

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS**

**11699/17  
COM (2017) 427 final**

**11700/17  
2017/0194 (NLE)**

**Proposal for a Council Decision on the conclusion, on behalf of the European Union, of an Agreement between the European Union and the Swiss Confederation on the Linking of their Greenhouse Gas Emissions Trading Systems**

**Add 1: Annex to the proposal**

**Proposal for a Council Decision on the signing, on behalf of the European Union, of an Agreement between the European Union and the Swiss Confederation on the linking of their Greenhouse Gas Emissions Trading Systems**

**Add 1: Annex to the proposal**

Submitted by Department for Business, Energy and Industrial Strategy on 6<sup>th</sup> September 2017.

**SUBJECT MATTER**

1. The European Commission is proposing two related Council Decisions: one is to sign and the other is to conclude, on behalf of the European Union (EU), an Agreement between the EU and Swiss Confederation to link greenhouse gas Emission Trading Systems (ETSs). The European Commission's proposals, and their annexes, are attached alongside this Explanatory Memorandum (EM). The proposals are straightforward and will give permission to the European Commission to sign and conclude the Agreement which will link the ETSs. The EM provided by the EU outlines how the Swiss ETS meets the basic conditions for linking, the legal basis for this linking, and an overview of the Agreement. The proposals' annexes contain the Agreement.
2. The development of a well-functioning international carbon market through bottom-up linking of ETSs has been a long term policy goal of the UK, the EU and the international community; notably, as a means to achieve climate objectives, including under the Paris Agreement.
3. The EU ETS has been operating for more than a decade. It was the world's first major carbon market and remains the biggest one. A cap is set on the total amount of certain greenhouse gases that can be emitted by installations and

aviation operators covered by the system. The cap is reduced over time so that the total emissions fall. Within the cap, companies receive or buy emissions allowances which they can trade with one another on the secondary market as needed. After each year a company must surrender enough allowances to cover all its emissions, otherwise enforcement action is taken. In this way the EU ETS both sets a target to reduce the emissions from the EU over time and aims to effect change by incentivising a shift towards low carbon development.

4. Article 25 of the Directive establishing the EU ETS allows for the EU ETS to be linked with other ETSs. In the past the EU ETS has been linked with Norway, Liechtenstein and Iceland which are now fully integrated into the EU ETS. In December 2010, the European Council adopted a Decision authorising the Commission to open negotiations with the Swiss Confederation for a link between the EU and the Swiss ETS. This was part of a package of wider EU-Swiss negotiations. Negotiations at the technical level concluded in January 2016 and the European Commission are now proposing for the link to be implemented.
5. In order for ETSs to be linked they must meet three basic conditions: they are mandatory, have an absolute cap on emissions; and are compatible. The Swiss ETS became mandatory in 2013 for large, energy intensive entities and puts an absolute cap on greenhouse gas emissions and so meets two of the basic conditions for linking with the EU ETS. It has also met the third basic condition of compatibility. The proposed linking agreement mandates alignment between the two ETSs on a range of issues, such as: the cap, the minimum level of ambition, the gases and activities covered, limits on international credit use, penalties, and monitoring, reporting and verification. EU Allowances (EUAs) will be eligible for surrender in the Swiss ETS, and vice versa. There was an outstanding issue on aviation but the Agreement now clarifies that Switzerland will mirror the EU ETS provisions on aviation in the Swiss ETS before the Agreement enters into force.
6. We understand that the European Commission would like for the Decision to be agreed through a vote at the Environment Council on 13<sup>th</sup> October, to be ready for signature in November at the 23<sup>rd</sup> Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC).

## **SCRUTINY HISTORY**

7. There is no relevant scrutiny history for this EM

## **MINISTERIAL RESPONSIBILITY**

8. The Secretary of State for Business, Energy and Industrial Strategy is responsible for this policy matter with the Secretary of State for Transport jointly responsible for the Aviation elements of the EU ETS.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

9. The EU ETS is a devolved matter; however, with the agreement of the devolved administrations, this is implemented by Regulations which extend to the whole of the UK. The devolved administrations have been consulted in preparation of this EM.

## **LEGAL AND PROCEDURAL ISSUES**

### **Legal basis**

10. The legal base given for the proposed Council Decisions is Article 192(1) and Article 218 of the Treaty of the Functioning of the European Union (TFEU). Article 192(1) is the treaty base concerning matters relating to the environment. Article 218 covers the negotiation and conclusion of agreements made by the EU with third countries.

### **European Parliament procedure**

11. The proposals are made under Article 192(1), together with Article 218, of the Treaty on the Functioning of the European Union (TFEU). Article 218 sets out the procedure the Council should take.

### **Voting procedure**

12. The Council voting procedure will be by Qualified Majority Voting.

### **Impact on United Kingdom Law**

13. The Agreement to link the two ETSs is based on existing EU legislation, it should not require further UK legislation for the purposes of implementation. However, officials will assess how implementation progresses to assess whether any further UK legislation will be required.

### **Application to Gibraltar**

14. The Agreement relates to EU legislation which is applicable to Gibraltar.

### **Fundamental Rights analysis**

15. No issues arise in respect of Fundamental Rights.

## **APPLICATION TO THE EUROPEAN ECONOMIC AREA**

16. The proposal does not make mention of application to the European Economic Area (EEA), but the EU legislation to which the Agreement relates has EEA applicability.

