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from : General Secretariat

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Subject : 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
- Political agreement

Delegations will find in the Annex the text of the political agreement reached at the Council (Environment) meeting on 20 December 2007.

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

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”.

- (1a) The following paragraph shall be added to Article 2:

"3. The application of this Directive to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.¹”;

¹ New recital (19b): "Whereas the Ministerial Statement on Gibraltar Airport, agreed in Cordoba on September 18th 2006, during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on the Airport made in London on 2nd December 1987, and the full compliance with it will be deemed to constitute compliance with the 1987 declaration."

(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) the following points are added:

“(o) 'aircraft operator' means the person who operates an aircraft at the time it performs an aviation activity listed in Annex I or, where the operator is not known or is not identified by the owner of the aircraft, the owner of the aircraft;

(p) 'commercial air transport operator' means an operator that, for remuneration, provides scheduled or non-scheduled air transport services to public for the carriage of passengers, freight or mail;

(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 an aerodrome situated in the territory of a Member State and those which arrive in such an aerodrome 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;”.

- (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 3a(a) - new

Aviation activities

Within 6 months of the entry into force of this Directive, guidelines shall be developed, in accordance with the procedure referred to in Article 23(2), on the detailed interpretation of the aviation activities in Annex I, in particular flights related to search and rescue, fire-fighting flights, humanitarian flights, emergency medical flights, and flights performed by commercial air transport operators operating for three consecutive four-month periods less than 243 flights per period.

Article 3b

Total quantity of allowances for aviation

1. For the period from 1 January 2012 to 31 December 2012, the total quantity of allowances to be allocated to aircraft operators shall be equivalent to 100% of the historical aviation emissions.
2. For the period referred to in Article 11(2) beginning on 1 January 2013, and, in the absence of any amendments following the review referred to in Article 30(4), for each subsequent period, the total quantity of allowances to be allocated to aircraft operators shall be equivalent to 100% of the historical aviation emissions multiplied by the number of years in the period.
3. The Commission shall review the total quantity of allowances to be allocated to aircraft operators in accordance with Article 30(4).
4. 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, including estimates based on actual traffic information. This decision shall be considered within the committee referred to in Article 23(1).

Article 3c

Method of allocation of allowances for aviation through auctioning

1. In the period referred to in Article 3b(1), 10% of allowances shall be auctioned.²
2. For future periods, the percentage to be auctioned referred to in paragraph 1 may be increased, as part of the general review of this Directive.
3. A Regulation shall be adopted 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 or Article 3d(a)(8). 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 3b(1), the reference year shall be 2010 and for each subsequent period referred to in Article 3b, 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).

² New recital: "Full harmonisation of the proportion of allowances issued free of charge to all aircraft operators participating in the scheme is appropriate to ensure a level playing field for aircraft operators given the fact that each aircraft operator will be regulated by a single Member State in respect of all their operations to, from and within the European Union and the non-discrimination provisions of bilateral Air Service Agreements with third countries.".

4. It shall be for Member States to determine the use to be made of revenues generated from the auctioning of allowances. Those revenues should be used to tackle climate change in the EU and third countries and to cover the costs of the administering Member State in relation to this Directive.³

³ Recital 14:

"Aviation contributes to the overall climate change impact of human activities and the environmental impact of greenhouse gas emissions from aircraft can be mitigated through measures to tackle climate change in the EU and third countries, and to fund research and development for mitigation and adaptation. Whereas decisions on national public expenditure issues are a matter for Member States, in line with the principle of subsidiarity. Without prejudice to that position, revenues generated from the auctioning of allowances, or an equivalent amount where required by overriding budgetary principles of the Member States, such as unity and universality, should be used to mitigate greenhouse gas emissions, to adapt to the impacts of climate change in the EU and third countries, to fund research and development for mitigation and adaptation and to cover the cost of administering the scheme. This could include measures to encourage environmentally-friendly transport. The use of auctioning proceeds should in particular fund contributions to the Global Energy Efficiency and Renewable Energy Fund, and measures to avoid deforestation and facilitate adaptation in developing countries. The provisions relating to the use of revenues in this Directive should not prejudice any decision on the use to be made of revenues generated from the auctioning of allowances in the broader context of the general review of this Directive."

