

Amendment of Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community *I**

European Parliament legislative resolution of 13 November 2007 on the proposal for 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 (COM(2006)0818 – C6-0011/2007 – 2006/0304(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0818),
 - having regard to Article 251(2) and Article 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0011/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, Research and Energy and the Committee on Transport and Tourism (A6-0402/2007),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Position of the European Parliament adopted at first reading on 13 November 2007 with a view to the adoption of Directive 2008/.../EC 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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission ^{||},

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) 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 ^{||}⁴ established a scheme for greenhouse gas emission allowance trading within the Community in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.

¹ OJ C 175, 27.7.2007, p. 47.

² OJ C 305, 15.12.2007, p. 15.

³ *Position of the European Parliament of 13 November 2007.*

⁴ OJ L 275, 25.10.2003, p. 32. Directive as amended by Directive 2004/101/EC (OJ L 338, 13.11.2004, p. 18).

- (2) The ultimate objective of the United Nations Framework Convention on Climate Change, which was approved on behalf of the European Community by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change¹, is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The Community has repeatedly stated that, with a view to meeting this objective, the overall global annual mean surface temperature increase should not exceed 2°C above pre-industrial levels. Recent scientific research and work indicate that keeping this long-term temperature objective within reach will require global greenhouse gas emissions to peak within two decades followed by substantial reductions in the order of at least 15%, and perhaps by as much as 50%, compared with 1990 levels. The levels of quantified reductions for States to make from 2013 to achieve the objective of stabilising greenhouse gas concentrations have not yet been fixed in the international climate change process. Whilst this Directive should be consistent with the EU's contribution to the long-term temperature objective, the methods and basis for allocation of allowances to aircraft operators under this Directive beyond that date should be kept under review in the light of scientific developments and the political developments at the international level.
- (3) The United Nations Framework Convention on Climate Change requires all parties to formulate and implement national and, where appropriate, regional programmes containing measures to mitigate climate change.
- (4) The Kyoto Protocol, which was approved by Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder², requires developed countries to pursue the limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation, working through the International Civil Aviation Organisation (ICAO).

¹ OJ L 33, 7.2.1994, p. 11. *Corrected in OJ L 146, 11.6.1994, p. 27.*

² OJ L 130, 15.5.2002, p. 1.

- (5) While the Community is not a contracting Party to the 1944 Chicago Convention, all Member States are contracting Parties to that Convention and members of ICAO, and continue to support work on the development of market-based instruments working with other states at global level. At the sixth meeting of the ICAO Committee on Aviation Environmental Protection in 2004, it was agreed that an aviation-specific emissions trading system based on a new legal instrument under ICAO auspices seemed sufficiently unattractive that it should not be pursued further. Consequently, Resolution 35-5 of the ICAO Assembly does not propose a new legal instrument but instead endorses ***“the further development of an open emissions trading system for international aviation”*** and the possibility for States to incorporate emissions from international aviation into their emissions trading schemes.
- (6) The Sixth Community Environment Action Programme established by Decision No 1600/2002/EC of the European Parliament and of the Council¹ provided for the Community to identify and undertake specific actions to reduce greenhouse gas emissions from aviation, if no such action was agreed within the ICAO by 2002. In its conclusions of October 2002, December 2003 and October 2004, the Council has repeatedly called upon the Commission to propose action to reduce the climate change impact of international air transport.
- (7) Policies and measures should be implemented at Member State and Community level across all sectors of the Community economy, and not only within the industry and energy sectors, in order to generate the substantial reductions needed. If the climate change impact of the aviation sector continues to grow at the current rate, it would significantly undermine reductions made by other sectors to combat climate change.
- (8) ***To assist with the reduction of emissions from aircraft, the Commission should carry out a feasibility study by 2009 into the possibility of laying down emissions standards for aircraft engines.***

¹ OJ L 242, 10.9.2002, p. 1.

- (9) In its Communication of 27 September 2005¹ the Commission adopted a strategy for reducing the climate impact of aviation. As part of a comprehensive package of measures, the strategy proposed the inclusion of aviation in the Community scheme for greenhouse gas emission allowance trading and provided for the creation of a multi-stakeholder working group on aviation as part of the second phase of the European Climate Change Programme to consider ways of including aviation in the Community scheme. In its conclusions of December 2005 the Council recognised that, from an economic and environmental point of view, the inclusion of the aviation sector in the Community scheme seems to be the best way forward and called on the Commission to bring forward a legislative proposal by the end of 2006. In its Resolution of 4 July 2006² the European Parliament recognised that emissions trading has the potential to play a role as part of a comprehensive package of measures to address the climate impact of aviation, provided that it is appropriately designed.
- (10) *Apart from the economic tools there is considerable emission lowering potential in technological and operational improvements which should be enhanced now more than in the past.*
- (11) *More efficient air traffic management could, by itself, cut fuel consumption by up to 12% and thereby contribute to the lowering of CO₂ emissions. Consequently, the Single European Sky and the SESAR projects should be implemented as quickly and as efficiently as possible. It is, in particular, the task of the Member States and the Community, in close consultation with the airspace users concerned, to take swift and firm action to establish functional airspace blocks, flexible airspace blocks and flexible airspace use. In this respect, support should be given to the AIRE initiative (Atlantic Interoperability Initiative to Reduce Emissions) agreed between the EU and the US Federal Aviation Administration.*

¹ COM(2005) 459.

