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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.4.2008
COM(2008) 221 final

2006/0304 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

common position of the Council on the adoption of a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community

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(Text with relevance for the EEA)

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2006)818 final – 2006/0304COD): 20 December 2006

Date of the opinion of the European Economic and Social Committee: 31 May 2007

Date of the opinion of the Committee of the Regions: 10 October 2007

Date of the opinion of the European Parliament, first reading: 13 November 2007

Date of adoption of the common position (by unanimity): 18 April 2008

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The aim of the proposal is to address the growing climate change impact attributable to aviation by including aviation in the Community emissions trading scheme. It is part of a comprehensive approach to reducing the climate change impact of aviation as set out in document COM (2005)459 final of 27 September 2005.

3. COMMENTS ON THE COMMON POSITION

3.1 General comments

The European Parliament gave its opinion at first reading on 13 November 2007. The Commission accepted in full, in part or in principle 22 of the 59 amendments adopted by the European Parliament in its first reading. Eleven of these 22 amendments are already reflected, at least in part, in the common position.

The Commission accepted amendments, either fully or in principle or in part, which would clarify the context of the proposal and do not detract from the general aim of the proposal. These include modifications to the categories of special types of flights which are excluded from the scheme.

The Commission rejected amendments which would alter the nature of the proposal, such as amendments that would limit the ability of the aviation sector to buy allowances from other sectors included in the EU Emissions Trading Scheme. It also rejected amendments that are technically unfeasible or needlessly burdensome from an administrative viewpoint.

The Commission considers that the common position does not alter the approach or aims of the proposal and can thus support it as it stands.

3.2. Detailed comments

3.2.1. Parliamentary amendments accepted by the Commission and incorporated in full, in part or in principle in the common position

Amendments **14, 76, 30, 40, 47, 49, 51, 52, and 53** have been incorporated, with a slightly different wording, in the common position. Amendment **30** is a useful clarification and consistent with Article 18 of the Directive and has been fully incorporated in the Council's common position. Amendments **76** and **14** concern the use of auctioning and are included to the extent that they make express reference to the use of revenues from auctioning to tackle climate change in the EU and in third countries and to the extent that such measures could be used to encourage environmentally-friendly transport. Amendment **40** is acceptable as it would ensure that the provisions regarding the use of CERs/ERUs by aircraft operators will be consistent with those applied to other sectors from 2013. Amendment **47** has been incorporated to the extent that it would provide for the deletion of the conversion mechanism contained in the Commission's proposal. Amendment **49** aims to send a signal that the EU is ready to engage with the rest of the world to find agreement on tackling aviation emissions and to adapt its scheme to the rules of a common scheme agreed with third countries. The spirit of this amendment is reflected in the common position. Amendment **51** is incorporated in the common position to the extent that it would require State flights by EU Heads of State to be included in the scheme. Amendments **52** and **53** are included, as the common position provides for the exclusion of search and rescue, fire-fighting, humanitarian and emergency medical service flights. Amendments **70** and **79** have been included to the extent that the common position excluded flights for checking, testing or certifying aircraft or equipment whether airborne or ground-based.

3.2.2. Parliamentary amendments rejected by the Commission but incorporated in full, in part or in principle in the common position

Five amendments which were rejected by the Commission have been incorporated in full, in part or in principle in the common position.

Amendment **13** was accepted to the extent that the Council's common position includes a reference to the 20 percent target in the recitals. The Commission agrees that the aviation sector must contribute to achieving the overall EU emissions reduction target of 20 to 30 percent compared to 1990 levels.

The spirit of amendments **22, 28** and **33**, which relate to the need for a new entrant reserve for the aviation sector, has been incorporated into the common position through the inclusion of a new Article 3f which provides for a special reserve for new aircraft operators and aircraft operators which experience significant growth.

Amendment **78** is included in the common position to the extent that it would provide for all flights to or from EU airports to be included in the scheme from the outset rather than a staged approach as provided for in the Commission's proposal.

3.2.3. *Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the common position*

Amendments **1, 3, 4, 5, 7, 8, 10, 35, 45, 17 and 65** were accepted in part or in principle by the Commission, but not incorporated. They predominantly concern minor changes in the recitals.

3.2.4. *Parliamentary amendments rejected by the Commission and the Council and not incorporated in the common position*

Those Parliamentary amendments dealing in particular with definitions in the proposal, a limit on the use by aircraft operators of allowances from other sectors, a multiplier to take into account non-CO₂ impacts of aviation and the weight threshold for exemption from the scheme were not acceptable to the Commission or the Council and are not incorporated in the common position.

3.2.5. *Changes made by the Council to the Proposal*

The Council proposed the following main changes to the Commission proposal:

Start date: The Council's common position provides for all flights to be included in the scheme from 2012. It therefore removes the provision in the Commission's proposal for flights between EU airports to be included in 2011. Whilst the Commission would prefer its original proposal for a staged approach, it can accept a one-stage approach. The Commission would like the scheme to start as soon as possible. However, given the likely time still required for the legislation to be finally agreed and for implementing measures to be put in place, and the fact that all flights would be included on the same date, 2012 is acceptable to the Commission.