New recital 14a:

"Provisions for the use of funds from auctioning should be notified to the Commission. Such notification does not release Member States from the obligation laid down in Article 88(3) of the Treaty, to notify certain national measures. The Directive does not prejudice the outcome of any future State aid procedures that may be undertaken in accordance with Articles 87 and 88 of the Treaty."

5. 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 3b, each aircraft operator may apply for an allocation of allowances that are to be allocated free of charge. 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 monitoring year. For the purposes of this Article, the monitoring year shall be the calendar year ending twenty four months before the start of the period to which it relates in accordance with Annexes IV and V or, in relation to the period referred to in Article 3b(1), 2010. Any application must be made at least twenty one months before the start of the period to which it relates or, in relation to the period referred to in Article 3b(1), by 30 March 2011.
2. At least eighteen months before the start of the period to which the application relates or, in relation to the period referred to in Article 3b(1), by 30 June 2011, Member States shall submit applications received under paragraph 1 to the Commission.
3. At least fifteen months before the start of each period referred to in Article 3b(2) or, in relation to the period referred to in Article 3b(1), by 30 September 2011, the Commission shall calculate :
 - (a) the total quantity of allowances to be allocated for that period in accordance with Article 3b;
 - (b) the number of allowances to be auctioned in that period in accordance with Article 3b;

- (c) the number of allowances in the special reserve for aircraft operators in that period in accordance with Article 3d(a)(1);
- (d) the number of allowances to be allocated free of charge in that period by subtracting the number of allowances referred to in point (b) and (ba) from the total quantity of allowances decided upon under point (a);
- (e) 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 (c), expressed as allowances per tonne-kilometre, shall be calculated by dividing the number of allowances referred to in point (b) 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 (c) 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 2012 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 under this Article or Article 3d(a).

Article 3d(a) - new

Special reserve for certain aircraft operators

1. In each period referred to in Article 3b(2), three percent of the total quantity of allowances to be allocated shall be set aside in a special reserve for aircraft operators:
 - (a) who start performing an aviation activity falling within Annex I after the year for which tonne-kilometre data was submitted under Article 3d(1) in respect of a period referred to in article 3b(2); or
 - (b) whose tonne-kilometre data increases by an average of more than 18 % annually between the year for which tonne-kilometre data was submitted under Article 3d(1) in respect of a period referred to in Article 3b(2) and the second calendar year of that period,and
 - (c) whose activity under point a), or additional activity under point b), is not in whole or in part a continuation of an aviation activity previously performed by another aircraft operator.
2. An aircraft operator who is eligible under paragraph 1 may apply for a free allocation of allowances from the special reserve by making an application to the competent authority of its administering Member State. An application must be made by 30 June in the third year of the period referred to in Article 3b(2) to which it relates.

3. An application under paragraph 2 shall:
- (a) include verified tonne-kilometre data in accordance with Annex IV and V for the aviation activities listed in Annex I performed by the aircraft operator in the second calendar year of the period referred to in Article 3b(2) to which the application relates,
 - (b) provide evidence that the criteria for eligibility under paragraph 1 are fulfilled;
and
 - (c) in the case of aircraft operators falling within paragraph 1(b), state:
 - (i) the percentage increase in tonne-kilometres performed by that aircraft operator between the year for which tonne-kilometre data was submitted under Article 3d(1) in respect of a period referred to in Article 3b(2) and the second calendar year of that period;
 - (ii) the absolute growth in tonne-kilometres performed by that aircraft operator between the year for which tonne-kilometre data was submitted under Article 3d(1) in respect of a period referred to in Article 3b(2) and the second calendar year of that period; and
 - (iii) the absolute growth in tonne-kilometres performed by that aircraft operator between the year for which tonne-kilometre data was submitted under Article 3d(1) in respect of a period referred to in Article 3b(2) and the second calendar year of that period which exceeds the percentage specified in paragraph 1(b).

4. No later than 6 months from the deadline for making an application under paragraph 2, Member States shall submit applications received under that paragraph to the Commission.
5. No later than 12 months from the deadline for making an application under paragraph 2, the Commission shall decide on 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 4.

