EUROPEAN
COMMISSION

Brussels, 20.3.2024
COM(2024) 125 final

2024/0067 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in 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 amending Annex II to the Agreement, the Common Operational Procedures and the Linking Technical Standards

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in 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 II to the Agreement, the Common Operational Procedures and the Linking Technical Standards in connection with the envisaged adoption of a decision to amend Annex II to the Agreement, the Common Operational Procedures as adopted by Decision No 1/2020 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[1] and the Linking Technical Standard as adopted by Decision No 2/2020 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[2].

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems

The Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems ('the Agreement') aims to connect the EU Emissions Trading System (EU ETS) with the Emissions Trading System of Switzerland, by allowing that allowances issued in one system can be traded and used for compliance in the other one, expanding the opportunities for climate change mitigation. The Agreement entered into force on 1 January 2020.

2.2. The Joint Committee

The Joint Committee, established by Article 12 of the Agreement, is responsible for administering the Agreement and ensuring its implementation. It can decide to adopt new annexes to the Agreement or amend existing ones. It can also discuss amendments to the Articles of the Agreement, facilitate the exchange of views on the Parties' legislation and conduct reviews of the Agreement.

The Joint Committee is a bilateral body composed by representatives of the Parties (the EU and Switzerland). Decisions taken by the Joint Committee shall be agreed by both Parties and once adopted, are legally binding to both Parties.

Article 13(2) of the Agreement provides that the Joint Committee may decide to adopt a new Annex or to amend an existing Annex to the Agreement. Furthermore, and in accordance with Article 3(6) and (7) of the Agreement, the Joint Committee has adopted decisions 1/2020[3] and 2/2020[4] to establish the Common Operational Procedures (COP) and the Linking Technical Standards (LTS).

---

1 OJ L 226 of 25.6.2021, p. 2
2 OJ L 226 of 25.6.2021, p. 16
3 OJ L 226 of 25.6.2021, p. 2
4 OJ L 226 of 25.6.2021, p. 16

2.3. The envisaged act of the Joint Committee

During its seventh meeting, which will be held in 2024, or earlier by means of the written procedure pursuant to Article 8(4) of the Rules of Procedure of the Joint Committee[5], the Joint Committee is to adopt a decision regarding amendments to Annex II to the Agreement, the Common Operational Procedures and the Linking Technical Standards ('the envisaged act'). The Common Operational Procedures and the Linking Technical Standards have been adopted by the Joint Committee through its Decisions No 1/2020[6] and 2/2020[7] respectively.

The purpose of the envisaged act is to update Annex II ("Linking Technical Standards") to the Agreement in order to reflect developments agreed by the Joint Committee in accordance with Joint Committee Decision 2/2019[8], which required to replace the provisional solution to operationalise the link between the EU ETS and the ETS of Switzerland with a permanent registry link as soon as possible. Furthermore, the evolution of relevant technologies should also be taken into account, when amending Annex II to the Agreement.

To ensure consistency and compatibility of the Common Operational Procedures and the Linking Technical Standards with Annex II to the Agreement, these documents should be aligned accordingly.

The envisaged act will become binding on the parties in accordance with Article 13(2) of the Agreement, which provides: 'The Joint Committee may decide to adopt a new Annex or to amend an existing Annex to this Agreement'. Furthermore, and in accordance with Article 12(3) of the Agreement, decisions taken by the Joint Committee in the cases provided for in this Agreement will, upon their entry into force, be binding on the Parties.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The Council Decision based on this proposal from the Commission determines the position of the European Union on the Decision of the Joint Committee to be taken on amending Annex II to the Agreement as well as the Common Operational Procedures and the Linking Technical Standards.

The position of the European Union should reflect the evolution of the registry link between the EU ETS and the ETS of Switzerland that is developing into a permanent registry link that will be implemented not later than 2024. It will enable the functioning of the linked markets with respect to benefits from market liquidity and execution of transactions between the two linked systems in a manner that is equivalent to one market made up of two systems and which allows market participants to act as if they were in one market, subject only to individual regulatory provisions of the Parties.

The position of the European Union should also streamline the provisions of Annex II to the Agreement in the light of the above developments and align the Common Operational Procedures and the Linking Technical Standards so as to reflect the evolution of the registry link.

---

5 Decision No 1/2019 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 25 January 2019 regarding the adoption of its Rules of Procedure, available from https://ec.europa.eu/clima/system/files/2021-07/20191201_jc_dec_rop_en.pdf and Council Decision (EU) 2018/1279 of 18 September 2018, OJ L 239 of 24.9.2018, p.8.

6 OJ L 226 of 25.6.2021, p.2

7 OJ L 226 of 25.6.2021, p. 16

8 OJ L 314 of 29.9.2020, p. 68

The development of a well-functioning international carbon market through bottom-up linking of emissions trading systems is a long-term policy goal of the EU and the international community, notably as a means to achieve the climate objectives of the Paris Agreement. In this respect, Article 25 of the Directive establishing the EU's Emissions Trading System (EU ETS) allows for the EU ETS to be linked with other emissions trading systems provided they are mandatory, have an absolute cap on emissions and are compatible, as it is the case with the Swiss system. Following the entry into force of the Agreement on 1 January 2020, restoring compatibility and consistency represents an important element towards the implementation of the Agreement.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[9].

4.1.2. Application to the present case

The Joint Committee is a body set up by an agreement, namely the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems.

The act which the Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 12(3) of the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

[9] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to environment.

Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 192(1) TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will amend Annex II to the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

2024/0067 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in 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 amending Annex II to the Agreement, the Common Operational Procedures and the Linking Technical Standards

(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[10] ('the Agreement') was signed on 23 November 2017 in accordance with Council Decision (EU) 2017/2240[11].

(2) The Agreement was concluded by Council Decision 2018/219[12] and entered into force on 1 January 2020.

(3) Pursuant to Article 12(3) of the Agreement, the Joint Committee may adopt decisions that shall, 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) Articles 3(6) and (7) provide that the Common Operational Procedures and the Linking Technical Standards should take effect when adopted by decision of the Joint Committee. By Decision No 1/2020[13] and 2/2020[14], the Joint Committee adopted the Common Operational Procedures and the Linking Technical Standards.

(6) It is appropriate to amend Annex II to the Agreement to reflect the evolution of the registry link between the EU Emission Trading System and the Emission Trading System of Switzerland and to streamline the provisions of Annex II in the light of technological developments. To ensure consistency of the Common Operational

[10] OJ L 322, 7.12.2017, p. 3.

[11] 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).

[12] OJ L 43, 16.2.2018, p. 1.

[13] OJ L 226, 25.6.2021, p. 2

[14] OJ L 226, 25.6.2021, p. 16

Procedures and the Linking Technical Standards with Annex II, those documents should also be amended.

(7) The Joint Committee, in its seventh meeting, or earlier by means of the written procedure pursuant to Article 8(4) of the Rules of Procedure of the Joint Committee[15], is to adopt a Decision amending Annex II to the Agreement, the Common Operational Procedures and the Linking Technical Standards.

(8) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the Decision will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the seventh meeting of the Joint Committee, 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 is addressed to the Commission.

Done at Brussels,

For the Council
The President

[15] Decision No 1/2019 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 25 January 2019 regarding the adoption of its Rules of Procedure and Council Decision (EU) 2018/1279 of 18 September 2018 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 regarding the adoption of its Rules of Procedure (OJ L 239, 24.9.2018, p. 8).