² OJ C 303 E, 13.12.2006, p. 119.

- (12) *Research and technology is the key to innovation and to achieving further cuts in aviation emissions. Aircraft and engine manufacturers, and fuel producers, are urged to research and implement changes in their respective fields which will significantly contribute to reducing the climate impact of aviation. The Community should continue its support for the "Clean Sky" Joint Technology Initiative (JTI) in the 7th Framework Programme for Research (FP7) which aims to radically reduce the impact of air transport on the environment. The Community should continue to give strong support to the work of ACARE (Advisory Council for Aeronautical Research in Europe), and more particularly its Strategic Research Agenda (SRA), which sets emissions reduction targets for the air transport industry of 50% for carbon dioxide per passenger kilometre and 80% for nitrogen oxide by 2020.*
- (13) *Subsidies to airports give in some cases wrong incentives concerning the emission of greenhouse gases. Therefore the Commission must fully respect existing competition law.*
- (14) The objective of this Directive is to reduce *aviation's contribution to global* climate change ■ by including emissions from aviation activities in the Community scheme.
- (15) Aircraft operators have the most direct control over the type of aircraft in operation and the way in which they are flown and should therefore be responsible for complying with the obligations imposed by this Directive. An operator may be identified by the use of an ICAO designator or any other recognised designator used in the identification of the flight. If the identity of the operator is not known, the owner of the aircraft should be regarded as the aircraft operator unless it proves which other person was the operator.

- (16) *A level playing field between airports and between aircraft operators needs to be ensured. Therefore, international flights to and from the European Union and flights within the European Union should both be included in the Community scheme from the start.*
- (17) From 2011, ■ emissions from all flights arriving at and departing from Community airports should be included. ■ If a third country adopts measures for reducing the climate impact of flights to a Community airport departing from that country which are at least equivalent to the requirements of this Directive, the scope of the Community scheme should be amended to exclude *the* flights ■ from that country. *Climate change is a global phenomenon which requires global solutions. The Community considers this Directive as an important first step. Non-EU parties are invited to contribute with their ideas to the debate so as to develop this policy instrument further. To make the voice of third parties heard, the Commission should be in permanent contact with them, both prior to and during the implementation of this Directive. If the European Union agrees with a third party on a common scheme which has at least the same positive effects for the environment as the Directive, the Commission may propose an amendment of the Directive. In any case the Commission may propose that incoming flights from third countries not be covered by the scheme if the third country has in place a system which has at least the same environmental benefit as this Directive.*

- (18) Aviation has an impact on the global climate through releases of carbon dioxide, nitrogen oxides, water vapour and sulphate and soot particles. The Intergovernmental Panel on Climate Change has estimated that the total impact of aviation currently is two to four times higher than the effect of its past carbon dioxide emissions alone. Recent Community research indicates that the total impact of aviation could be around two times higher than the impact of carbon dioxide alone. However, none of these estimates takes into account the highly uncertain cirrus cloud effects. In accordance with Article 174(2) of the Treaty, Community environment policy must be based on the precautionary principle and therefore all impacts of aviation should be addressed to the extent possible. *Air traffic management authorities should apply effective measures in order to avoid the formation of contrails and cirrus clouds through changes in flight patterns, namely by ensuring that flights will avoid passing through areas where due to specific atmospheric conditions the formation of such clouds is foreseen. In addition, they should strongly promote research on the formation of contrails and cirrus clouds including effective mitigation measures (e.g. fuel, engines, air traffic management) that do not adversely affect other environmental goals. Pending other legislation to be proposed by the Commission focusing specifically on the problem of nitrogen oxide emissions in aviation, a multiplier should be applied to every tonne of CO₂ emitted.*
- (19) *Other actions are needed in order to supplement this Directive. Study groups should therefore be set up to examine other means of action.*
- (20) In order to avoid distortions of competition, a harmonised allocation methodology should be specified. To ensure access to the market for new aircraft operators, a proportion of allowances will be allocated by auction in accordance with rules to be developed by the Commission. Aircraft operators that cease operations should continue to be issued with allowances until the end of the period for which free allowances have already been allocated.

