

DIRECTIVES

DIRECTIVE 2008/101/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 November 2008

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 Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

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⁾ Opinion of the European Parliament of 13 November 2007 (not yet published in the Official Journal), Council Common Position of 18 April 2008 (OJ C 122 E, 20.5.2008, p. 19) and Position of the European Parliament of 8 July 2008 (not yet published in the Official Journal). Council Decision of 24 October 2008.

⁽⁴⁾ OJ L 275, 25.10.2003, p. 32.

(2) The ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC), which was approved on behalf of the European Community by Council Decision 94/69/EC ⁽⁵⁾, is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

(3) The European Council meeting in Brussels on 8 and 9 March 2007 underlined the vital importance of achieving the strategic objective of limiting the global average temperature increase to not more than 2 °C above pre-industrial levels. The latest scientific findings reported by the Intergovernmental Panel on Climate Change (IPCC) in its Fourth Assessment Report demonstrate even more clearly that the negative impacts of climate change are increasingly posing a serious risk to ecosystems, food production and the attainment of sustainable development and of the Millennium Development Goals, as well as to human health and security. Keeping the 2 °C objective within reach requires stabilisation of the concentration of greenhouse gases in the atmosphere in line with about 450 ppmv CO₂ equivalent, which requires global greenhouse gas emissions to peak within the next 10 to 15 years and substantial global emission reductions to at least 50 % below 1990 levels by 2050.

(4) The European Council emphasised that the European Union is committed to transforming Europe into a highly energy-efficient and low greenhouse gas-emitting economy and, until a global and comprehensive post-2012 agreement is concluded, made a firm independent commitment for the EU to reduce its greenhouse gas emissions to at least 20 % below 1990 levels by 2020. The limitation of greenhouse gas emissions from aviation is an essential contribution in line with this commitment.

⁽⁵⁾ OJ L 33, 7.2.1994, p. 11.

- (5) The European Council emphasised that the EU is committed to a global and comprehensive agreement for reductions in greenhouse gas emissions beyond 2012, providing an effective, efficient and equitable response on the scale required to face climate change challenges. It endorsed a 30 % reduction in the EU's greenhouse gas emissions below 1990 levels by 2020 as its contribution to a global and comprehensive agreement for the period beyond 2012, provided that other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries to contributing adequately according to their responsibilities and respective capabilities. The EU is continuing to take the lead in the negotiation of an ambitious international agreement that will achieve the objective of limiting the global temperature increase to 2 °C and is encouraged by the progress made towards this objective at the 13th Conference of the Parties to the UNFCCC in Bali in December 2007. The EU will seek to ensure that such a global agreement includes measures to reduce greenhouse gas emissions from aviation and, in this event, the Commission should consider which amendments to this Directive as it applies to aircraft operators are necessary.
- (6) On 14 February 2007 the European Parliament adopted a resolution on climate change ⁽¹⁾ in which it referred to the objective to limit the average global temperature increase to 2 °C above pre-industrialisation levels, and in which it urged the EU to maintain its leading role in the negotiations with a view to establishing a post-2012 international framework on climate change and to maintain a high level of ambition in future discussions with its international partners, and it emphasised the need to undertake overall emission reductions for all industrialised countries of 30 % compared to 1990 emission levels by 2020 with a view to achieving a reduction in the order of 60 to 80 % by 2050.
- (7) The UNFCCC requires all parties to formulate and implement national and, where appropriate, regional programmes containing measures to mitigate climate change.
- (8) The Kyoto Protocol to the UNFCCC, which was approved on behalf of the European Community by Council Decision 2002/358/EC ⁽²⁾, 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).
- (9) While the Community is not a Contracting Party to the 1944 Chicago Convention on International Civil Aviation (the Chicago Convention), all Member States are Contracting Parties to that Convention and members of the ICAO. Member States continue to support work with other States in the ICAO on the development of measures, including market-based instruments, to address the climate change impacts of aviation. 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 then be pursued further. Consequently, Resolution A35-5 of the ICAO's 35th Assembly held in September 2004 did not propose a new legal instrument but instead endorsed open emissions trading and the possibility for States to incorporate emissions from international aviation into their emissions trading schemes. Appendix L to Resolution A36-22 of the ICAO's 36th Assembly held in September 2007 urges Contracting States not to implement an emissions trading system on other Contracting States' aircraft operators except on the basis of mutual agreement between those States. Recalling that the Chicago Convention recognises expressly the right of each Contracting Party to apply on a non-discriminatory basis its own air laws and regulations to the aircraft of all States, the Member States of the European Community and fifteen other European States placed a reservation on this resolution and reserved the right under the Chicago Convention to enact and apply market-based measures on a non-discriminatory basis to all aircraft operators of all States providing services to, from or within their territory.
- (10) The Sixth Community Environment Action Programme established by Decision No 1600/2002/EC of the European Parliament and of the Council ⁽³⁾ provided for the Community to identify and undertake specific actions to reduce greenhouse gas emissions from aviation if no such action were agreed within the ICAO by 2002. In its conclusions of October 2002, December 2003 and October 2004, the Council has repeatedly called on the Commission to propose action to reduce the climate change impact of international air transport.
- (11) Policies and measures should be implemented at Member State and Community level across all sectors of the Community economy 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.