Subject to paragraph 6, the benchmark shall be calculated by dividing the number of the allowances in the special reserve by the sum of:

- (a) the tonne-kilometre data for aircraft operators falling within paragraph 1(a) included in applications submitted to the Commission in accordance with paragraphs 3(a) and 4; and
 - (b) the absolute growth in tonne-kilometres exceeding the percentage specified in paragraph 1(b) for aircraft operators falling within paragraph 1(b) included in applications submitted to the Commission in accordance with paragraphs 3(c)(iii) and 4.
6. The benchmark calculated under paragraph 5 shall not result in an annual allocation per tonne-kilometre greater than the annual allocation per tonne-kilometre to aircraft operators under Article 3d(4).

7. Within 3 months from the date on which the Commission adopts a decision under paragraph 5, each administering Member State shall calculate and publish:
 - (a) the allocation of allowances from the special reserve to each aircraft operator whose application it submitted to the Commission in accordance with paragraph 2. This allocation shall be calculated by multiplying the benchmark published under paragraph 5 by:
 - (i) in the case of an aircraft operator falling within paragraph 1(a), the tonne-kilometre data included in the application submitted to the Commission under paragraphs 3(a) and 4;
 - (ii) in the case of an aircraft operator falling within paragraph 1(b), the absolute growth in tonne-kilometres exceeding the percentage specified in paragraph 1(b) included in the application submitted to the Commission under paragraphs 3(c)(iii) and 4; and
 - (b) the allocation of allowances to each aircraft operator for each year, which shall be determined by dividing its allocation of allowances under point (a) by the number of full calendar years remaining in the period referred to in Article 3b(2) to which the allocation relates.
8. Any unallocated allowances in the special reserve shall be auctioned by Member States.
9. Detailed rules may be established on the operation of the special reserve under this Article, including the assessment of compliance with eligibility criteria under paragraph 1. Those measures, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the procedure referred to in Article 23(2a).

Article 3d(b) - new
Monitoring and reporting plans

Administering Member States shall ensure that each aircraft operator submits to the competent authority in that State a monitoring plan setting out measures to monitor and report emissions and tonne-kilometre data for the purpose of an application under Article 3d and that such plans are approved by the competent authority in accordance with the guidelines adopted pursuant to Article 14.

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 6(2)(e), after “allowances” the words “, other than allowances issued under Chapter II,” are inserted.
- (5) The following heading of Chapter IV is inserted after Article 11:

“Chapter IV

Provisions applying to aviation and stationary installations”.

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

“1a. Subject to paragraph 3, for the period referred to in Article 3b, Member States shall allow each aircraft operator to use CERs and ERUs from project activities. For the period referred to in Article 3b(1), aircraft operators may use CERs and ERUs, up to 15% of the number of allowances it is required to surrender pursuant to Article 12(2a).

For subsequent periods, the percentage shall be decided in line with the procedure for determining the use of CERs and ERUs from project activities, as part of the review of this Directive and taking into consideration the development of the international climate regime.

The Commission shall publish this percentage at least six months before the start of each period referred to in Article 3b.”⁴

(7) In Article 11b(2), the word “installations” is replaced by “activities”.

(8) 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;

⁴ New phrase added to recital (15): "These CERs and ERUs should be consistent with the ETS acceptance criteria, as laid out in this Directive."

(b) the following paragraph 2a is 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;

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

(9) In Article 13(3), “Article 12(3)” is replaced by “Article 12(2a) or (3)”.

(10) 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 words “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”.

(11) 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, add the following paragraph:

“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).”.

(12) 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.

- (d) the following new paragraphs are inserted:

- "5. In the event that an aircraft operator fails to comply with the requirements of this Directive and where other enforcement measures have failed to ensure compliance, its administering Member State may request the Commission to decide on the imposition of an operating ban on the aircraft operator concerned.

- 6. Any request by an administering Member State under paragraph 5 shall include:
 - (a) evidence that the aircraft operator has not complied with its obligations under the Directive;
 - (b) details of the enforcement action which has been taken by the Member State;
 - (c) a justification for the imposition of an operating ban at Community level; and
 - (d) a recommendation for the scope of an operating ban at Community level and any conditions that should be applied.