- (21) *Despite the fact that it is difficult for aircraft operators to switch to alternative (renewable) energy sources, the aviation sector must still achieve a considerable emissions reduction that is in line with the overall EU reduction target of 20% to 30% compared to 1990 levels. For each commitment period under the Community's scheme in which aviation is to be included, depending on the reference period used for aviation in that commitment period, the target for aviation should be set on the basis of the average efforts required of all the other fixed-source sectors in all the Member States.*
- (22) *Aviation contributes to the overall climate change impact of human activities. Proceeds from the auctioning of allowances should be used to mitigate greenhouse gas emissions **and** to adapt to the impacts of climate change **in the EU and third countries, especially in developing countries**, **and** to fund research and development for mitigation and adaptation. **In order to reduce to some extent the burden on citizens, revenues generated by auctioning should also be used to lower taxes and charges on environment-friendly transport such as rail and bus. They should also be used to cover the Member States' justified costs in administering this Directive. Member States may also use the revenues to mitigate or even eliminate any accessibility and competitiveness problems arising for outermost regions and problems for public service obligations in connection with the implementation of this Directive. Member States should inform the Commission of measures taken in this connection.***
- (23) *To increase the cost-effectiveness of the scheme, aircraft operators should be able to use **allowances issued to installations in other emission trading scheme sectors, Certified Emission Reductions (CERs) and Emission Reduction Units (ERUs)** from project activities to meet obligations to surrender allowances* .
- (24) *As a result of the current emission trading scheme, energy-intensive industry is already under pressure from significantly high CO₂ prices. There is the real threat of carbon leakage if another significant sector is included in the scheme that has to buy emission permits. To avoid carbon leakage from energy-intensive industry, for example the cement, lime or steel sector, the Commission will examine different options such as sectoral targets or border tax adjustment and publish a report before the end of 2008 on how the question should be addressed.*

- (25) In order to reduce the administrative burden on aircraft operators, one Member State should be responsible for each aircraft operator. Member States should be required to ensure that aircraft operators which were issued with an operating licence in that State, or aircraft operators without an operating licence or from third countries whose emissions in a base year are mostly attributable to that Member State, comply with the requirements of this Directive.
- (26) To maintain the integrity of the accounting system for the Community scheme in view of the fact that emissions from international aviation are not yet integrated into Member States' commitments under the Kyoto Protocol, allowances allocated to the aviation sector should only be used to meet the obligations placed on aircraft operators to surrender allowances under this Directive. However, aircraft operators should be able to exchange an allowance issued to the aviation sector for an allowance which can be used by all operators in the scheme through their registry administrator.
- (27) *In order to ensure equal treatment of aircraft operators, Member States should follow harmonised rules for the administration of aircraft operators under their responsibility, in accordance with specific guidelines to be developed by the Commission.*
- (28) The European Organisation for the Safety of Air Navigation (Eurocontrol), may possess information which could assist Member States or the Commission in discharging their obligations under this Directive.
- (29) The provisions of the Community scheme relating to monitoring, reporting and verifying emissions and to penalties applicable to operators should also apply to aircraft operators.
- (30) *This Directive should not prevent any Member State from maintaining or establishing other complementary and parallel policies or measures that address the aviation sector's total impacts on climate change.*
- (31) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹.

¹ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (32) In particular ||the Commission *should be empowered* to adopt measures for the auctioning of allowances not required to be issued for free and to amend the aviation activities listed in Annex I where a third country introduces measures to reduce the climate change impact of aviation. Since those measures are of general scope and are designed to amend non-essential elements of this Directive and to supplement this Directive by the addition or modification of new non-essential elements, they *must* be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (33) Since the objective of the proposed action cannot be achieved by the Member States acting individually, and can therefore, by reason of the scale and effects of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (34) Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

- (1) The following heading of Chapter I is inserted before Article 1:
“Chapter I
General Provisions”
- (2) Article 3 is amended as follows:
 - (a) in point (b), the following is added: “or the release from an aircraft performing an aviation activity listed in Annex I of the gases specified in respect of that activity”;
 - (b) *point (f) is replaced by the following:*

“(f) 'operator' means any person who operates or controls a stationary installation or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of the stationary installation has been delegated;”
 - (c) the following points are added:

“(o) 'aircraft operator' means the person *or body identified by its ICAO code which* operates an aircraft at the time it performs an aviation activity listed in Annex I or, where the *ICAO code* is not known, *the holder of the Air Operator's Certificate (AOC) or* the owner of the aircraft. *This will require a harmonised provision in Member States' National Aviation Registries to ensure that the aircraft operator, as well as the owner, is always identified where possible, as per the Cape Town Convention on International Interests in Mobile Equipment;*