⁽¹⁾ OJ C 287 E, 29.11.2007, p. 344.

⁽²⁾ OJ L 130, 15.5.2002, p. 1.

⁽³⁾ OJ L 242, 10.9.2002, p. 1.

- (12) In its Communication of 27 September 2005 to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions entitled 'Reducing the Climate Change Impact of Aviation', the Commission outlined 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 2 December 2005, the Council recognised that, from an economic and environmental point of view, the inclusion of the aviation sector in the Community scheme seemed 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 2006 on reducing the climate change impact of aviation⁽¹⁾, 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.
- (13) A comprehensive package of measures should also include operational and technological measures. Improvements in air traffic management under the Single European Sky and SESAR programmes could help increase overall fuel efficiency by up to 12%. Research into new technologies, including into methods for improving the fuel efficiency of aircraft, can further cut emissions from aviation.
- (14) The objective of the amendments made to Directive 2003/87/EC by this Directive is to reduce the climate change impact attributable to aviation 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, including the obligation to prepare a monitoring plan and to monitor and report emissions in accordance with that plan. An aircraft 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 aircraft operator is not known, the owner of the aircraft should be regarded as the aircraft operator unless it proves which other person was the aircraft operator.
- (16) In order to avoid distortions of competition and improve environmental effectiveness, emissions from all flights arriving at and departing from Community aerodromes should be included from 2012.
- (17) The Community and its Member States should continue to seek an agreement on global measures to reduce greenhouse gas emissions from aviation. The Community scheme may serve as a model for the use of emissions trading worldwide. The Community and its Member States should continue to be in contact with third parties during the implementation of this Directive and to encourage third countries to take equivalent measures. If a third country adopts measures, which have an environmental effect at least equivalent to that of this Directive, to reduce the climate impact of flights to the Community, the Commission should consider the options available in order to provide for optimal interaction between the Community scheme and that country's measures, after consulting with that country. Emissions trading schemes being developed in third countries are beginning to provide for optimal interaction with the Community scheme in relation to their coverage of aviation. Bilateral arrangements on linking the Community scheme with other trading schemes to form a common scheme or taking account of equivalent measures to avoid double regulation could constitute a step towards global agreement. Where such bilateral arrangements are made, the Commission may amend the types of aviation activities included in the Community scheme, including consequential adjustments to the total quantity of allowances to be issued to aircraft operators.
- (18) In line with the principle of better regulation, certain flights should be exempt from the Community scheme. To further avoid disproportionate administrative burdens, commercial air transport operators operating, for three consecutive four-month periods, fewer than 243 flights per period should be exempt from the Community scheme. This would benefit airlines operating limited services within the scope of the Community scheme, including airlines from developing countries.
- (19) Aviation has an impact on the global climate through releases of carbon dioxide, nitrogen oxides, water vapour and sulphate and soot particles. The IPCC has estimated that the total climate impact of aviation is currently two to four times higher than the effect of its past carbon

⁽¹⁾ OJ C 303 E, 13.12.2006, p. 119.

dioxide emissions alone. Recent Community research indicates that the total climate 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 is to be based on the precautionary principle. Pending scientific progress, all impacts of aviation should be addressed to the extent possible. Emissions of nitrogen oxides will be addressed in other legislation to be proposed by the Commission in 2008. Research on the formation of contrails and cirrus clouds and effective mitigation measures, including operational and technical measures, should be promoted.

