



EUROPEAN
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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions

(Text with EEA relevance)

{SWD(2013) 430 final}

{SWD(2013) 431 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Emissions from aviation are one of the fastest growing sources of greenhouse gas emissions. As the technological potential for emissions reduction is limited in the aviation sector, market-based measures (MBMs) allow aviation to contribute to emission reductions by the airlines offsetting their strong emission growth through funding emission reductions in other sectors.

The suitability of MBMs for international aviation has long been recognised. The 2001 ICAO Assembly endorsed the application of open emissions trading systems to international aviation. Following the ICAO's 2004 endorsement of regional MBMs, the EU led the way by including aviation in its Emission Trading System (EU ETS). Despite its positive environmental effects at low economic costs, the implementation of the EU ETS has had to face significant international opposition (e.g. allegations that regulating emissions from airlines based outside the EU would violate the sovereignty of third states). The European Court of Justice has, however, dismissed appeals by foreign airlines in this respect and confirmed the legality of the EU ETS¹.

At the same time, the integration of aviation into the EU ETS has been decisive in driving forward ICAO discussions. The intensive engagement of the EU in tackling climate change has been crucial in generating momentum in ICAO towards global action for addressing aviation emissions. Clearly, given the EU ETS would only ever cover a proportion of international aviation emissions, the overall strong global growth of these emissions will continue if no MBM is implemented on a global level, and emission reduction goals will remain aspirational.

The 2013 38th ICAO Assembly has now decided on the development of a global MBM to be finalised at the next ICAO Assembly in 2016 and to be implemented by 2020. Progress was not made on a "framework" for national/ regional MBMs up to 2020, as in particular the Assembly resolution repeated the same language as from the 2007 and 2010 Assemblies and the European States confirmed their position on the 2007 and 2010 Assembly resolutions as concerns so-called 'mutual agreement'. In response to this progress on a global MBM and to promote further momentum, the Commission considers it appropriate to propose lowering the proportion of emissions to which the EU emissions trading system should apply up to 2020, as the further action already envisaged in Decision No. 377/2013/EU.

2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultations on aviation's inclusion in the EU ETS began in September 2005 with the Communication "Reducing the Climate Change Impact of Aviation", COM(2005)459, which led to the proposal of legislation in December 2006. Consultations with third countries on aviation and emissions trading have taken place since then, both formally e.g. in the context of EU-US Joint Committee meetings and through bilateral and multilateral meetings. Most recently, an online public consultation was held for 12 weeks from 21 June to 13 September 2013. The public consultation was carried out using the "General principles and minimum standards for consultation of interested parties by the Commission", and it asked all stakeholders – including public authorities from third countries – on their views concerning

¹ See judgment of the European Court of Justice in Case C-366/2010, handed down on 21 December 2011.

the scope of regional and global MBMs. The Commission will continue to engage in constructive bilateral and multilateral contacts with third countries.

The public consultation confirms strong support for MBMs from public authorities, NGOs and the airlines. All respondents favour MBMs for the aviation sector, with one association opposing regional MBMs in advance of a global MBM. With regard to regional action, airlines emphasise administrative simplicity and political acceptability, as well as environmental effectiveness and avoiding discrimination on routes and between operators. Public authorities and NGOs emphasise covering meaningful emissions, administrative simplicity and political acceptability.

The Impact Assessment has shown that adapting the EU ETS to accord with what was expected to be ICAO's MBM Resolution for the period up to 2020 is feasible at low administrative costs. The chief benefit from reducing the scope of the EU ETS up to 2020 is that, with a global MBM applying from 2020 closing the global "emission gap", doubling coverage of international aviation emissions compared to the EU ETS, and leading to a halving of these emissions by 2050, this will have significantly greater overall environmental benefits.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

In line with the outcome of the 38th ICAO Assembly held in September 2013, there should be a single global market-based measure (MBM) applying to international aviation emissions from 2020 onwards. In response to this progress and to promote further momentum towards the successful establishment of a global MBM, amendments should be made to the aviation activities covered by the EU ETS.

This proposal for a Directive follows on from the Decision No. 377/2013/EU, which was adopted in order to promote progress on global action through ICAO. As with Decision No. 377/2013/EU, it is important that this proposal is agreed swiftly between the European Parliament and Council, so as to be in place for when the next allowance surrender obligations fall due on 30 April 2014. In the absence of a further agreed revision, the ETS reverts to the position before the Decision No. 377/2013/EU. The key features of the revised ETS system resulting from this proposal would be as follows:

- Flights between aerodromes in the EEA remain fully covered, as under the original Directive and Decision No. 377/2013/EU.
- Flights to and from third countries which are not developed countries and which emit less than 1% of global aviation emissions would be exempted. This would exclude routes to around 80 countries on a non-discriminatory basis.
- Flights to and from third countries are responsible for emissions taking place not beyond EEA countries, as from 2014. A simplified procedure is proposed to determine the relevant proportion of emissions of a given flight which is covered by the ETS. It is proposed that operators can choose between approaches to MRV methodology for compliance.
- Overflights of EEA countries are exempt, as are emissions from flights between airports in third countries and EEA airports as regards European dependencies and territories, and flights to and from EEA airports and those territories.