- (p) *'new entrant' means any person or operator who performs an aviation activity listed in Annex I and has not applied for an allocation of allowances in accordance with Article 3d. It shall, neither partly nor wholly, be owned by an aircraft operator who submitted an application for an allocation of allowances;*
- (q) 'administering Member State' means the Member State responsible for administering the scheme in respect of an aircraft operator in accordance with Article 18a;
- (r) 'attributed aviation emissions' means emissions from all flights falling within the aviation activities listed in Annex I which depart from a Member State or arrive in the Member State from a third country;
- (s) 'historical aviation emissions' means the mean average of the annual emissions in the calendar years 2004, 2005 and 2006 from aircraft performing an aviation activity listed in Annex I;
- (t) *'aviation emissions allowances' means allowances that are allocated to aircraft operators at the start of each negotiation period."*

- (3) The following Chapter II and heading of Chapter III and Article 3e are inserted after Article 3:

“Chapter II
Aviation

Article 3a
Scope of Chapter II

The provisions of this Chapter shall apply to the allocation and issue of allowances in respect of aviation activities listed in Annex I.

Article 3b

Total quantity of allowances for aviation

1. **■** The total quantity of allowances to be allocated to aircraft operators shall be equivalent to **90%** of the sum of the historical aviation emissions in relation to each year.

2. *Depending on the choice for a post-2012 carbon dioxide reduction target of either 30% or 20% with 1990 as a base year, the Commission shall reduce the total quantity of allowances to be allocated to aircraft operators in the further periods under Article 11(2) in accordance with the regulatory procedure with scrutiny referred to in Article 23(2a). This downward review will provide a mechanism to ensure that the environmental effectiveness of the scheme is maintained. There shall be provision for subsequent downward reviews of the total quantity of allowances allocated.*

■

3. Within six months of the entry into force of this Directive, the Commission shall decide on the historical aviation emissions based on best available data.

Article 3c

Method of allocation of allowances for aviation

1. *Starting in 2011, 25%* of allowances shall be auctioned. **■**

2. For future periods, the percentage to be auctioned *referred to in paragraph 1 shall be increased, according to the maximum level of auctioning in other sectors.*

3. The Commission shall adopt a Regulation containing detailed provisions for the auctioning by Member States of allowances not required to be issued free of charge in accordance with paragraphs 1 and 2. The number of allowances to be auctioned in each period by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year reported pursuant to Article 14(3) and verified pursuant to Article 15. For the period referred to in *Article 11(2)*, the reference year shall be 2010 and for each subsequent period referred to in *Article 11(2)* the reference year shall be the calendar year ending 24 months before the start of the period to which the auction relates.

That Regulation, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2a).

4. The Commission shall adopt a Regulation laying down detailed provisions for the setting up of a European allowance reserve. The percentage of allowances to be kept as a reserve for the benefit of potential new aircraft operators in each period shall be established by the Commission taking into account the market prediction studies issued by the appropriate bodies.

5. Revenues generated from the auctioning of allowances shall be used to mitigate greenhouse gas emissions *and* to adapt to the impacts of climate change *in the EU and third countries, especially in developing countries, and* to fund research and development for mitigation, *especially in the airline sector*, and adaptation. *In order to reduce to some extent the burden on citizens, revenues generated by auctioning shall also be used to lower taxes and charges on climate-friendly transport such as rail and bus. They may also be used to cover the Member States' justified costs in administering this Directive. Member States may also use the revenues to mitigate or even eliminate any accessibility and competitiveness problems arising for outermost regions and problems for public service obligations in connection with the implementation of this Directive.* Member States shall inform the Commission of measures taken pursuant to this paragraph.

6. Information provided to the Commission on the basis of this Directive does not free Member States from the notification obligation pursuant to Article 88(3) of the Treaty.

Article 3d

Allocation and issue of allowances to aircraft operators

1. For each period referred to in *Article 11(2)*, each aircraft operator may apply for an allocation of allowances that are to be allocated free of charge in accordance with Article 3c. An application may be made by submitting to ***the competent authority in*** the administering Member State verified tonne-kilometre data for the aviation activities listed in Annex I performed by that operator for the calendar year ending *24 months* before the start of the period to which it relates in accordance with Annexes IV and V. Any application must be made at least *21 months* before the start of the period to which it relates.

2. At least *18 months* before the start of the period to which the application relates Member States shall submit applications received under paragraph 1 to the Commission.

3. At least *15 months* before the start of each period referred to in *Article 11(2)*, the Commission shall decide on the following:

(a) the total quantity of allowances to be allocated for that period in accordance with Article 3b;

■

(b) the benchmark to be used to allocate allowances free of charge to aircraft operators whose applications were submitted to the Commission in accordance with paragraph 2.

