



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 April 2008

**Interinstitutional File:
2006/0304 (COD)**

**5058/3/08
REV 3 ADD 1**

**ENV 2
AVIATION 2
MI 1
IND 1
ENER 2
CODEC 4**

STATEMENT OF THE COUNCIL'S REASONS

Subject : Common position adopted by the Council on 18 April 2008 with a view to the adoption of a directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

In December 2006, the Commission adopted its proposal ¹ 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. This proposal was transmitted to the Council on 22 December 2006.

The European Parliament adopted its first-reading opinion on 13 November 2007.

The Economic and Social Committee adopted its opinion on 30 May 2007. ²

The Committee of the Regions adopted its opinion on 10 October 2007. ³

The Council adopted its common position on 18 April 2008.

II. OBJECTIVE

The main objective of the proposed Directive is to reduce the climate change impact attributable to aviation, in view of the growing emissions from the aviation sector, namely by including aviation activities in the general Community scheme for emissions trading (ETS).

The proposal takes the form of an amendment to Directive 2003/87/EC (ETS Directive).

¹ Doc. 5154/07 - COM(2006) 818 final

² OJ C 206, 27.7.2007, p. 47

³ OJ C 305, 15.12.2007, p. 15

III. ANALYSIS OF THE COMMON POSITION

General

The common position incorporates a number of the European Parliament's first-reading amendments, either verbatim, in part or in spirit. These improve or clarify the text of the proposed Directive. However, other amendments are not reflected in the common position because the Council agreed that they were either unnecessary and/or impracticable, being insufficiently supported by current scientific knowledge and entailing increased and non-commensurate administrative costs for their implementation.

The common position also includes a number of changes other than those envisaged in the European Parliament's first-reading opinion as, in a number of cases, provisions from the original Commission proposal have been supplemented with new elements or entirely redrafted, with some completely new provisions inserted.

In addition, a number of drafting changes merely seek to clarify the text or to ensure the overall coherence of the Directive.

Specific

(1) Start date and scope of the scheme

The Council, agreeing with the European Parliament, has rejected the two-stage approach proposed by the Commission and has opted for a **single starting date for all flights** to be included in the scheme. This was deemed necessary to ensure the scheme's enhanced environmental impact whilst minimising distortion of competition. However, the Council, contrary to the Commission and the European Parliament, which both suggested 2011 as the start year, decided that delaying the scheme for one year, i.e. **2012**, would be reasonable in view of the procedural steps involved in the adoption of the legislation, the complexity of the scheme and the need to provide for a number of implementing measures.

(2) *Allocation*

The Council, very much like the European Parliament, considers the issue of allocation of allowances of central importance for the functioning of the scheme. In this respect, the Council has introduced a number of changes to the Commission proposal that would bring its contents closer to the spirit of a number of EP amendments, even though it did not incorporate them literally in the text of the common position.

Thus, whilst the Council has maintained the **cap** of 100% of historical emissions, as in the Commission proposal, it has nonetheless pointed towards a possible future reduction as part of a review of the functioning of the Directive in relation to aviation activities, to be carried out by 2015 (Article 30(4)).

The Council agreed with the Commission's choice of **allocation mechanism** that would work partly by allocation of allowances free-of-charge based on a simple benchmark and partly by auctioning.

The Council has nevertheless slightly **adjusted the benchmark** by introducing modifications to the payload (which it increased to 110 kg per passenger and their checked baggage) and to the distance (with 95 km added to the greater circle distance) used to calculate the aviation activity (*tonne kilometre*) of each aircraft operator.

Concerning the **levels of auctioning**, the Council has rejected the Commission proposal to use a percentage corresponding to the average percentage proposed by the Member States that would include auctioning in their national allocation plans (NAPs), opting instead for a **fixed percentage of 10%**. Additionally, the Council also introduced the explicit possibility for that percentage to be increased as part of the general review of the ETS Directive. Thus, although not incorporating EP amendment 74, the common position shares in fact the general spirit of that amendment as it acknowledges the desirability of providing for a (gradual) increase in the level of auctioning. The choice of an initially lower percentage of auctioning coupled with the possibility of future increases was considered preferable by the Council, as a more cautious approach ensuring, on the one hand, that aviation would not be treated significantly differently from other sectors falling within the ETS, whilst providing, on the other hand, for better adaptation to the overall functioning of the Community scheme.

On the **use of the proceeds generated from auctioning**, the Council adopts a slightly modified position with regard to both Commission and European Parliament. According to the current wording of Article 3d(4), it is for Member States to decide how these revenues are to be used. Nevertheless, Article 3d(4) provides that these proceeds should be used to tackle climate change both in the EU and in third countries and to cover the administrative costs of running the scheme. This modification seeks to ensure respect of the overriding constitutional and/or budgetary principles in the domestic legal orders of a number of Member States.

