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COMMISSION DELEGATED REGULATION (EU) .../...

of 18.7.2019

supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards measures adopted by the International Civil Aviation Organisation for the monitoring, reporting and verification of aviation emissions for the purpose of implementing a global market-based measure

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Union and its Member States are a strong supporter of ICAO's intention to put a global market-based measure for international aviation globally into effect to contribute to tackling climate change. This is underlined by the fact that the European Parliament and Council have amended the EU Emissions Trading System (EU ETS) three times in order to facilitate progress in ICAO on its global market-based measure, as well as by the substantial financial and expert contributions which the Union and its Member States¹ have made to the ICAO Secretariat over the past 6 years to help ICAO succeed. The Union is amongst the first jurisdictions to adopt legally binding legislative provisions for the purposes of implementing ICAO's scheme called 'CORSIA', including through this delegated act, while other States are also expected to undertake such domestic implementation.

All sectors of the economy need to contribute to tackling climate change. Putting a price on greenhouse gas emissions is important to harness market forces and achieve cost-effective emission reductions. The EU ETS has been the cornerstone of the European Union's climate policy since 2005, and it is a key tool for substantially reducing greenhouse gas (GHG) emissions in line with the Union's commitment under the Paris Agreement that aim to limit temperature increases to well below 2°C, and to 1.5°C if possible. The inclusion of intra-European flights in the EU ETS has delivered around 100 million tonnes of CO₂ reductions/offsets between 2012 and 2018². In 2017, the EU ETS Directive has been revised to duly contribute to the 2030 climate and energy targets³ and to prepare for the implementation of the ICAO scheme⁴.

Union legislation is being prepared to implement the ICAO scheme in two steps. Firstly, appropriate provisions are being included in three pieces of implementing and delegated legislation: this delegated act, the Commission Implementing Regulation on the monitoring and reporting of greenhouse gas emissions⁵, and the Commission Implementing Regulation on the verification of data reports and on the accreditation of verifiers⁶. The second step is laid down in Article 28b of the Directive, and it concerns amendments to the EU ETS by the European Parliament and the Council through the ordinary legislative procedure.

¹ This includes financial support of over €15 million for EU capacity building projects in developing countries; the time of Commission, EASA, and EUROCONTROL staff involved in ICAO work; intensive involvement of government and industry experts; and the secondment of staff to the ICAO Secretariat.

² For further information, see the European common section in the ICAO State Action Plan of Austria for emission reductions at https://www.icao.int/environmental-protection/Lists/ActionPlan/Attachments/78/CO2%20Reduction%20Action%20Plan_Austria_July%202018.pdf, pages 45-49.

³ Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814, OJ L 76, 19.3.2018, p. 3.

⁴ Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021, OJ L 350, 29.12.2017, p. 7.

⁵ Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012, OJ L 334, 31.12.2018, p. 1–93.

⁶ Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council, OJ L 334, 31.12.2018, p. 94–134.

Alongside this delegated act, revisions have been made to both the Commission Regulation on the monitoring and reporting (MRR) and the Commission Regulation on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers (AVR), to take account of the MRV provisions of the SARP. The EU has experience of monitoring, reporting and verifying aviation emissions under the EU ETS Directive since 2010, and there is a good deal of similarity between the provisions of the ICAO scheme and these two Regulations. In respect of the few remaining differences that can be removed through implementing powers under the Directive, this has taken place alongside the adoption of this delegated act and entered into force on 1 January 2018.

Article 28c of Directive 2003/87/EC requires the Commission to adopt provisions for the appropriate monitoring, reporting and verification of emissions for implementing ICAO's global market-based measure on all routes covered by it. These are to be based on the relevant instruments adopted in the ICAO, and must avoid any distortion of competition and be consistent with the EU ETS's monitoring and reporting principles. Emissions reports must be verified in accordance with the verification principles and criteria in the EU ETS Directive. The delegated act complements the reporting under the above Regulations in respect of flights and operations that are not currently covered by the EU ETS Directive (e.g. flights between the EEA and third countries, flights between the EEA and various other regions, and flights solely between third countries or between third countries and overseas dependencies or territories). As a number of aircraft operators reported verified emissions from flights to, from and between aerodromes located in the European Economic Area (EEA), including its outermost regions, dependencies and territories, in the past, templates already exist for reporting these emissions, and these templates will be updated for use as regards the broader emissions information that is relevant for ICAO's scheme. Unlike the Regulations for monitoring, reporting, verification and accreditation, this delegated act is solely for the purpose of providing information to the ICAO Secretariat. It draws on existing rules and frameworks so far as possible in order to minimise administrative burden for aircraft operators, verifiers and other stakeholders, and specifies how information reported in accordance with the Regulations for monitoring, reporting, verification and accreditation will be transmitted to the ICAO Secretariat.