The benchmark referred to in *point (b)* shall be calculated by dividing the number of allowances *allocated free of charge* by the sum of the tonne-kilometre data included in applications submitted to the Commission in accordance with paragraph 2.

4. Within three months of the date on which the Commission adopts a decision under paragraph 3, each administering Member State shall calculate and publish:

- (a) the total allocation of allowances for the period to each aircraft operator whose application it submitted to the Commission in accordance with paragraph 2, calculated by multiplying the tonne-kilometre data included in the application by the benchmark published under *point (b)* of paragraph 3; and
- (b) the allocation of allowances to each aircraft operator for each year which shall be determined by dividing its total allocation of allowances for the period calculated under point (a) by the number of years in the period for which that aircraft operator is performing an aviation activity listed in Annex I.

5. By 28 February 2011 and by 28 February in each subsequent year, the competent authority of the administering Member State shall issue to each aircraft operator the number of allowances allocated to that aircraft operator for that year.

6. *The Commission shall implement measures in respect of the allocation of allowances to make provision for new aviation entrants.*

"New aviation entrants" means an aircraft operator which has been issued with an Air Operator's Certificate (AOC) for the first time subsequent to the start of a period referred to in Article 11(2) and has actually commenced operations in that period.

7. *In the event of a merger or takeover involving several carriers during a given period, the allowances which have been allocated to them or which they have acquired shall be retained by the new entity. If a carrier ceases to operate, the Member State to which it is attached shall place the relevant allowances on the secondary market for allowances. At the beginning of the following year, the share of the allowances still available shall be allocated in full for auctioning, taking account of the general rate of reduction of authorised allowances.*

8. *On the basis of the experience acquired during the period 2010-2012, the Commission shall submit a proposal concerning the quota of emission permits the aviation sector is authorised to purchase on the secondary market for wider emission permit schemes.*

Chapter III
Stationary installations

Article 3e
Scope of Chapter III

The provisions of this Chapter shall apply to greenhouse gas emissions permits and the allocation and issue of allowances in respect of activities listed in Annex I other than aviation activities.”

- (4) *In Article 5, point (a) is replaced by the following:*

“(a) the installation or the aircraft and its activities including the technology used;”

- (5) In Article 6(2)(e), after “allowances” the words “, other than allowances issued under Chapter II,” are inserted.

- (6) The following heading of Chapter IV is inserted after Article 11:

“Chapter IV
Provisions applying to aviation and stationary installations”

- (7) In Article 11a the following paragraph 1a is inserted:

“1a. Subject to paragraph 3, during each period referred to in *Article 11(2)*, Member States shall allow each aircraft operator to use *allowances issued under Chapter III*, CERs and ERUs from project activities up to a percentage of the number of allowances it is required to surrender pursuant to Article 12(2a); this percentage being the average of the percentages specified by Member States *for the use of CERs and ERUs* for the period in accordance with paragraph 1.

The Commission shall publish this percentage at least six months before the start of each period referred to in *Article 11(2)*.

The percentage of CERs and ERUs usable in relation to aviation activities shall be reviewed alongside their use in other sectors as part of the emission trading scheme review.”

- (8) In Article 11b(2), the word “installations” is replaced by “activities”.
- (9) Article 12 is amended as follows:
- (a) in paragraph 2, after “purpose” the words “of meeting an aircraft operator's obligations under paragraph 2a or” are inserted;
 - (b) the following *paragraphs 2a to 2g* are inserted:
 - “2a. Administering Member States shall ensure that, by 30 April each year at the latest, each aircraft operator surrenders a number of allowances equal to the total emissions during the preceding calendar year from aviation activities listed in Annex I for which it is the aircraft operator, as verified in accordance with Article 15. Member States shall ensure that allowances surrendered in accordance with this paragraph are subsequently cancelled.
 - 2b. As long as there are no Community measures which incentivise the reduction of releases of nitrogen oxides from aircraft carrying out an aviation activity listed in Annex I, and which ensure the same ambitious level regarding the protection of the environment as this Directive, for the purposes of paragraph 2a and by way of derogation from Article 3(a), the amount of carbon dioxide which an allowance, other than an aviation emissions allowance, or a CER or ERU permits an aircraft operator to emit shall be divided by an impact factor of 2.***
 - 2c. Every year, aircraft operators wishing to surrender allowances for the purposes of paragraph 2a other than aviation emissions allowances, shall be required to submit to the administering Member State verified tonne-kilometre data for the aviation activities listed in Annex I performed in that calendar year.***

2d. Based on the data to be submitted under the provisions of Article 3, the Commission shall determine an efficiency indicator for all aircraft operators, calculated by dividing the total emissions from aircraft operators by the sum of the tonne-kilometre data. Based on this efficiency indicator for the first year for which data is available, the Commission shall publish a target efficiency indicator for 2010, 2015 and 2020 on the basis of an emissions reduction per revenue-tonne-kilometre (RTK) of 3,5% per year, which takes into account the voluntary target of a 3,5% improvement in fuel efficiency of aircraft per year until 2020.

