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

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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.

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

(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

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

APPENDIX

“

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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		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

			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.	