One of the major new elements that the Council has introduced to the Commission proposal relates to the creation of a **special reserve for new entrants or fast-growing aircraft operators** (i.e. operators that can demonstrate a growth rate of 18% annually in the years following the base year used for the allocation of allowances). According to Article 3f, a set percentage (3%) of allowances would be set aside to be distributed to eligible aircraft operators on the basis of a benchmark system similar to the system used for the initial allocation. The introduction of such a provision would ensure that new aircraft operators or aircraft operators in Member States with initially very low (but currently increasing) mobility rates would not be penalised by the scheme. The Council has counterbalanced any possible market distortions by making the distribution of allowances under the special reserve a one-off, alongside a provision that the resulting annual allocation per tonne-kilometre to eligible aircraft operators shall not be greater than the annual allocation per tonne-kilometre to aircraft operators under the main allocation (Article 3f(6)). Thus, the Council is in fact moving in the same direction as EP amendments 22, 28 and 33. Nevertheless, the functioning of the special reserve as envisaged in the common position would entail lower administrative costs and would not introduce significant distortions in the market.

(3) Exemptions

The Council has **refined** further a number of exemptions from the scheme, taking into consideration the corresponding EP amendments (i.e. amendments 51, 52, 53, 70 and 79). Thus, it has opted not to exclude flights by EU Heads of State from the scheme, but has chosen to include exemptions for flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights. Furthermore, flights performed exclusively for the purpose of checking, testing or certifying aircraft or equipment, whether airborne or ground-based, are also excluded.

The common position has introduced an additional exemption from the scheme, namely a "**de minimis**" clause entailing the exclusion of flights performed by a commercial air transport operator operating, for three consecutive four-month periods, fewer than 243 flights per period. The Council has coupled this exemption with a corresponding definition of "commercial air transport operator" and a recital aiming to ensure that operators with very low traffic levels, including many operators from developing countries, would not be faced with disproportionate administrative costs. Thus, a strong political signal is sent to developing countries, whilst at the same time red tape and the general administrative burdens associated with the administering of the scheme are reduced. The possible adverse effects on the market are taken into account by opting for a neutral criterion for the exclusion, based on "pure" activity.

The Council, very much like the European Parliament, has also taken into consideration the **special needs of outermost regions and the particular status of flights performed under public service obligations (PSOs)**. The common position excludes from the scheme flights performed in the framework of public service obligations on routes within outermost regions or on routes where the capacity offered does not exceed 30 000 seats per year, and provides also for the corresponding recital. In this respect, therefore, it goes beyond EP amendment 78.

(4) Other issues

A new article is inserted (Article 3g) imposing on Member States an additional obligation to ensure that aircraft operators submit to the relevant competent authority **monitoring and reporting plans** setting out measures to monitor and report emissions and tonne-kilometre data for the purpose of applying for allowances to be issued.

A number of new paragraphs are added to the **enforcement** article of the ETS Directive (Article 16), providing for the possibility for an administering Member State to request the Commission to impose an operating ban at Community level on an aircraft operator that fails to comply with the requirements of the Directive. Whilst the imposition of an operating ban is viewed as an enforcement measure of last resort, its inclusion was considered necessary, in order to guarantee the full compliance of aircraft operators with the scheme, a matter of utmost importance to the Council.

Furthermore, the Council has modified the Commission proposal as regards the **conversion of allowances and their subsequent use towards international commitments**, opting for a "semi-open" scheme and deleting the provision from the Commission's proposal that would have enabled aircraft operators to convert their allowances into allowances that can be used by other operators. In recognition of the fact that domestic (and not international) aviation is part of Member State's commitments for the first commitment period under the Kyoto Protocol, a new paragraph is added to current Article 19 of the ETS Directive providing for the Regulation on Registries to ensure that allowances, CERs and ERUs are only transferred to Member States' retirement accounts for the first commitment period under the Kyoto Protocol if they correspond to emissions included in the national totals of Member State's national inventories for that period.

The Council has also substantially amended Article 25a, which now seeks to clarify the various institutional procedures available to the Commission for adapting, adjusting or amending the Directive following consultation or conclusion of new agreements with **third countries**. The importance of seeking a global solution to the issue of reducing emissions from aviation activities is emphasised, as is the need to seek the optimal interaction between the Community scheme and equivalent schemes from third countries. In this respect, even though the Council chose not to incorporate verbatim the corresponding EP amendment (amendment 49), the spirit of the common position follows very closely its rationale.

Finally, a number of points are added to the current **review clause** of the ETS Directive (Article 30), to serve as a "check-list" for reviewing the functioning of the Directive in relation to aviation activities and for addressing any problems that might be bound to arise from the inclusion of these activities in the general ETS.

IV. CONCLUSION

The Council believes that the common position represents a balanced package of measures that would contribute to reducing aviation emissions in a manner consistent with the policies and objectives of the EU, as expressed also within the UNFCCC, whilst ensuring that the scheme is applied to all aircraft operators without distinction as to nationality and, therefore, that the inclusion of aviation in the Community ETS should not lead to distortions of competition.

The Council looks forward to constructive discussions with the European Parliament with a view to the early adoption of the Directive.