2e. Those aircraft operators which, for a given year, have an efficiency indicator with a value above the target efficiency indicator calculated by the Commission for that year, shall be required to surrender only aviation emissions allowances to comply with the provisions of paragraph 2a.

2f. The Commission shall, having regard to air operators' pledge to increase the efficiency of aircraft engines by 50% in 2020, report to the European Parliament in 2010 and 2015 on progress made towards achieving this target.

2g. As soon as sufficient scientific evidence is available an appropriate multiplier will be proposed to take into account the effects of cirrus clouds caused by aviation activity."

- (c) in paragraph 3, after "allowances" the words", other than allowances issued under Chapter II," are inserted.

(10) In Article 13(3), "Article 12(3)" is replaced by "Article 12(2a) or (3)".

(11) Article 14 is amended as follows:

(a) in paragraph 1:

- (i) after “those activities” the words “and of tonne-kilometre data for the purpose of an application under Article 3d” are inserted”;
- (ii) the words “, by 30 September 2003” are deleted; and

(b) in paragraph 3:

- (i) the word “of an installation” is replaced by “or aircraft operator”;
- (ii) the words “from that installation during each calendar year” are replaced by “during each calendar year from the installation, or, from 1 January 2010, the aircraft, which it operates”.

(12) Article 15 is amended as follows:

(a) in the first paragraph:

- (i) the word “operators” is replaced by “operators and aircraft operators”;
- (ii) after “Annex V” the words “and any detailed provisions adopted by the Commission in accordance with this paragraph” are inserted;

(b) in the second paragraph:

- (i) the word “operator” is replaced by “operators and aircraft operators”;
- (ii) after “Annex V” the words “and any detailed provisions adopted by the Commission in accordance with this paragraph” are inserted; and

(c) after the second paragraph, *the following paragraph is added:*

“The Commission may adopt detailed provisions for the verification of reports submitted by aircraft operators pursuant to Article 14(3) and applications under Article 3d in accordance with the regulatory procedure referred to in Article 23(2).”

(13) Article 16 is amended as follows:

- (a) in paragraph 1, the words “by 31 December 2003 at the latest,” are deleted;
- (b) in paragraph 2:
 - (i) the word “operators” is replaced by “operators and aircraft operators”;
 - (ii) the words “Article 12(3)” are replaced by the words “this Directive”; and
- (c) in paragraph 3:
 - (i) the word “operator” is replaced by “operator or aircraft operator”;
 - (ii) in the second sentence, the words “by that installation” are deleted.

(14) The following Articles 18a and 18b are inserted:

“Article 18a
Administering Member State

1. The administering Member State in respect of an aircraft operator shall be:
 - (a) in the case of an aircraft operator with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers*, the Member State which granted the operating licence in respect of that aircraft operator; and
 - (b) in all other cases, the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator in the base year.

2. Based on best available information, the Commission shall:
 - (a) by 1 February 2009, publish a list of aircraft operators which performed an aviation activity listed in Annex I on or after 1 January 2006 specifying the administering Member State for each aircraft operator in accordance with paragraph 1; and
 - (b) by 1 February in each subsequent year, update the list to include aircraft operators which have subsequently performed an aviation activity listed in Annex I.
3. For the purposes of paragraph 1, 'base year' means, in relation to an operator which started operating in the Community after 1 January 2006, the first calendar year of operation; and in all other cases, the calendar year starting on 1 January 2006.
4. ***In order to ensure equal treatment of aircraft operators, the Commission shall adopt specific guidelines to harmonise the administration of aircraft operators by administering Member States.***

Article 18b
Assistance from Eurocontrol

For the purposes of carrying out its obligations under *Articles 3b(3) and 18a*, the Commission may request the assistance of Eurocontrol and ***shall designate a neutral organisation to which airlines will supply data directly.***

* OJ L 240, 24.8.1992, p. 1.”

(15) In Article 23, the following paragraph 2a is inserted:

“2a. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.”

(16) The following Article 25a is inserted:

“Article 25a

Third country measures to reduce aviation's climate change impact

Where a third country adopts measures for reducing the climate change impact of flights ■ which are at least equivalent to the requirements of this Directive, the Commission shall amend this Directive *in order to avoid double charging and to ensure equal treatment*.

That amendment, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2a).”

