised, both Parties shall immediately inform each other and suspend the link between the SSTL and the EUTL
- in the event of a security breach, the Parties shall commit to immediately share the information with each other. To the extent that the technical details are available, a report describing the incident (date, cause, impact, remedies) shall be shared between the Swiss registry administrator and the Union central administrator within 24 hours after the security breach.

The security testing procedure set out in the LTS shall be completed before the communication link between the SSTL and the EUTL is established, and whenever a new version or release of the SSTL or the EUTL is required.

The LTS shall provide two testing environments in addition to the production environment: a developer testing environment and an acceptance environment.

The Parties shall provide evidence through the Swiss registry administrator and the Union central administrator that an independent security assessment of their systems has been performed in the previous 12 months in accordance with the security requirements set out in the LTS. Security testing and in particular penetration testing shall be performed on all new major releases of the software in accordance with the security requirements set out in the LTS. The penetration testing shall not be performed by the software developer or by a subcontractor of the software developer.

DRAFT

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 ...

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

THE JOINT COMMITTEE,

Status: Point in time view as at 21/11/2019.

*Changes to legislation: There are currently no known outstanding effects
for the Council Decision (EU) 2019/2106. (See end of Document for details)*

Having regard to the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems⁽⁴⁾ (hereinafter ‘the Agreement’), and in particular Article 13(2) thereof,

Whereas:

- (1) Articles 11 to 13 of the Agreement have been provisionally applied since its signature on 23 November 2017.
- (2) Article 13(2) of the Agreement provides that the Joint Committee may amend the Annexes to the Agreement.
- (3) The Appendix to this Decision contains amendments to Annexes I and II to the Agreement, which update relevant aspects of the original Annexes I and II that were agreed in 2015. It also provides for a provisional solution to operationalise the link between the EU ETS and the ETS of Switzerland.
- (4) In accordance with section B of Annex I to the Agreement, the Union should, pursuant to Article 25a of Directive 2003/87/EC of the European Parliament and of the Council⁽⁵⁾, as amended by Directive (EU) 2018/410 of the European Parliament and of the Council⁽⁶⁾, exclude incoming flights from aerodromes situated in the territory of Switzerland from the scope of the EU ETS. This does not affect the coverage of aircraft operators by the EU ETS, which is based on Annex I to Directive 2003/87/EC which provides that the category of activities to which Directive 2003/87/EC applies includes all flights that arrive at, or depart from, an aerodrome situated in the territory of a Member State.
- (5) Annex I to the Agreement should be reviewed in accordance with Article 13(7) of the Agreement with a view to maintaining the current compatibility of the EU ETS and the ETS of Switzerland for the trading period 2021-2030. It should be ensured that the revision of Annex I to the Agreement, as a minimum, preserves the integrity of the respective domestic emission reduction commitments of the Union and Switzerland and the integrity and orderly functioning of their carbon markets. Carbon leakage and distortion of competition between linked systems are to be avoided,

HAS ADOPTED THIS DECISION:

Article 1

Annexes I and II to the Agreement are replaced by the text appearing in Annexes I and II in the Appendix to this Decision.

Article 2

This Decision shall enter into force on the date of entry into force of the Agreement.

Status: Point in time view as at 21/11/2019.

Changes to legislation: There are currently no known outstanding effects
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Done at ...,

For the Joint Committee
Secretary for the European Union
The Chair
Secretary for Switzerland

Status: Point in time view as at 21/11/2019.

*Changes to legislation: There are currently no known outstanding effects
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- (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](#)).
- (4) [OJ EU L 322, 7.12.2017, p. 3.](#)
- (5) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC ([OJ EU L 275, 25.10.2003, p. 32](#)).
- (6) 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 ([OJ EU L 76, 19.3.2018, p. 3](#)).
- (7) Those technologies are currently used for establishing a connection between the Union Registry and the International Transaction Log as well as between the Swiss Registry and the International Transaction Log.

Status:

Point in time view as at 21/11/2019.

Changes to legislation:

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