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 reduce 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 Community scheme. Revenues generated from auctioning should also be used on low-emission transport. The proceeds of auctioning should in particular be used to fund contributions to the Global Energy Efficiency and Renewable Energy Fund, and measures to avoid deforestation and facilitate adaptation in developing countries. The provisions of this Directive relating to the use of revenues 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 Directive 2003/87/EC.

- (20) In order to avoid distortions of competition, a harmonised allocation methodology should be specified for determining the total quantity of allowances to be issued and for distributing allowances to aircraft operators. A proportion of allowances will be allocated by auction in accordance with rules to be developed by the Commission. A special reserve of allowances should be set aside to ensure access to the market for new aircraft operators and to assist aircraft operators which increase sharply the number of tonne-kilometres that they perform. 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) Full harmonisation of the proportion of allowances issued free of charge to all aircraft operators participating in the Community scheme is appropriate in order to ensure a level playing field for aircraft operators, given that each aircraft operator will be regulated by a single Member State in respect of all their operations to, from and within the EU and by the non-discrimination provisions of bilateral air service agreements with third countries.
- (22) 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, especially in developing countries, and to fund research and development for mitigation and adaptation including in particular in the fields of aeronautics and air transport. Decisions on national public expenditure are a matter for Member States, in line with the principle of subsidiarity.
- (23) Provisions for the use of funds from the 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. This Directive should be without prejudice to the outcome of any future State aid procedures that may be undertaken in accordance with Articles 87 and 88 of the Treaty.
- (24) To increase the cost-effectiveness of the Community scheme, aircraft operators should be able to use certified emission reductions (CERs) and emission reduction units (ERUs) from project activities to meet obligations to surrender allowances up to a harmonised limit. The use of CERs and ERUs should be consistent with the criteria for acceptance for use in the trading scheme set out in this Directive. The average of the percentages specified by Member States for the use of CERs and ERUs during the Kyoto Protocol's first commitment period is approximately 15 %.
- (25) In its Conclusions, the European Council meeting in Brussels on 13 and 14 March 2008 recognised that in a global context of competitive markets the risk of carbon leakage is a concern that needs to be analysed and addressed urgently in the new Emissions Trading System Directive, so that if international negotiations fail appropriate measures can be taken. An international agreement remains the best way of addressing this issue.

- (26) 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 Member 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. In the event that an aircraft operator fails to comply with the requirements of this Directive and other enforcement measures by the administering Member State have failed to ensure compliance, Member States should act in solidarity. The administering Member State should therefore be able to request the Commission to decide on the imposition of an operating ban at Community level on the aircraft operator concerned, as a last resort.
- (27) To maintain the integrity of the accounting system for the Community scheme in view of the fact that emissions from international aviation are not 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.
- (28) In order to ensure equal treatment of aircraft operators, Member States should follow harmonised rules for the administration of aircraft operators for which they have responsibility, in accordance with specific guidelines to be developed by the Commission.
- (29) To safeguard the environmental integrity of the Community scheme, units surrendered by aircraft operators should only count towards greenhouse gas reduction targets that take these emissions into account.
- (30) 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 imposed by this Directive.
- (31) 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.
- (32) The Commission should review the functioning of Directive 2003/87/EC in relation to aviation activities in the light of experience of its application and should then report to the European Parliament and the Council.
- (33) The review of the functioning of Directive 2003/87/EC 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 in which the tourism sector provides a high contribution to those countries' gross domestic product. Special consideration should be given to mitigating or even eliminating any accessibility and competitiveness problems arising for the outermost regions of the Community, as specified in Article 299(2) of the Treaty, and problems for public service obligations in connection with the implementation of this Directive.
- (34) The Ministerial Statement on Gibraltar Airport, agreed in Córdoba on 18 September 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 2 December 1987, and full compliance with it will be deemed to constitute compliance with the 1987 Declaration.
- (35) 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 Commission ⁽¹⁾.
- (36) In particular, the Commission should be empowered to adopt measures for the auctioning of allowances not required to be issued for free; to adopt detailed rules on the operation of the special reserve for certain aircraft operators and on the procedures relating to requests for the Commission to decide on the imposition of an operating ban on an aircraft operator; 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, *inter alia*, by supplementing this Directive with 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.
- (37) Since the objective of this Directive cannot be sufficiently achieved by the Member States 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.
- (38) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽²⁾, 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.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ C 321, 31.12.2003, p. 1.