With effect from 2013 onwards, this act derogates from the ETS Directive in respect of a proportion of flight emissions to and from third countries. In 2013, this relates to all emissions

from flights to and from countries outside the European Economic Area (EEA). For each calendar year between 2014 to 2020, these proportions are set out in an Annex, and have been calculated by Eurocontrol on the basis of the proportion of the Great Circle Distance between the main airports in the EEA and in third countries, that is not more than 12 miles beyond the furthest point of EEA coastline. The percentages are low estimates of the actual climate change impact from aircraft taking off and landing from aerodromes in the Union since aviation also impacts on climate change from emissions of nitrogen oxides, water vapour and sulphate and soot particles which have been estimated to have climate change effects of the same level as those from the carbon dioxide emissions, which have not been taken into account.

The process of applying percentages for flights to and from third countries is designed to be workable and pragmatic, using existing reporting categories applicable since 2010. Working on the basis of country-pairs means that figures are needed for flights on the routes from each Member State to third countries. Where flights operate to multiple time zones in a third country, a percentage shall be included for each timezone to which flights operate. These percentages are developed based on best available information, including from Eurocontrol. A table containing all these percentages will be inserted in the Annex.

To provide further flexibility and alternative monitoring, reporting and verification (MRV), it is proposed to offer a choice to operators. In respect of flights to and from third countries, an aircraft operator should be able to choose not to report verified emissions from these flights but instead to rely upon a determination of estimated emissions not beyond EEA Member countries from such flights that is as accurate as possible, based on Eurocontrol calculations of the precise distance flown not beyond EEA countries.

The Member States will adjust allocations for the years 2013-2020 in accordance with the proportions set out in the Annex. The number of allowances auctioned by Member States will be adjusted accordingly.

An additional simplification proposed to the ETS Directive is to provide that action not be taken against non-commercial aircraft operators in respect of emissions from small aircraft operators emitting less than 1000 tonnes CO₂ per annum. This is expected to reduce the number of aircraft operators regulated by Member States by around 2200 representing 0.2% of emissions. Alongside other measures being taken to simplify administration for small aircraft operators, this is a significant lightening of administrative tasks for aircraft operators and for Member States' competent authorities, in line with the EU's better regulation agenda.

All other obligations in respect of flights remain unaffected. This limited approach has shown itself to be workable, as was the case under Decision No. 377/2013/EU. Issuing additional free allocations to operators would undermine the emission reductions that the ETS will bring, and carrying out a new benchmarking exercise would place significant requirements on aircraft operators and Member States when the global MBM is expected to apply in 7 years and, if not, new benchmarking would in any case take place in 2018 according to Article 3e of the ETS Directive.

The environmental benefit of this proposal comes from two key elements: First, it gives impetus to the global MBM that will cover the total emissions from international aviation from 2020 onwards. Depending on the ambition level agreed for the global MBM, total international aviation emissions will be capped at their 2020 level and even be halved by 2050 below 2005 levels. Second, the EU ETS will continue to achieve substantial emission reductions that are expected to be up to 250 million tons CO₂ in the period from 2013 to 2020.

It should also be noted that, in terms of administration a global MBM, States will need to enact national provisions. After the 2016 ICAO Assembly, the ETS Directive should be amended as appropriate to provide for the implementation of this global MBM. The global MBM to apply from 2020 onwards should, in terms of the recognition of early action called for by IATA, take offsetting of emissions outside the aviation sector under the EU ETS into account, as well as emission reductions within the sector. Paragraph 26 of ICAO Resolution A38/17-2 calls for these emission reductions to be reported to ICAO.