- 7. When requests such as those referred to in paragraph 5 are addressed to the Commission, the Commission shall inform the other Member States (through their representatives on the committee referred to in Article 23(1) in accordance with the procedures provided in the Committee's internal rules).

8. The adoption of the decisions referred to in paragraph 5 shall be preceded, when appropriate and practicable, by consultations with the authorities with responsibility for regulatory oversight over the aircraft operator concerned. Whenever possible, consultations shall be held jointly by the Commission and the Member States.
9. When the Commission is considering whether to adopt a decision referred to in paragraph 5, it shall disclose to the aircraft operator concerned the essential facts and considerations which form the basis for such decision. The aircraft operator concerned shall be given an opportunity to submit written comments to the Commission within 10 working days from the date of disclosure.
10. At the request of a Member State, a decision to impose an operating ban on the aircraft operator concerned may be adopted in accordance with the procedure referred to in Article 23(2).
11. Each Member State shall enforce, within its territory, any Community action agreed in accordance with this Article. Member States shall inform the Commission of any measures taken to implement the decisions adopted by the Commission.
12. Where appropriate, detailed rules shall be established in respect of the procedures referred to in this Article. These measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the procedure referred to in Article 23(2a)."

(13) 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.
- 1a. Where in the first two years of any period referred to in Article 3b, none of the attributed aviation emissions from flights performed by an aircraft operator falling within paragraph 1(b) are attributed to its administering Member State, the aircraft operator shall be transferred to another administering Member State in respect of the next period. The new administering Member State shall be the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator during the first two years of the previous period.
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

^{*} OJ L 24, 24.8.1992, p. 1.

- (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.

Article 18b

Assistance from Eurocontrol

For the purposes of carrying out its obligations under Articles 3b(4) and 18a, the Commission may request the assistance of Eurocontrol and may conclude to that effect any appropriate agreements with that organisation.”.

(14) Article 19 is amended as follows:

- (a) the following words shall be added to paragraph 3: “and provisions to take account of the inclusion of aviation activities in the Community scheme”.
- (b) the following new paragraph is added:
- "The Regulation on a standardised and secured system of registries shall ensure that allowances, CERs and ERUs surrendered by aircraft operators are only transferred to Member States' retirement accounts for the Kyoto Protocol's first commitment period to the extent that these correspond to emissions included in the national totals of Member States' national inventories for that period.";⁵

⁵ New recital: "Units surrendered by aviation operators should only count towards greenhouse gas reduction targets that take these emissions into account.".

(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

1. Where a third country adopts measures for reducing the climate change impact of flights departing from that country which land in the Community, the Commission, after having consulted with the third country, and with Member States within the Committee referred to in Article 23(1), shall consider options available in order to provide for optimal interaction between the Community scheme and that country's measures.

Where necessary, amendments may be adopted to provide for flights arriving from the third country concerned to be excluded from the aviation activities listed in Annex I or to provide for any other amendments to the aviation activities listed in Annex I which are required by an agreement pursuant to the fourth subparagraph. These measures, 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).

Any other amendments to this Directive may be proposed to the European Parliament and the Council.

The Commission may also, where appropriate, make recommendations to the Council in accordance with Article 300(1) of the Treaty to open negotiations with a view to concluding an agreement with the third country concerned.

2. The Community and its Member States shall continue to seek to reach an agreement on global measures to reduce greenhouse gas emissions from aviation. In the light of such agreement, the Commission shall consider whether amendments to this Directive as it applies to aircraft operators are necessary.”.

(17) Article 28 is amended as follows:

- (a) in paragraph (3b), 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.