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

years 2004, 2005 and 2006 from aircraft performing an aviation activity listed in Annex I.;

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2003/87/EC

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

1. the following title shall be inserted before Article 1:

'CHAPTER I

GENERAL PROVISIONS';

2. 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.';

3. Article 3 shall be amended as follows:

(a) point (b) shall be replaced by the following:

'(b) "emissions" means the release of greenhouse gases into the atmosphere from sources in an installation 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 shall be 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 that person 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 the public for the carriage of passengers, freight or mail;

(q) "administering Member State" means the Member State responsible for administering the Community 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

4. the following Chapter shall be inserted after Article 3:

'CHAPTER II

AVIATION

Article 3a

Scope

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

Aviation activities

By 2 August 2009, the Commission shall, in accordance with the regulatory procedure referred to in Article 23(2), develop guidelines on the detailed interpretation of the aviation activities listed in Annex I.

Article 3c

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 97 % 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 95 % of the historical aviation emissions multiplied by the number of years in the period.

This percentage may be reviewed as part of the general review of this Directive.

3. The Commission shall review the total quantity of allowances to be allocated to aircraft operators in accordance with Article 30(4).

4. By 2 August 2009, the Commission shall decide on the historical aviation emissions, based on best available data, including estimates based on actual traffic information. That decision shall be considered within the Committee referred to in Article 23(1).

Article 3d

Method of allocation of allowances for aviation through auctioning

1. In the period referred to in Article 3c(1), 15 % of allowances shall be auctioned.

2. From 1 January 2013, 15 % of allowances shall be auctioned. This percentage 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 of this Article or Article 3f(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 3c(1), the reference year shall be 2010 and for each subsequent period referred to in Article 3c 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(3).

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, *inter alia*, to reduce greenhouse gas emissions, to adapt to the impacts of climate change in the EU and third countries, especially developing countries, to fund research and development for mitigation and adaptation, including in particular in the fields of aeronautics and air transport, to reduce emissions through low-emission transport and to cover the cost of administering the Community scheme. The proceeds of auctioning should also be used to fund contributions to the Global Energy Efficiency and Renewable Energy Fund, and measures to avoid deforestation.

Member States shall inform the Commission of actions taken pursuant to this paragraph.

5. Information provided to the Commission pursuant to this Directive does not free Member States from the notification obligation laid down in Article 88(3) of the Treaty.

Article 3e

Allocation and issue of allowances to aircraft operators

1. For each period referred to in Article 3c, 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 aircraft operator for the monitoring year. For the

purposes of this Article, the monitoring year shall be the calendar year ending 24 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 3c(1), 2010. Any application shall be made at least 21 months before the start of the period to which it relates or, in relation to the period referred to in Article 3c(1), by 31 March 2011.

2. At least 18 months before the start of the period to which the application relates or, in relation to the period referred to in Article 3c(1), by 30 June 2011, 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 3c(2) or, in relation to the period referred to in Article 3c(1), by 30 September 2011, the Commission shall calculate and adopt a decision setting out:

- (a) the total quantity of allowances to be allocated for that period in accordance with Article 3c;
- (b) the number of allowances to be auctioned in that period in accordance with Article 3d;
- (c) the number of allowances in the special reserve for aircraft operators in that period in accordance with Article 3f(1);
- (d) the number of allowances to be allocated free of charge in that period by subtracting the number of allowances referred to in points (b) and (c) from the total quantity of allowances decided upon under point (a); and
- (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 (e), expressed as allowances per tonne-kilometre, shall be calculated by dividing the number of allowances referred to in point (d) by the sum of the tonne-kilometre data included in applications submitted to the Commission in accordance with paragraph 2.

4. Within three months from 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 referred to in paragraph 3(e); 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 of 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 3f.

Article 3f

Special reserve for certain aircraft operators

1. In each period referred to in Article 3c(2), 3 % 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 monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2); or
- (b) whose tonne-kilometre data increases by an average of more than 18 % annually between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period;

and 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. Any application shall be made by 30 June in the third year of the period referred to in Article 3c(2) to which it relates.