The second step is laid down in Article 28b(1), (2) and (3) of the Directive, and it concerns amendments to the EU ETS that can only be made by the European Parliament and the Council acting through the ordinary legislative procedure. The Commission is obliged to report to the European Parliament and the Council on progress in the ICAO negotiations. In particular, this relates to the relevant international instruments⁷, Council-approved recommendations, the establishment of a global registry, domestic measures taken by third countries to implement the global market-based measure, the implications of reservations by third countries and other relevant international developments and applicable instruments. In line with the UNFCCC's global stocktake, the Commission will also report on efforts to meet the aviation sector's aspirational long-term emissions reduction goal of halving aviation CO₂ emissions relative to 2005 levels⁸. The Commission will present a report to the European Parliament and to the Council in which it will consider ways for those instruments to be implemented through a revision of the EU ETS Directive, considering the rules applicable in respect of flights within the EEA as appropriate.

⁷ See the Commission study on possible legal arrangements to implement a global market based measure for international aviation emissions, at https://ec.europa.eu/clima/sites/clima/files/transport/aviation/docs/gmbm_legal_study_en.pdf.

⁸ See recital 11 of Regulation (EU) 2017/2392 of the Council of 13 December 2017.

The report will also examine the ambition and overall environmental integrity of the global market-based measure, its general ambition in relation to targets under the Paris Agreement, the level of participation, enforceability, transparency, penalties for non-compliance, processes for public input, quality of offset credits, monitoring, reporting and verification of emissions, registries, accountability as well as rules on the use of biofuels. The Commission may accompany the report referred to in paragraph 2 of this Article with a legislative proposal to the European Parliament and the Council to amend, delete, extend or replace the derogations provided for in Article 28a of the EU ETS Directive, that is consistent with the Union economy-wide greenhouse gas emission reduction commitment for 2030 with the aim of preserving the environmental integrity and effectiveness of Union climate action. The Directive also makes clear that the report will consider whether the legal basis for this delegated act⁹ needs to be revised.

Directive 2003/87/EC applies irrespective of the nationality of the airline operator and in principle covers flights which depart from or arrive in an aerodrome situated in the territory of a Member State. Article 28a exempts emissions from flights to and from aerodromes located in countries outside the EEA in each calendar year until 2023. The equal treatment of aircraft operators on routes is vital to avoid distortions of competition, and is also identified as an important issue in the 2016 ICAO resolution. Intra-EEA flights are operated by over 500 aircraft operators including more than 100 commercial aircraft operators based outside the EEA, in respect of which there is an extremely high level of compliance. The scope of Directive 2003/87/EC could only be changed by the European Parliament and the Council¹⁰.

This delegated act applies equal treatment in line with Article 28c of the EU ETS Directive. The Member States will only submit to the ICAO Secretariat the information regarding flights which is expected under the ICAO scheme, and aircraft operators with significant emissions in all other countries should have their emissions reported to the ICAO Secretariat by other countries. It is in the self-interest of aircraft operators to report their emissions data for international flights¹¹ in 2019 and 2020 as it will reduce the emissions they will have to offset later. In the event of non-reporting, the SARP foresees using other information sources to fill gaps. The Commission has worked with Eurocontrol to ensure that IT tools are developed and put in place to allow for completeness and accuracy of emissions data for all relevant flights operated by airlines based in the Member States. In the interests of ensuring the completeness and accuracy of emissions data to be submitted by Member States, Member States should be able to request the Commission to seek the assistance of Eurocontrol.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

A stakeholder meeting took place on 13 July 2018 in the context of the Climate Change Expert Group, involving representatives of industry, civil society and Member States. A second meeting took place on 3 December 2018 before the adoption of the delegated act, and examined the text of the delegated act and the broader context of EU ETS implementing rules for monitoring, reporting, verification and accreditation. Furthermore, online feedback on the text of the Delegated Regulation was collected on the Better Regulation portal for four weeks between 28 November and 26 December 2018. Five contributions were provided from airline associations.

⁹ See Article 28b(2) of Regulation (EU) 2017/2392 of the Council of 13 December 2017.