(17a) The following paragraph is added to Article 30:

- “(4) By 1 June 2015 the Commission shall on the basis of monitoring and experience of the application of this Directive, review the functioning of this Directive in relation to aviation activities in Annex I and may make proposals as appropriate. The Commission shall give consideration in particular to:
- a) the implications and impacts of this Directive to the overall functioning of the EU scheme for greenhouse gas emission allowance trading;
 - b) the functioning of the aviation allowance market, covering in particular any possible market disturbances;
 - c) the environmental effectiveness of the scheme and the extent by which the total quantity of allowances to be allocated to aircraft operators under Article 3b should be reduced in line with overall EU emissions reductions targets;

- d) the impact of the scheme on the aviation sector;
- e) the continuing with the special reserve for aircraft operators, taking into account the likely convergence of growth rates across the industry;
- f) the impact of the scheme on the structural dependency on aviation transport of islands, landlocked and peripheral regions of the Community;⁶
- g) whether a gateway system should be included to facilitate the trading of allowances between aircraft operators and operators of installations whilst ensuring that no transactions would result in a net transfer of allowances from aircraft operators to operators of installations.
- h) the implications of the exclusion thresholds as specified in Annex I in terms of certified maximum take-off mass and number of flights per year performed by an aircraft operator.
- i) the impact of the exemption of certain flights performed in the framework of Public Service Obligations imposed in accordance with Regulation (EC) 2408/92 on the scheme.

The Commission will then report to the European Parliament and the Council.”.

⁶ New recital 19a: "The review of the functioning of this Directive in relation to aviation activities should consider the structural dependence on aviation of countries which do not have adequate and comparable alternative modes of transport and which are therefore highly dependent on air transport and where the tourism sector provides a high contribution to those countries' GDP".

The following heading is inserted after Article 30:

“Chapter V Final Provisions”.

(18) 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 18 months after its entry into force. They shall forthwith communicate to the Commission the text of those provisions.⁷

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.

⁷ New recital: "In accordance with paragraph 34 of the interinstitutional agreement on better lawmaking, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between the Directive and the transposition measures, and to make them public."

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 Brussels,

For the European Parliament
The President

For the Council
The President

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:

“For the year 2012 all flights which arrive at or depart from an aerodrome situated in the territory of a Member State to which the Treaty applies shall be included”;

(c) the following category of activity is added:

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|---|----------------|
| <i>Aviation</i> Flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies. This activity shall not include: | Carbon dioxide |
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| <p>a) flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a country other than a Member State, where this is substantiated by an appropriate status indicator in the flight plan;</p> <p>b) military flights performed by military aircraft and customs and police flights;</p> <p>ba) flights related to search and rescue, fire-fighting flights and humanitarian flights and emergency medical service flights authorised by the appropriate competent authority;</p> <p>c) any flights performed exclusively under visual flight rules as defined in Annex 2 to the Convention on International Civil Aviation 1944;</p> <p>d) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;</p> | |
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| <p>e) 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 or for the positioning or ferrying of the aircraft;</p> <p>f) flights performed exclusively for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based; and</p> <p>g) flights performed by aircraft with a certified maximum take-off mass of less than 5 700kg.</p> | |
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| <p>h) flights performed in the framework of Public Service Obligations imposed in accordance with EC Regulation 2408/92 on routes within Outermost Regions as defined in Article 299(2) of the EC Treaty or on routes where the capacity offered does not exceed 30 000 seats per year.</p> <p>i) flights, other than flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of an EU Member State, performed by a commercial air transport operator operating for three consecutive four-month periods less than 243 flights per period, which, but for this point, would fall within this activity.⁸</p> | |
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⁸ New recital (19a): "To avoid disproportionate administrative burdens, in particular for developing country airlines with air services of very limited frequency to and from Europe, aircraft operators operating for three consecutive four-month periods less than 243 flights per period should be exempt from the scheme."

(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 Articles 3d and 3d(a)

For the purpose of applying for an allocation of allowances in accordance with Article 3d(1) or Article 3d(a)(2), the amount of aviation activity shall be calculated in tonne-kilometres using the following formula:

tonne kilometres = distance x payload

where:

"distance" means the great circle distance between the airport of departure and the airport of arrival plus an additional fixed factor of 95 km; 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 choose 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, his checked baggage of 110 kg.

Reporting of tonne-kilometre data for the purpose of Articles 3d and 3d(a)

Each aircraft operator shall include the following information in its application under Article 3d(1) or Article 3d(a)(2):

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;
- Chosen method for calculation of mass for passengers and checked baggage;
- 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.

Additional provisions for the verification of tonne-kilometre data submitted for the purposes of Articles 3d and 3d(a)

- (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 Articles 3d(1) and 3d(a)(2). 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.”.