(17) Article 28 is amended as follows:

(a) in *paragraph 3(b)*, after “allowances” the words “, other than allowances issued under Chapter II,” are inserted; and

(b) in *paragraph 4*, after “allowances” the words “, other than allowances issued under Chapter II,” are inserted.

(18) The following heading is inserted after Article 30:

“Chapter V
Final Provisions”

(19) Annexes I, IV and V are amended in accordance with the Annex to this Directive.

Article 2 Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than ...*. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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. The Commission shall inform the Member States thereof.

3. *Should third countries or groups of such countries agree with the European Union on a common scheme of emission trading which brings at least the same environmental benefit as the scheme under this Directive, the Commission may propose an amendment to this Directive to adapt it to the rules of the common scheme.*

Article 3 Entry into force

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

Article 4 Addressees

This Directive is addressed to the Member States.
Done at ,

For the European Parliament
The President

For the Council
The President

* 12 months after the entry into force of this Directive.

ANNEX

Annexes I, IV and V to Directive 2003/87/EC are amended as follows:

(1) Annex I is amended as follows:

(a) the title is replaced by the following:

“CATEGORIES OF ACTIVITIES TO WHICH THIS DIRECTIVE APPLIES”;

(b) the following paragraph is added after paragraph 2:

“**■** From 1 January **2011**, all flights which arrive at or depart from an airport situated in the territory of a Member State to which the Treaty applies shall be included, *taking into account the special situation of the flights between ultra-peripheral regions and the European Continental zone.*”

(c) the following category of activity is added:

<p>“<i>Aviation</i></p> <p>Flights which arrive at or depart from an airport situated in the territory of a Member State to which the Treaty applies.</p> <p>This activity shall not include:</p> <p>■</p> <p>a) military flights performed by military aircraft-<i>flights by</i> customs and police <i>services</i>, flights <i>for</i> search and rescue <i>purposes as well as medical and disaster relief including fire-fighting which are</i> authorised by the appropriate competent authority;</p> <p>b) <i>flights for humanitarian purposes under a mandate from the United Nations or its subsidiary organisations and Emergency Medical Service flights, if the aircraft operator has been instructed to perform them (e.g. by the United Nations) or holds the necessary official authorisation (licence for such EMS flights under its Air Operator’s Certificate);</i></p>	<p>Carbon dioxide”</p>
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■
c) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;

d) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers and/or cargo ■ ;

e) flights performed exclusively *for the purpose of scientific research or* for the purpose of checking, testing, *qualifying or certifying aircraft, equipment or air-traffic-management procedures, whether airborne or ground-based; ferrying new aircraft as well as ferry flights performed by or on behalf of an aircraft owner as a consequence of the occurrence of a sudden early termination event, event of default, repossession, or similar occurrence in respect of a leasing, charter or similar arrangement;* and

f) flights performed by aircraft with a certified maximum take-off weight of less than **20 000 kg**, *under the condition that operators of these aircraft participate in an offset scheme which operates according to strict criteria and which must be open to external control (comparable to Gold Standard).*

(2) Annex IV is amended as follows:

(a) the following heading is inserted after the title:

“PART A – Monitoring and reporting of emissions from stationary installations”

(b) the following part B is added:

“PART B – Monitoring and reporting of emissions from aviation activities

Monitoring of carbon dioxide emissions

Emissions shall be monitored by calculation. Emissions shall be calculated using the formula:

Fuel consumption x emission factor

Fuel consumption shall include fuel consumed by the auxiliary power unit. Actual fuel consumption for each flight shall be used wherever possible and shall be calculated using the formula:

Amount of fuel contained in aircraft tanks once fuel uplift for the flight is complete –
amount of fuel contained in aircraft tanks once fuel uplift for subsequent flight is
complete + fuel uplift for that subsequent flight

If actual fuel consumption data are not available, a standardised tiered method shall be used to estimate fuel consumption data based on best available information.

Default IPCC emission factors, taken from the 2006 IPCC Inventory Guidelines or subsequent updates of these Guidelines, shall be used unless activity-specific emission factors derived by independent accredited laboratories using accepted analytical methods are more accurate. The emission factor for biomass shall be zero.

A separate calculation shall be made for each flight and for each fuel.

Reporting of emissions

Each aircraft operator shall include the following information in its report under Article 14(3):

A. Data identifying the operator, including:

- Name of the operator;
- Its administering Member State;
- Its address, including postcode and country and, where different, its contact address in the administering Member State;
- The aircraft registration numbers and types of aircraft used in the period covered by the report to perform the aviation activities listed in Annex I for which it is the aircraft operator;
- The number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Annex I for which it is the aircraft operator were performed;
- Address, telephone, fax and email details for a contact person; and
- Name of the aircraft owner.