¹⁰ Except as provided for by delegated act pursuant to Article 25a of Directive 2003/87/EC.

¹¹ International flights constitute around 60% of global aviation emissions, while the remaining 40% relate to domestic flights. ICAO's mandate does not extend to domestic aviation, see <https://www.icao.int/environmental-protection/Documents/STATEMENTS/cop4.PDF>.

A delegated act adopted by the Commission on 6 March 2019¹² has been objected to by the Council on 6 June 2019. The Council contested the Commission's task to transmit data to ICAO, set out in Article 7 of that delegated act. No other issues were identified by the Council as decisive. The European Parliament did not object to the delegated act. The present delegated act no longer includes the provision contested by the Council.

Following adoption, the delegated act will be subject to scrutiny from the European Parliament and the Council for a period of two months.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The scope of the delegated act is determined by the revised EU ETS Directive. A Regulation is considered to be the appropriate instrument. As explained above, it is in the interests of aircraft operators to follow this Regulation for the purposes of establishing initial emissions baseline under the ICAO scheme.

Article 1

This Article sets out which aircraft operators are subject to this regulation, and exempts certain types of non-commercial flights they may operate.

Article 2

Paragraphs 1 and 2 of this Article set out the additional verified emissions information that aircraft operators should report, in order to supplement the already verified emissions reported pursuant to the MRR. Emissions reporting under the MRR and these paragraphs are mandatory and subject to enforcement proceedings under Article 16 of the EU ETS Directive if it does not take place.

The first category of additional emissions information is in paragraph 1(a), for flights between aerodromes situated in the EEA and aerodromes in third countries (e.g. Paris-Marrakesh).

The second category of additional emissions information, in paragraph 1(b), relates to flights between aerodromes located in the EEA and aerodromes located in outermost regions of other Member States of the EEA (e.g. Dublin-Lanzarote), and in dependencies or territories of those Member States¹³ (e.g. Ireland-Greenland). It is to be noted that domestic flights such as Madrid-Lanzarote are not covered by the ICAO scheme and therefore not part of this delegated act.

The third category of additional emissions information, in paragraph 1(c), relates to flights between aerodromes located in outermost regions, dependencies or territories of EEA Member States and aerodromes located in third countries, or dependencies or territories of other Member States (e.g. Greenland-Canada).

Paragraph 2 clarifies that the requirements in paragraph 1 also apply in respect of aircraft operators operating less than 243 flights per period of three consecutive four-month periods that depart from or arrive in an aerodrome situated in the territory of a Member State (referring to letter (j) under activity 'Aviation' in Annex 1 to Directive 2003/87/EC).

Paragraph 3 relates to the reporting of verified emissions data for flights between aerodromes located in two different third countries, i.e. between aerodromes located outside the EEA and aerodromes located in other countries outside the EEA (e.g. Mexico D.F.-Rio de Janeiro). In

¹² C(2019)1644.

¹³ For a full list of these, see the response 5 in the Frequently Asked Questions at: https://ec.europa.eu/clima/sites/clima/files/transport/aviation/docs/faq_aviation_2013-2016_en.pdf.

respect of this category, it is recommended to report emissions. The issue of whether greater powers would be appropriate should be examined in the report to the European Parliament and the Council.

Paragraph 4 provides clarity on the types of flights which are to be reported for the ICAO scheme's purposes.

Article 3

Paragraph 1 of this Article confirms that reporting of emissions pursuant to Article 2 is to meet the standards set out in the relevant provisions of the EU ETS Directive and the MRR.

Paragraph 2 refers to electronic templates to be used for reporting. Over 900 aircraft operators have used them to report verified emissions as well as to apply for free allocations under the EU emissions trading system. The templates will be updated by the Commission for the purpose of the ICAO scheme.

Article 4

This Article states that, for the reporting of emissions pursuant to Article 2, the standards set out in the relevant provisions of the EU ETS Directive and the AVR apply.

Article 5

This Article stipulates that the administering Member State in respect of an aircraft operator is the Member State referred to in Article 18a of Directive 2003/87/EC. Not all operators which are to report under this regulation will be listed in the Annex to Commission Regulation (EC) No 748/2009. In such cases the aircraft operator should report its verified emissions to the Member State which has issued its Air operator certificate or, in cases where no such certificate has been issued by a Member State, the operator should report to the Member State in which it has its place of judicial registration.

