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NOTE

From: General Secretariat of the Council

To: Delegations

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Subject: Draft Decision No 1/2022 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 on amending Annexes III and IV to the Agreement

Based on the outcome of the informal silence procedure on the Presidency compromise proposal for the draft Council Decision as set out in the Annex the text is considered as agreed and, after legal-linguistic revision, will be submitted to Coreper/Council for formal adoption.

DRAFT

**DECISION No 1/2022 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 ...

on amending Annexes III and IV to the Agreement

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems¹ (hereinafter ‘the Agreement’) and in particular Article 9 and Article 13(2) thereof,

Whereas:

- (1) Pursuant to Article 9(2) of the Agreement, sensitive information shall be marked in accordance with its level of sensitivity.
- (2) Annex III to the Agreement sets out how sensitive information that is handled and exchanged within the Agreement is marked. It requires the Parties to make use of the sensitivity levels to identify such sensitive information.
- (3) Annex IV to the Agreement defines the ETS sensitivity levels and establishes the global information sensitivity level.
- (4) Marking and corresponding handling of information is important to ensure the necessary level of confidentiality of information to avoid damage accruing from unauthorised disclosure of information.

¹ OJ L 322, 7.12.2017, p. 3.

- (5) By means of Security Notice C(2019) 1904, the European Commission changed the security markings of sensitive non-classified information for internal European Commission use. The European Commission recommended drawing up an agreement with external partners setting out the handling instructions for all information exchanged between them.
- (6) To ensure consistency of the application of security markings as set out in Annex III and IV to the Agreement, the Joint Committee may amend these Annexes in accordance with Article 13(2) of the Agreement.
- (7) In its 3rd meeting held on 26 November 2020, the Joint Committee approved the handling instructions in accordance with Annex III to the Agreement and as referred to in Article 8(2) of the Agreement.
- (8) The Working Group established by Decision 1/2020 and 2/2020 of the Joint Committee recommended, in accordance with the mandate provided by those Decisions, to amend the handling instructions to ensure consistent application of security markings.

HAS ADOPTED THIS DECISION:

Article 1

Annex III and IV to the Agreement are replaced by the Annex to this Decision.

Article 2

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

Done at [Brussels][Bern], on [xx 2022].

For the Joint Committee

*Secretary for the European
Union*

The Chair

Secretary for Switzerland

ANNEX

ANNEX III

SENSITIVITY LEVELS AND HANDLING INSTRUCTIONS

The Parties shall make use of the following sensitivity levels to identify sensitive information that is handled and exchanged within this Agreement:

To this end, the markings laid down in Article 9(2) of this Agreement shall be applied as follows:

— ETS Limited shall be applied in the EU as “**SENSITIVE: ETS Joint Procurement**”; in Switzerland as “**LIMITED: ETS**”

— ETS Sensitive shall be applied in the EU and in Switzerland as “**SENSITIVE: ETS**”

— ETS Critical shall be applied in the EU and in Switzerland as “**SPECIAL HANDLING: ETS Critical**”

Information that is marked as ‘**SPECIAL HANDLING: ETS Critical**’ is more sensitive than information that is marked as ‘**SENSITIVE: ETS**’, which in turn is more sensitive than information that is marked as ‘**SENSITIVE: ETS Joint Procurement**’ in the European Union or ‘**LIMITED: ETS**’ in Switzerland.

The Parties agree to develop handling instructions on the basis of the existing ETS information classification policy of the Union and on the basis of the Information Protection Ordinance (IPO) and the Federal Act on Data Protection (FADP) of Switzerland. The handling instructions shall be submitted to the Joint Committee for approval. Following approval, all information shall have to be handled according to its sensitivity level in compliance with the handling instructions.

In case of different level assessments by the Parties, the higher level shall be applied.

The legislation of each Party shall include equivalent essential security requirements for the following handling steps, taking into account the ETS sensitivity levels:

- Generation of document
- Resources
- Sensitivity Level
- Storage
- Electronic document on network
- Electronic document in a local environment
- Physical document
- Electronic transmission
- Phone and mobile
- Fax
- E-mail
- Data transmission
- Physical Transmission
- Oral
- Personal handover
- Postal system

- Use
- Processing with IT applications
- Printing
- Copying
- Removal from permanent location
- Information management
- Regular evaluation of classification and recipients
- Archiving
- Deletion and destruction

ANNEX IV

DEFINITION OF ETS SENSITIVITY LEVELS

A.1 – Confidentiality and Integrity rating

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

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

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

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

A.2 – Confidentiality and Integrity rating

A.2.1 – ‘Low rating’

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

— moderately affect political or diplomatic relations;

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

A.2.2 – ‘Medium rating’

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

- cause embarrassment to political or diplomatic relations;
- cause damage to the image or reputation of the Parties or other institutions;
- cause distress to individuals;
- cause consequential reduction in staff morale/productivity;
- embarrass the Parties or other institutions in commercial or policy negotiations with others;
- cause financial loss or facilitate improper gain or advantage for individuals or companies;
- affect the investigation of crime;
- breach legal or contractual obligations on confidentiality of information;
- affect the development or operation of the Parties' policies;
- affect the proper management of the Parties and their operations.

A.2.3 – ‘High rating’

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

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

A.3 – ETS Sensitive information level assessment

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

Confidentiality rating	Low	Medium	High
Integrity rating			
Low	Marking EU: SENSITIVE: ETS Joint Procurement Marking CH : LIMITED : ETS	SENSITIVE: ETS (or (*)) Marking EU: SENSITIVE: ETS Joint Procurement Marking CH: LIMITED: ETS)	SPECIAL HANDLING: ETS Critical
Medium	SENSITIVE: ETS (or (*)) Marking EU: SENSITIVE: ETS Joint Procurement Marking CH: LIMITED: ETS)	SENSITIVE: ETS (or (*)) SPECIAL HANDLING: ETS Critical)	SPECIAL HANDLING: ETS Critical
High	SPECIAL HANDLING: ETS Critical	SPECIAL HANDLING: ETS Critical	SPECIAL HANDLING: ETS Critical
(*) Possible variation to be assessed on a case-by-case basis.			