This proposal should be adopted by the European Parliament and Council early in 2014, so as to provide legal certainty and clarity for aircraft operators who would otherwise have to surrender allowances for their full emissions to and from third countries by 30 April 2014, as referred to in Directive 2003/87/EC.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union is endeavouring to secure a future international agreement to control greenhouse gas impacts from aviation and, in the meantime, is limiting climate change impacts from aviation activities to and from aerodromes in the Union by autonomous action. In order to ensure that these objectives are mutually supportive and not in conflict, it is appropriate to take account of developments at and positions taken in international fora and in particular to take account of the Resolution containing the "Consolidated statement of continuing ICAO policies and practices related to environmental protection" adopted at the 38th session of the Assembly of the International Civil Aviation Organisation (ICAO).
- (2) Consequently it is desirable to temporarily consider the requirements set out in Directive 2003/87/EC of the European Parliament and of the Council⁴ as satisfied, when obligations are met in respect of a certain percentage of the emissions from flights to and from aerodromes in third countries. In doing so, the Union emphasises that requirements can be applied in respect of certain percentages of emissions from flights to and from aerodromes in countries of the European Economic Area (EEA), in the same manner as legal requirements can be placed on more of the emissions from flights to and from such aerodromes.

² OJ C , , p. .

³ OJ C , , p. .

⁴ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32)

- (3) While the application of Directive 2003/87/EC continues to be based on arrival at or departure from aerodromes in the Union, in order to be a simple and workable means to limit the application of regional market-based measures for the 7 years until a global market-based measure begins operation, the percentages have been calculated by Eurocontrol on the basis of the proportion of the Great Circle Distance between the main airports in the EEA and in third countries that is not more than 12 miles beyond the furthest point of EEA coastline. Since the Union does not consider that a global market-based measure should be based on actual airspace considerations, as compared to the arrival or departure from aerodromes, the relevance of the percentages is limited to the period up to 2020.
- (4) The derogations provided for in this directive take into account the results of bilateral and multilateral contacts with third countries, which the Commission will continue to pursue on behalf of the Union.
- (5) In order to avoid distortions of competition, it is important that all flights on the same route are treated in the same way.
- (6) In order to establish a percentage of verified emissions for flights to and from aerodromes in third countries, whole flight emissions have to be known. However, no account is being taken of emissions not covered by that percentage.
- (7) In addition, in respect of flights to and from third countries, an aircraft operator should be able to choose not to report verified emissions from these flights but instead to rely upon a determination of estimated emissions taking place not beyond EEA Member countries from such flights that is as accurate as possible.
- (8) As a simplification and to in order to lighten administrative tasks for the smallest aircraft operators, non-commercial aircraft operators emitting less than 1000 tonnes CO₂ per annum should be considered as meeting the requirements of the Directive, and additional measures by Member States' competent authorities should be facilitated to simplify administration for small aircraft operators.
- (9) The application of a percentage to verified emissions for flights to and from aerodromes in third countries, or the use of an alternative approach by operators, should relate to emissions from 2014 onwards to give time for operators to understand these approaches when planning their flight activities,
- (10) Without prejudice to the global market-based measure applying from 2020, emissions from flights to and from countries which are developing countries and whose share of total revenue ton kilometres of international civil aviation activities is less than 1% should be exempted for the period 2014 to 2020. Countries considered to be developing for the purposes of this proposal should be those which benefit at the time of adoption of this proposal from preferential access to the Union market in accordance with Regulation (EU) No 978/2012 of the European Parliament and of the Council, that is those which are not classified in 2013 by the World Bank as high-income or upper-middle income countries.
- (11) In order to ensure legal certainty for aircraft operators and national authorities it is appropriate to allow until 2015 for the surrender and reporting deadlines for 2013 emissions.
- (12) After the 2016 ICAO Assembly the Commission should submit a report to the European Parliament and to the Council in order to ensure that international developments can be taken into account and any issues about the application of the derogation be addressed.

(13) Directive 2003/87/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/87/EC is hereby amended as follows:

(1) The following Article 28a is inserted after Article 28:

"Article 28a

Derogations applicable in advance of the implementation by 2020 of an international agreement applying a single global market-based measure

1. By way of derogation from Article 12(2a) and Article 14(3), Member States shall consider the requirements set out in those paragraphs satisfied in respect of:
 - (a) all emissions from flights to and from countries outside the European Economic Area in 2013;
 - (b) emissions from flights to and from countries outside the European Economic Area (EEA) in each calendar year between 2014 and 2020 where the operator of such flights has surrendered allowances in respect of the percentages of their verified emissions from those flights listed in accordance with Annex IIc, or calculated in accordance with paragraph 6;
 - (c) emissions from flights operated by a non-commercial aircraft operator in each calendar year up to 2020 where the emissions for which that aircraft operator are responsible in the calendar year are less than 1000 tonnes;
 - (d) the surrender of allowances corresponding to verified 2013 emissions from flights between countries in the EEA taking place by 30 April 2015 instead of 30 April 2014, and verified 2013 emissions for those flights being reported by 31 March 2015 instead of 31 March 2014.

The verified emissions referred to in paragraph 1(b) calculated in accordance with Annex IIc shall be considered to be the verified emissions of the aircraft operator for the purposes of Articles 11a, 12 and 14.