B. For each type of fuel for which emissions are calculated:

- Fuel consumption;
- Emission factor;
- Total aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator;

- Aggregated emissions from:
 - all flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator and which departed from an airport situated in the territory of a Member State and arrived at an airport situated in the territory of the same Member State;
 - all other flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator;
- Aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator which:
 - departed from each Member State; and
 - arrived in each Member State from a third country;
- Uncertainty.

Monitoring of tonne-kilometre data for the purpose of Article 3d

For the purpose of applying for an allocation of allowances in accordance with Article 3d(1), the amount of aviation activity shall be calculated in tonne-kilometres using the following formula:

$$\text{tonne kilometres} = \text{distance} \times \text{payload}$$

where:

"distance" means the great circle distance between the airport of departure and the airport of arrival; and

"payload" means the total mass of freight, mail and passengers carried.

For the purposes of calculating the payload:

- the number of passengers shall be the number of persons onboard excluding crew members;
- an aircraft operator may chose to apply either the actual or standard mass for passengers and checked baggage contained in its mass and balance documentation for the relevant flights or a default value for each passenger and his checked baggage of 100 kg.

Reporting of tonne-kilometre data for the purpose of Article 3d

Each aircraft operator shall include the following information in its application under Article 3d(1):

A. Data identifying the operator, including:

- Name of the operator;
- Its administering Member State;
- Its address, including postcode and country and, where different, its contact address in the administering Member State;
- The aircraft registration numbers and types of aircraft used during the year covered by the application to perform the aviation activities listed in Annex I for which it is the aircraft operator;
- The number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Annex I for which it is the aircraft operator were performed;

- Address, telephone, fax and email details for a contact person; and
- Name of the aircraft owner.

B. Tonne-kilometre data:

- Number of flights by airport pair;
- Number of passenger-kilometres by airport pair;
- Number of tonne-kilometres by airport pair;
- Total number of tonne-kilometres for all flights performed during the year to which the report relates falling within the aviation activities listed in Annex I for which it is the operator.”

(3) Annex V is amended as follows:

- (a) the following heading is inserted after the title:

“PART A – Verification of emissions from stationary installations”

- (b) the following part B is added:

“PART B – Verification of emissions from aviation activities

- (13) The general principles and methodology set out in this Annex shall apply to the verification of reports of emissions from flights falling within an aviation activity listed in Annex I.

For this purpose:

- (a) in paragraph 3, the reference to operator shall be read as if it were a reference to an aircraft operator and in point (c), the reference to installation shall be read as if it were a reference to the aircraft used to perform the aviation activities covered by the report;
- (b) in paragraph 5, the reference to installation shall be read as if it were a reference to the aircraft operator;
- (c) in paragraph 6 the reference to activities carried out in the installation shall be read as a reference to aviation activities covered by the report carried out by the aircraft operator;
- (d) in paragraph 7 the reference to the site of the installation shall be read as if it were a reference to the sites used by the aircraft operator to perform the aviation activities covered by the report;
- (e) in paragraphs 8 and 9 the references to sources of emissions in the installation shall be read as if they were a reference to the aircraft for which the aircraft operator is responsible; and
- (f) in paragraphs 10 and 12 the references to operator shall be read as if they were a reference to an aircraft operator.

Additional provisions for the verification of aviation emission reports

(14) The verifier shall in particular ascertain that:

- (a) all flights falling within an aviation activity listed in Annex I have been taken into account. In this task the verifier shall be assisted by timetable data and other data on the operator's traffic including data from Eurocontrol requested by the operator;

- (b) there is overall consistency between aggregated fuel consumption data and data on fuel purchased or otherwise supplied to the aircraft performing the aviation activity.

The Community and the Member States shall ensure that the working methods to be used by the verifier are harmonised before the implementation of the Directive and that its provisions are applied on a uniform basis.

Additional provisions for the verification of tonne-kilometre data submitted for the purposes of Article 3d(1)

- (15) The general principles, and methodology for verifying emissions reports under Article 14(3) set out in this Annex shall, where applicable, also apply correspondingly to the verification of aviation tonne-kilometre data.
- (16) The verifier shall in particular ascertain that only flights actually performed and falling within an aviation activity listed in Annex I for which the aircraft operator is responsible have been taken into account in that operator's application under Article 3d(1). In this task the verifier shall be assisted by data on the operator's traffic including data from Eurocontrol requested by the operator. In addition, the verifier shall ascertain that the payload reported by the operator corresponds to records on payloads kept by that operator for safety purposes.

The Community and the Member States shall ensure that the working methods to be used by the verifier are harmonised before the implementation of the Directive and that its provisions are applied on a uniform basis.”