An allocation to an aircraft operator under paragraph 1(b) shall not exceed 1 000 000 allowances.

3. An application under paragraph 2 shall:

- (a) include verified tonne-kilometre data in accordance with Annexes 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 3c(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 monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period;
- (ii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period; and
- (iii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period which exceeds the percentage specified in paragraph 1(b).

4. No later than six 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 referred to in 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 3e(4).

7. Within three 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 4. This allocation shall be calculated by multiplying the benchmark referred to in 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 3c(2) to which the allocation relates.

8. Any unallocated allowances in the special reserve shall be auctioned by Member States.

9. The Commission may establish detailed rules 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 regulatory procedure with scrutiny referred to in Article 23(3).

Article 3g

Monitoring and reporting plans

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

5. the following title and Article shall be inserted:

‘CHAPTER III

STATIONARY INSTALLATIONS

Article 3h

Scope

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.;

6. Article 6(2)(e) shall be replaced by the following:

‘(e) an obligation to surrender allowances, other than allowances issued under Chapter II, equal to the total emissions of the installation in each calendar year, as verified in accordance with Article 15, within four months following the end of that year.;

7. the following title shall be inserted after Article 11:

‘CHAPTER IV

PROVISIONS APPLYING TO AVIATION AND STATIONARY INSTALLATIONS;

8. in Article 11a the following paragraph shall be inserted:

‘1a. During the period referred to in Article 3c(1), aircraft operators may use CERs and ERUs, up to 15 % of the number of allowances they are required to surrender pursuant to Article 12(2a).

For subsequent periods, the percentage of CERs and ERUs that may be used in relation to aviation activities shall be reviewed as part of the general review of this Directive and taking into consideration the development of the international climate change regime.

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

9. in Article 11b(2), the word 'installations' shall be replaced by the word 'activities';

10. Article 12 shall be amended as follows:

(a) in paragraph 2, after the word 'purpose' the words 'of meeting an aircraft operator's obligations under paragraph 2a or' shall be inserted;

(b) the following paragraph shall be inserted:

'2a. Administering Member States shall ensure that, by 30 April each year, 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) paragraph 3 shall be replaced by the following:

'3. Member States shall ensure that, by 30 April each year, the operator of each installation surrenders a number of allowances, other than allowances issued under Chapter II, equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15, and that these are subsequently cancelled.;

11. in Article 13(3), the words 'Article 12(3)' shall be replaced by the words 'Article 12(2a) or (3)';

12. Article 14 shall be amended as follows:

(a) in the first sentence of paragraph 1:

(i) after the words 'those activities' the words 'and of tonne-kilometre data for the purpose of an application under Articles 3e or 3f' shall be inserted;

(ii) the words 'by 30 September 2003' shall be deleted;

(b) paragraph 3 shall be replaced by the following:

'3. Member States shall ensure that each operator or aircraft operator reports the emissions during each calendar year from the installation, or, from 1 January 2010, the aircraft, which it operates to the competent authority after the end of that year in accordance with the guidelines.;

13. Article 15 shall be replaced by the following:

'Article 15

Verification

Member States shall ensure that the reports submitted by operators and aircraft operators pursuant to Article 14(3) are verified in accordance with the criteria set out in Annex V and any detailed provisions adopted by the Commission in accordance with this Article, and that the competent authority is informed thereof.

Member States shall ensure that an operator or aircraft operator whose report has not been verified as satisfactory in accordance with the criteria set out in Annex V and any detailed provisions adopted by the Commission in accordance with this Article by 31 March each year for emissions during the preceding year cannot make further transfers of allowances until a report from that operator or aircraft operator has been verified as satisfactory.

The Commission may adopt detailed provisions for the verification of reports submitted by aircraft operators pursuant to Article 14(3) and applications under Articles 3e and 3f, including the verification procedures to be used by verifiers, in accordance with the regulatory procedure referred to in Article 23(2).;

14. Article 16 shall be amended as follows:

(a) in paragraph 1, the words 'by 31 December 2003 at the latest,' shall be deleted;

(b) paragraphs 2 and 3 shall be replaced by the following:

'2. Member States shall ensure publication of the names of operators and aircraft operators who are in breach of requirements to surrender sufficient allowances under this Directive.