## **SUBSIDIARITY**

17. This proposal accords with the principle of subsidiarity.

## **POLICY IMPLICATIONS**

18. The UK took an active role in negotiating the text of the Agreement to be signed between the EU and the Swiss Confederation. It is in line with UK objectives for

- global carbon markets, as expanding the market and increasing the availability of reduction opportunities enhances the cost-efficiency of emissions trading. There has not been an Impact Assessment undertaken by the EU Commission as the detrimental impact of this linking is deemed to be negligible. The main considerations have been for: the EU 2030 emissions target; Phase IV of the ETS; and the price of EU ETS allowances. The details of these issues are outlined below.
19. On the first issue, the EU collectively has a domestic greenhouse gas emissions reduction target for 2030 of at least 40% below 1990 levels. The EU ETS is the cornerstone of this policy and covers around 45% of the EU's greenhouse gas emissions. Emissions from other sectors will be covered by the EU Effort Sharing Regulation. We are confident that the link to the Swiss ETS will not have a detrimental impact on the EU's ability to meet its domestic climate target as: there is a review clause in paragraph 13(7) which provides member states with the flexibility to assess the link in 2020 and understand its implications on the EU's emissions reduction target; and both systems are capped preventing any increase in overall emissions.
  20. Secondly, like the EU ETS's Phase IV negotiations, the Swiss ETS is currently undergoing review for its next period, from 2021 to 2030. The Agreement to link the Swiss ETS and EU ETS includes provisions to ensure a continued compatibility between the systems for the link to be maintained in the 2021-2030 period. The proposed linking will not impact on the UK position in negotiations relating to Phase IV of the EU ETS or negotiations relating to the future of aviation in the EU ETS, both of which are currently in the EU trilogue process.
  21. Finally, the impact on the price of EU ETS allowances is likely to be negligible. This is because of the relatively small size of the Swiss ETS<sup>1</sup> compared to the EU ETS and the fact that the Swiss ETS allowance price is only slightly higher than the EU ETS allowance price. The price of Swiss allowances was ~CHF6.50 (~£5.23<sup>2</sup>) as of March 2017, compared with an EU allowance price of ~€5.10 (~£4.70<sup>3</sup>)<sup>4</sup>.
  22. On 23 June, the people of the United Kingdom voted in the EU referendum to leave the EU. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

## CONSULTATION

23. The Commission has not undertaken formal consultation with outside bodies specifically in relation to this communication as it is not a proposal for legislation.

---

<sup>1</sup> In 2017 the Swiss system has a cap of 5.25MtCO<sub>2</sub>e, less than 0.3% of the 1,939 MtCO<sub>2</sub>e covered by the EU ETS (2017)

([https://icapcarbonaction.com/en/?option=com\\_etsmap&task=export&format=pdf&layout=list&system\\_s%5B%5D=64](https://icapcarbonaction.com/en/?option=com_etsmap&task=export&format=pdf&layout=list&system_s%5B%5D=64))

<sup>2</sup> 1CHF = £0.8

<sup>3</sup> 1EURO = £0.92

<sup>4</sup> 2017 Emissions Handled Register

<https://www.emissionsregistry.admin.ch/crweb/public/auction/list.do?org.apache.struts.taglib.html.TOKEN=d673e257cbc579659f4af2225bf46dcd>

24. BEIS has engaged with the Commission, other Member States and across HMG throughout the negotiation of the Agreement.

### **IMPACT ASSESSMENT**

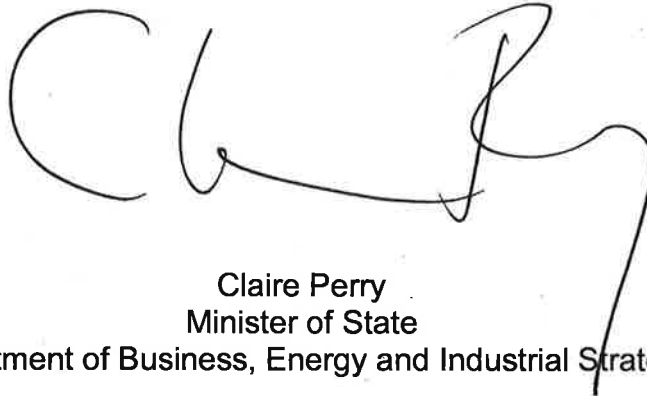
25. The Commission has not undertaken an Impact Assessment.

### **FINANCIAL IMPLICATIONS**

26. There are no financial implications for the UK. As discussed above, any impact on the price of EU ETS allowances as a result of the link it expected to be negligible.

### **TIMETABLE**

27. It is expected that the proposal will go to the Environment Council on 13<sup>th</sup> October 2017 to be agreed through a vote. The Agreement will then be ready for signature in November, prior to the 23<sup>rd</sup> Conference of the Parties to the UNFCCC with the conclusion at a later date.

A handwritten signature in black ink, appearing to read 'CPerry', with a long vertical stroke extending downwards from the end of the signature.

Claire Perry  
Minister of State  
Department of Business, Energy and Industrial Strategy