2. By way of derogation from Article 3e(5) and Article 3f, an aircraft operator benefitting from the derogations provided for in paragraphs 1(a) to 1(c) shall be issued a number of free allowances reduced in proportion to reduction of the surrender obligation provided for in those paragraphs.

As regards activity in 2013 to 2020, Member States shall publish the number of free aviation allowances allocated to each operator by *[OP: insert a date 4 months after the entry into force of this Directive]*.

3. By way of derogation from Article 3d, Member States shall auction a number of aviation allowances reduced in proportion to the reduction in the total number of allowances issued.
4. By way of derogation from Article 3d(3), the number of allowances to be auctioned by each Member State in respect of the period from 2013 to 2020 shall be reduced to correspond with its share of attributed aviation emissions resulting from the application of Article 28(a) to (c).

5. By way of derogation from Articles 3g, 12, 15 and 18a, where an aircraft operator has total annual emissions lower than 25000 tonnes, its emissions shall be considered to be verified emissions if determined using a small emitters tool approved by the Commission and populated by Eurocontrol with data from its ETS support facility, and Member States may implement simplified procedures for non-commercial aircraft operators as long as there is no less accuracy than such a tool provides.
 6. By way of derogation from Article 12(2a) and Article 14(3), for flights to and from countries outside the EEA, an aircraft operator may choose not to report emission data using the percentages in Annex IIc, in order that such emissions shall be calculated by the competent authority. This calculation shall take into account figures from the small emitters tool approved by the Commission and populated by Eurocontrol with data from its ETS support facility. The competent authority shall report all such calculations to the Commission. Calculations of emissions made in these circumstances shall be considered to be the verified emissions of the aircraft operator for the purposes of Articles 11a, 12, 14 and 28a.
 7. Following the 2016 ICAO Assembly, the Commission shall report to the European Parliament and the Council on the actions to implement the global market-based measure to apply to emissions from 2020, together with proposals as appropriate.

In the event that a global measure will not apply from 2020, that report shall consider the appropriate scope for coverage of emissions from activity to and from countries outside the EEA from 2020 onwards in the continued absence of such a global measure. In its report, the Commission shall also consider solutions to other issues that may arise in the application of paragraphs 1 to 4, while preserving equal treatment for all operators on the same route."
- (2) The Annexes are amended as set out in the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by [*OP: please insert concrete date – last day of 3rd month from the date of entry into force*], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [*OP: please insert concrete date: transposition + 1 day*].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

After Annex IIB to Directive 2003/87/EC, the following Annex IIc is inserted:

"ANNEX IIc

TABLE OF PERCENTAGES APPLICABLE FOR DEROGATIONS UNDER ARTICLE 28a

[The percentage of emissions referred to in Article 28a for flights operating to and from a country (“third country”) outside the EEA Member countries (“EEA Member countries”) shall be calculated according to the table below which will be populated before adoption with the percentages resulting from the formula, based on the best available data, including assistance from Eurocontrol:

$$X = (Y \div Z) \times 100$$

where:

Z = the total Great Circle Distance of a flight from the aerodrome in each of the relevant EEA Member countries with the highest number of flights to and from all destinations in third countries in 2012 (“the reference EEA Member countries aerodrome”) to the aerodrome in the relevant third country with the highest number of flights to and from all destinations in the EEA Member countries in 2012 (“the reference third country aerodrome”).

Y = the part of the Great Circle Distance of the flight defined in Z between the reference EEA Member countries aerodrome and the first point on that route 12 nautical miles from the last point in EEA Member countries, excluding third country areas and excluding sea area in excess of 400 nautical miles between EEA Member countries.

Where flights operate to multiple time zones in a third country, a percentage shall be included for each timezone to which flights operate.

Distances to and from the dependencies and territories of EEA Member countries, and over those dependencies and territories, shall not be taken into account.

For the period 2014 to 2020, and without prejudice to the global market-based measure applying from 2020, the percentage applicable to flights between EEA Member countries and countries which are developing countries and whose share of total revenue ton kilometres of international civil aviation activities is less than 1% shall be zero. Countries considered to be developing for the purposes of this proposal are those which benefit at the time of adoption of this proposal from preferential access to the Union market in accordance with Regulation (EU) No 978/2012 of the European Parliament and of the Council, that is those which are not classified in 2013 by the World Bank as high-income or upper-middle income countries.]

[the above formula is intended to be deleted from the final text and replaced by the corresponding table completed with percentages calculated by Eurocontrol.]

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Notwithstanding the above, the percentage applicable to flights between the outermost regions of the Union as defined in Article 349 of the Treaty on the Functioning of the European Union and countries outside the Union shall be zero.