3. Member States shall ensure that any operator or aircraft operator who does not surrender sufficient allowances by 30 April of each year to cover its emissions during the preceding year shall be held liable for the payment of an excess emissions penalty. The excess emissions penalty shall be EUR 100 for each tonne of carbon dioxide equivalent emitted for which the operator or aircraft operator has not surrendered allowances. Payment of the excess emissions penalty shall not release the operator or aircraft operator from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in relation to the following calendar year.;

(c) the following paragraphs shall be added:

'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 this Directive;
- (b) details of the enforcement action which has been taken by that 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 Committee's Rules of Procedure.

8. The adoption of a decision following a request pursuant to paragraph 5 shall be preceded, when appropriate and practicable, by consultations with the

authorities responsible for regulatory oversight of 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 following a request pursuant to 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, the Commission may, in accordance with the regulatory procedure referred to in Article 23(2), adopt a decision to impose an operating ban on the aircraft operator concerned.

11. Each Member State shall enforce, within its territory, any decisions adopted under paragraph 10. It shall inform the Commission of any measures taken to implement such decisions.

12. Where appropriate, detailed rules shall be established in respect of the procedures referred to in this Article. Those measures, 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(3).;

15. the following Articles shall be 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. Where in the first two years of any period referred to in Article 3c, none of the attributed aviation emissions from flights performed by an aircraft operator falling within paragraph 1(b) of this Article 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.

3. Based on the best available information, the Commission shall:

(a) before 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) before 1 February of each subsequent year, update the list to include aircraft operators which have subsequently performed an aviation activity listed in Annex I.

4. The Commission may, in accordance with the regulatory procedure referred to in Article 23(2), develop guidelines relating to the administration of aircraft operators under this Directive by administering Member States.

5. For the purposes of paragraph 1, "base year" means, in relation to an aircraft 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 3c(4) and 18a, the Commission may request the assistance of Eurocontrol or another relevant organisation and may conclude to that effect any appropriate agreements with those organisations.

(*) OJ L 240, 24.8.1992, p. 1.;

16. in Article 19, paragraph 3 shall be amended as follows:

(a) the last sentence shall be replaced by the following:

'That Regulation shall also include provisions concerning the use and identification of CERs and ERUs in the Community scheme and the monitoring of the level of such use and provisions to take account of the inclusion of aviation activities in the Community scheme.;

(b) the following subparagraph shall be added:

'The Regulation on a standardised and secured system of registries shall ensure that allowances, CERs and ERUs surrendered by aircraft operators are transferred to Member States' retirement accounts for the Kyoto Protocol's first commitment period only to the extent that those allowances, CERs and ERUs correspond to emissions included in the national totals of Member States' national inventories for that period.;

17. in Article 23, paragraph 3 shall be replaced by the following:

'3. 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.;

18. the following Article shall be inserted:

'Article 25a

Third country measures to reduce the climate change impact of aviation

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 consulting with that 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, the Commission may adopt amendments 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. Those 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(3).

The Commission may propose to the European Parliament and the Council any other amendments to this Directive.

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 an agreement on global measures to reduce greenhouse gas emissions from aviation. In the light of any such agreement, the Commission shall consider whether amendments to this Directive as it applies to aircraft operators are necessary.;

19. Article 28 shall be amended as follows:

(a) paragraph 3(b) shall be replaced by the following:

'(b) to be responsible for surrendering allowances, other than allowances issued under Chapter II, equal to the total emissions from installations in the pool, by way of derogation from Articles 6(2)(e) and 12(3); and';

(b) paragraph 4 shall be replaced by the following:

'4. The trustee shall be subject to the penalties applicable for breaches of requirements to surrender sufficient allowances, other than allowances issued under Chapter II, to cover the total emissions from installations in the pool, by way of derogation from Article 16(2), (3) and (4).';

20. the following paragraph shall be added to Article 30:

'4. By 1 December 2014 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 to the European Parliament and the Council pursuant to Article 251 of the Treaty as appropriate. The Commission shall give consideration in particular to:

- (a) the implications and impacts of this Directive as regards the overall functioning of the Community scheme;
- (b) the functioning of the aviation allowance market, covering in particular any possible market disturbances;
- (c) the environmental effectiveness of the Community scheme and the extent by which the total quantity of allowances to be allocated to aircraft operators under Article 3c should be reduced in line with overall EU emissions reduction targets;