Article 6

On the basis of a cooperation agreement of the Commission with Eurocontrol, which has been renewed yearly for more than a decade, the Commission is entitled to request the assistance of Eurocontrol to allow for ensuring the quality of emissions data. This Article clarifies that, in the interests of ensuring the completeness and accuracy of emissions data to be transmitted by Member States in the format expected by ICAO, they should be able to request the Commission to seek this assistance from Eurocontrol.

Article 7

This Article requires Member States to transmit relevant verified emissions data to the ICAO Secretariat. This will only concern data of aircraft operators in whose respect the ICAO Secretariat expects to receive emissions data from the Member States (e.g. European airlines). Before transmission, the relevant Member State is expected to give its endorsement after having conducted an order of magnitude check on the data, including any data from Eurocontrol. At the same time, Member States should also transmit this emissions data to the Commission to enable it to have a full overview of the transmissions.

The role of the European Parliament and the Council in deciding on changes to Union law is fully respected, and therefore this Article is expressly without prejudice to the consideration by the European Parliament and the Council of ways for the ICAO scheme to be implemented in Union law through a future revision of the EU ETS Directive.

There are three emissions factors for aviation fuel in the EU ETS:

Fuel	Emission factor (t CO₂/t fuel)
Aviation gasoline (AvGas)	3.10
Jet gasoline (Jet B)	3.10
Jet kerosene (Jet A1 or Jet A)	3.15

In the ICAO scheme, the emissions factor for the fuel Jet Kerosene (Jet A1 or Jet A) is 3.16. In the transmission to the ICAO Secretariat, this emissions factor shall be used. The application of this factor is facilitated to Member States by the Commission through Eurocontrol (cf. Article 6). The report pursuant to Article 28b of the Directive will consider whether this should be revised, and the European Parliament and Council could take action as appropriate, including changing the EU ETS Jet kerosene emissions factor.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC, and in particular Article 28c thereof,

Whereas:

- (1) Article 28c of Directive 2003/87/EC empowers the Commission to adopt provisions for the appropriate monitoring, reporting and verification of emissions for the purpose of implementing the International Civil Aviation Organisation's ('ICAO') global market-based measure on all routes covered by that measure. For reasons of legal certainty and clarity, it is necessary to specify the flights subject to those provisions by reference to the relevant routes and aircraft operators.
- (2) Arrangements for the monitoring and reporting of emissions as well as the verification of emission reports apply, for the purposes of the EU Emission Trading System, in accordance with Commission Regulation (EU) No 601/2012¹⁴ and Commission Implementing Regulation (EU) 2018/2067¹⁵. Those arrangements have been updated and further developed, as regards the monitoring and reporting of emissions, by Commission Implementing Regulation (EU) 2018/2066¹⁶, which will apply from 1 January 2021. Implementing Regulations (EU) 2018/2066 and (EU) 2018/2067 take account of the first edition of the international standards and recommended practices adopted by the ICAO on 27 June 2018. For reasons of administrative efficiency and to minimise compliance costs for operators, it is appropriate to align the provisions for

¹⁴ Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 181, 12.7.2012, p.30).

¹⁵ Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 334, 31.12.2018, p. 94).

¹⁶ Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012 (OJ L 334, 31.12.2018, p. 1).

the implementation of the ICAO's global market based measure and the provisions laid down in Regulation (EU) No 601/2012 and in those Implementing Regulations.

- (3) Under Commission Regulation (EU) No 601/2012, Member States can prescribe the use of electronic templates and specific file formats for the purposes of reporting emissions from aviation activities under Directive 2003/87/EC. To ensure that aircraft operators can comply with such requirements also when reporting emissions for the purposes of the ICAO's global market-based measure, the Commission should publish a specific electronic data exchange format.
- (4) The application of monitoring, reporting and verification requirements for certain flights only in respect of aircraft operators based in the EEA is not considered to cause any distortion of competition. Therefore, such requirements can be adopted on the basis of Article 28c of Directive 2003/87/EC.
- (5) On the basis of a cooperation agreement between the two, the Commission is entitled to request the assistance of Eurocontrol to ensure quality of emissions data. In the interests of ensuring the completeness and accuracy of emissions data to be transmitted by Member States in the format expected by ICAO, Member States should be able to request the Commission to seek this assistance from Eurocontrol.
- (6) Member States should transmit relevant verified emissions data to the ICAO Secretariat, and ensure complete and timely reporting of emissions data concerning all relevant flights.
- (7) In accordance with Article 28b(2) of Directive 2003/87/EC, the report referred to in that article should consider whether this regulation should be revised.