Auctioning revenues: The Commission's proposal provided that the revenues from the auctioning of allowances shall be used for mitigation of and adaptation to climate change and to cover the costs of administering the scheme. The Commission regrets that the common position weakens this wording to state only that revenues from auctioning should be used for these purposes.

Review of caps: The common position includes provision for the Commission to review the functioning of the Directive in relation to aviation activities by 1 June 2015. This includes consideration of the extent to which the total quantity of allowances to be allocated to aircraft operators should be reduced in line with overall emissions reduction targets. The Commission agrees that such a review is appropriate.

Interaction with third country measures: The Commission's proposal provides for flights arriving from third countries to be exempt if they are covered by equivalent measures in those countries. The Council's common position provides for a more flexible approach to finding the best option to ensure interaction between the Community scheme and measures taken in a third country. The Commission supports this approach.

Level of auctioning: The Commission proposed that, in the period prior to 2013, the percentage of allowances to be auctioned in the aviation sector should be the average of the percentages proposed by the Member States that include auctioning in their national allocation plans. Based on the current information available to the Commission on plans for auctions, the weighted average would be around 7-8%. The Commission still considers its original proposal to be the best option. However, the 10 per cent figure included in the Council's common position is acceptable to the Commission because it does not lead in practice to undue differences in treatment in auctioning between aviation and other sectors of the economy.

The Commission's proposal provided for the levels of auctioning for future periods to take into account the general review of the Directive 2003/87/EC. The Council's common position provides that for future periods the share of auctioning may be increased as part of the general review of Directive 2003/87/EC. This is acceptable to the Commission. The Commission's proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community (COM(2008) 16 final) provides that "aviation should be treated as other industries which receive transitional free allocation rather than as electricity generators. This means that 80% of allowances should be allocated for free in 2013 and thereafter the free allocation to aviation should decrease each year by equal amounts, resulting in no free allocation in 2020."

Adjustments to the benchmarking provisions: The common position adjusts payload and the distance used to calculate the tonne-kilometres performed by each aircraft operator which are the basis for the benchmark used to distribute free allowances. The default mass for each passenger and his checked baggage is increased to 110kg and 95km is added to the great circle distance. The Commission regrets that the Council has not adopted the benchmark as proposed but in order to reach an agreement can accept this approach.

Monitoring and reporting plans: The common position introduces an additional requirement for Member States to ensure that aircraft operators to submit monitoring plans setting out measures to monitor and report emissions and tonne-kilometre data. The Commission considers that this additional requirement will be useful to ensure that all aircraft operators are aware of the monitoring requirements which apply to them under the scheme.

Special reserve: The Council's common position contains a new Article providing for a special reserve to be created for new aircraft operators and operators which experience strong growth (of more than 18% annually in the years following the base year used to allocate allowances to aircraft operators). The new Article provides for 3% of allowances to be placed in the reserve and for a one-off distribution of the allowances based on the same benchmark system as is proposed for the initial allocation of allowances. Although the Commission would prefer not to make any specific provision for new entrants, it can accept the new Article as it contains sufficient safeguards to ensure that its effect is limited and that it does not undermine the allocation methodology set out in the Commission's proposal.

Conversion of aviation allowances: As international aviation emissions are not integrated into Member States' commitments under the Kyoto Protocol, allowances allocated to the aviation sector may only be used for compliance by aircraft operators. This is necessary in order to maintain the integrity of the accounting system which provides for allowances to be attached to AAU's in the 2008-12 period. However, the Commission's proposal included a provision which would have enabled aircraft operators to convert their allowances into allowances which could be used by other operators. The common position would delete this provision. Whilst the Commission would prefer to include a provision for the conversion of allowances, the deletion of this provision was considered acceptable in order to facilitate an agreement.

Enforcement provisions: The Council proposed additional enforcement measures to ensure that where an operator fails to comply with the obligations under the scheme and enforcement measures employed by the Member State have been exhausted, the Member State may request the Commission to decide on the imposition of an operating ban at Community level on the aircraft operator. Enforcement measures are essential to ensure that the scheme is effective in reducing the climate change impact of aviation. The additional Article strengthens the enforcement mechanisms under the scheme and is a further disincentive to non-compliance.

Therefore, the Commission agrees with the inclusion of the additional provisions.

De minimis exemption: The common position contains several changes to the exclusions in the proposal. The most significant is the inclusion of a de minimis exclusion which would exclude commercial operators operating less than 243 flights per period for three consecutive four-month periods. The Commission supports a de minimis exclusion which would exclude infrequent flyers to the EU and which, in particular, has the potential to help those developing country airlines with the weakest links to the EU.

4. CONCLUSION

The changes introduced by the Council are acceptable to the Commission as they are consistent with the objective of reducing the climate change emissions of aviation and build upon the Commission's proposal. Therefore the Commission can accept the common position.