(d) the impact of the Community scheme on the aviation sector, including issues of competitiveness, taking into account in particular the effect of climate change policies implemented for aviation outside the EU;

(e) 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 Community scheme on the structural dependency on aviation transport of islands, landlocked regions, peripheral regions and the outermost regions of the Community;

(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 from the Community scheme of certain flights performed in the framework of public service obligations imposed in accordance with Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (*);

(j) developments, including the potential for future developments, in the efficiency of aviation and in particular the progress towards meeting the Advisory Council for Aeronautics Research in Europe (ACARE) goal to develop and demonstrate technologies able to reduce fuel consumption by 50 % by 2020 and whether further measures to increase efficiency are necessary;

(k) developments in scientific understanding on the climate change impacts of contrails and cirrus clouds caused by aviation with a view to proposing effective mitigation measures.

The Commission shall then report to the European Parliament and the Council.

(*) OJ L 240, 24.8.1992, p. 8.;

21. the following title shall be inserted after Article 30:

‘CHAPTER V

FINAL PROVISIONS’;

22. Annexes I, IV and V shall be 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 before 2 February 2010. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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.

Article 3

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 19 November 2008

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J.-P. JOUYET

ANNEX

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

1. Annex I shall be amended as follows:

(a) the title shall be replaced by the following:

'CATEGORIES OF ACTIVITIES TO WHICH THIS DIRECTIVE APPLIES';

(b) the following subparagraph shall be inserted in paragraph 2 before the table:

'From 1 January 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 shall be added:

<p><i>'Aviation</i></p> <p>Flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies.</p> <p>This activity shall not include:</p> <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>(c) flights related to search and rescue, firefighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate competent authority;</p> <p>(d) any flights performed exclusively under visual flight rules as defined in Annex 2 to the Chicago Convention;</p> <p>(e) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;</p> <p>(f) 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>(g) flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;</p> <p>(h) flights performed by aircraft with a certified maximum take-off mass of less than 5 700 kg;</p> <p>(i) flights performed in the framework of public service obligations imposed in accordance with Regulation (EEC) No 2408/92 on routes within outermost regions, as specified in Article 299(2) of the Treaty, or on routes where the capacity offered does not exceed 30 000 seats per year; and</p> <p>(j) flights which, but for this point, would fall within this activity, performed by a commercial air transport operator operating either:</p> <p>— fewer than 243 flights per period for three consecutive four-month periods; or</p> <p>— flights with total annual emissions lower than 10 000 tonnes per year.</p> <p>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 Member State may not be excluded under this point.'</p>	<p>Carbon dioxide</p>
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2. Annex IV shall be amended as follows:

(a) the following title shall be inserted after the title of the Annex:

'PART A — Monitoring and reporting of emissions from stationary installations';

(b) the following part shall be 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 × 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 identified 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 aircraft operator, including:

- name of the aircraft 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 e-mail 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 aerodrome situated in the territory of a Member State and arrived at an aerodrome 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 and 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 3e and 3f

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

tonne-kilometres = distance × payload

where:

'distance' means the great circle distance between the aerodrome of departure and the aerodrome 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 on-board 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 of 100 kg for each passenger and his checked baggage.

Reporting of tonne-kilometre data for the purpose of Articles 3e and 3f

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

A. Data identifying the aircraft operator, including:

- name of the aircraft 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 e-mail details for a contact person, and
- name of the aircraft owner.

B. Tonne-kilometre data:

- number of flights by aerodrome pair,
- number of passenger-kilometres by aerodrome pair,
- number of tonne-kilometres by aerodrome 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 aircraft operator.;

3. Annex V shall be amended as follows:

- (a) the following title shall be inserted after the title of the Annex:

'PART A — Verification of emissions from stationary installations';

- (b) the following part shall be 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) of that paragraph 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 aircraft operator's traffic including data from Eurocontrol requested by that 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 3e and 3f

15. The general principles and methodology for verifying emissions reports under Article 14(3) as 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 3e(1) and 3f(2). In this task the verifier shall be assisted by data on the aircraft operator's traffic including data from Eurocontrol requested by that operator. In addition, the verifier shall ascertain that the payload reported by the aircraft operator corresponds to records on payloads kept by that operator for safety purposes.
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