HAS ADOPTED THIS REGULATION:

Article 1

1. The reporting obligations provided for in Article 2 shall only apply to aircraft operators that fulfil all of the following conditions:
 - (a) they hold an air operator certificate issued by a Member State or are registered in a Member State, including in the outermost regions, dependencies and territories of that Member State;
 - (b) they produce annual CO₂ emissions greater than 10 000 tonnes from the use of aeroplanes with a maximum certified take-off mass greater than 5 700 kg conducting flights between aerodromes located in different States in the European Economic Area (EEA) or flights referred to in Article 2(1), from 1 January 2019.
2. For the purposes of point (b) of paragraph 1, emissions from the following types of flights shall not be taken into account:
 - (a) State flights;
 - (b) humanitarian flights;
 - (c) medical flights;
 - (d) military flights;
 - (e) firefighting flights.

Article 2

1. Aircraft operators shall report emissions from the following flights:
 - (a) flights between aerodromes located in Member States and aerodromes located in third countries;
 - (b) flights between aerodromes located in Member States and aerodromes located in outermost regions, dependencies or territories of other Member States;
 - (c) flights between aerodromes located in outermost regions, dependencies or territories of Member States and aerodromes located in third countries or dependencies or territories of other Member States.
2. Paragraph 1 shall apply also in respect of commercial air transport operators operating fewer than 243 flights per period of three consecutive four-month periods that depart from or arrive in an aerodrome situated in the territory of a Member State.
3. Aircraft operators are recommended to also verify and report their emissions from flights between aerodromes located in two different third countries.
4. Paragraphs 1 and 3 shall apply with respect to emissions from any type of flight except for the types of flights referred to in Article 1(2), including:
 - (a) flights for the purposes of training or search and rescue;
 - (b) flights under visual flight rules;
 - (c) flights for scientific research and testing;
 - (d) Public Service Obligation flights.

Article 3

5. For the purposes of reporting their emissions pursuant to Article 2 of this Regulation, aircraft operators shall be subject to the same requirements as those laid down in Article 14 of Directive 2003/87/EC and Regulation (EU) No 601/2012. From 1 January 2021, they shall be subject to the same requirements as those laid down in Implementing Regulation (EU) 2018/2066.
6. The Commission shall publish an electronic data exchange format for the purposes of reporting emissions from the flights referred to in Article 2. Aircraft operators shall use that electronic data exchange format.

Article 4

The verification of emission data to be reported pursuant to Article 2 of this Regulation and the accreditation of verifiers carrying out that verification shall be subject to the same requirements as those laid down in Article 15 of Directive 2003/87/EC and Part B of Annex V to that Directive, as well as Implementing Regulation (EU) 2018/2067.

Article 5

An aircraft operator that is listed in the Annex to Commission Regulation (EC) No 748/2009¹⁷ shall report its emissions to its administering Member State specified in that Annex.

An aircraft operator that is not listed in the Annex to Regulation (EC) No 748/2009 shall report its emissions to the Member State that issued its air operator certificate or, where an air operator certificate has not been issued by a Member State, the Member State where that aircraft operator has its place of judicial registration.

Article 6

Upon request by a Member State, the Commission may request the assistance of Eurocontrol to improve the accuracy of emissions data, with a view to their transmission in accordance with Article 7.

Article 7

Without prejudice to the revision of Directive 2003/87/EC by the European Parliament and the Council, Member States shall transmit to the Secretariat of the International Civil Aviation Organisation the relevant emissions data that have been reported pursuant to Article 14 of Directive 2003/87/EC and pursuant to this Regulation. Before that transmission, competent authorities shall conduct order of magnitude checks on the data to be transmitted. At the same time, Member States shall also transmit this emissions data to the Commission.

The emissions factor specified in Annex 16, Volume IV to the Convention on International Civil Aviation signed on 7 December 1944 (Chicago Convention) for the fuel Jet Kerosene (Jet A1 or Jet A) shall be used for the purposes of the transmission of emissions data pursuant to the first paragraph of this Article.

Article 8

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18.7.2019

For the Commission
The President
Jean-Claude JUNCKER

¹⁷ Commission Regulation (EC) No 748/2009 of 5 August 2009 on the list of aircraft operators which performed an aviation activity listed in Annex I to Directive 2003/87/EC on or after 1 January 2006 specifying the administering Member State for each aircraft operator (OJ L 219, 22.8.2009, p. 1).