COMMISSION OF THE EUROPEAN COMMUNITIES

Last update: 6 May 2010

Frequently asked Questions about the implementation of the EU's Emissions Trading Scheme regarding aviation activities

This set of Frequently Asked Questions responds to many of the queries which have been received about the operation of the EU's Emissions Trading Scheme (EU ETS) in relation to aviation activities. The FAQs aim to assist aircraft operators and Administering Member States to implement the legislation. Whilst in some cases, the FAQs may present a particular interpretation of the legislation it should be recalled that only the Court of Justice can provide definitive interpretations of EU law.

Further information on the EU ETS and aviation can be found at the following web address:

http://ec.europa.eu/environment/climat/aviation/index_en.htm

Table of contents

Glossary of terms

EU ETS	EU's Emissions Trading Scheme for greenhouse gases
EU ETS Directive	Directive 2003/87/EC as amended, which establishes the Community greenhouse gas trading system
Aviation Directive	Directive 2008/101/EC which amended the EU ETS Directive 2003/87/EC so as to include emissions from aviation
Monitoring Decision	Commission Decision 2007/589 establishes guidelines on the monitoring and reporting of greenhouse gas emissions under the EU ETS
Annex I Decision	Commission Decision 2009/450/EC on the detailed interpretation of the aviation activities listed in Annex I to Directive 2003/87/EC
Aircraft List Regulation	Commission Regulation (EC) N° 748/2009 on the list of aircraft operators which performed an aviation activity listed in Annex I of Directive 2003/87/EC on or after 1 July 2006 specifying the administering Member State for each aircraft operator
Air Services Regulation	Regulation (EC) N° 1008/2008 establishes common rules for the operation of air services in the Community (Recast)
Registries Regulation	COMMISSION REGULATION (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries
EUROCONTROL	European organisation for the safety of air navigation
CRCO	Central Route Charges Office of EUROCONTROL
AOC	Air Operators Certificate issued pursuant to the Chicago Convention to Commercial air service providers

1. AIRCRAFT OPERATORS

1.1. Who is an aircraft operator?

The definition in Article 3(o) of the EU ETS Directive determines who is an "aircraft operator" for the purposes of the EU ETS. This definition refers to a natural or legal person which operates an aircraft at the time it performs an aviation activity specified in Annex I to the ETS Directive (i.e. a flight departure or a flight arrival at an aerodrome in the EU). If the identity of the operator cannot be ascertained then the aircraft owner is deemed to be the operator unless the owner identifies the relevant operator.

1.2. From what moment do aircraft operators have to comply with EU ETS requirements?

The legal requirements of the EU ETS apply when an aircraft operator first performs an activity in Annex I of the ETS Directive which is not covered by any of the exemptions in that Annex. The specific obligations which an operator needs to fulfil are explained in FAQs 3.1and 3.2 below.

1.3. From what moment does an aircraft operator cease having to comply with EU ETS requirements?

An aircraft operator that does not perform any flight activity in Annex I of the ETS Directive for a complete calendar Year X is not required to comply with EU ETS requirements for that calendar year. However, verified emissions reports and the surrender of allowances will be required in Year X in respect of any relevant flight activity performed in the calendar year X-1.

1.4. How will operators and their flight activities be identified?

Annex XV of the Monitoring Decision states in Part 2 that for the purpose of identifying the aircraft operator defined by Article 3(o) of the ETS Directive, the ICAO designator in box 7 of a flight plan is to be used or, in the absence of such a designator, the aircraft registration marking is to be used. It appears that there is no uniform system, criteria or procedure for the application and issue of ICAO designator codes. So that it is unclear whether all operators will have a designator or whether aircraft operators within the same corporate group will share the same designator or have separate and distinct ICAO designators. Further complications may arise in identifying an aircraft operator due to the various types of aircraft leasing, the use of management companies, or the use of multiple ICAO designators by the same aircraft operator. Where the aircraft operator cannot be identified then the legislation stipulates that the owner will be responsible unless the owner can identify the relevant operator. Naturally, complications will not arise if each operator possesses and uses its own distinct ICAO designator.

1.5. Are companies in the same corporate group to be considered as a single operator?

The relevant test in the ETS Directive for an aircraft operator is simply that there is a legal person responsible for flights arriving or departing from EU aerodromes which are not covered by the exemptions in Annex I of the ETS Directive. Individual companies that have been duly incorporated each possess their own distinct legal personality. It follows, therefore, that each company responsible for flights covered by Annex I is a different aircraft operator for the purposes of the ETS Directive even if they are in the same Corporate group of companies.

In addition, Article 18(a) of the ETS Directive identifies an administering Member State, in relation to a particular commercial aircraft operator, by reference to the mandatory operating licence issued to that operator by the Member State concerned. There is a presumption, therefore, that each legal person

issued with an operating licence by a Member State should be treated as a *distinct and separate* aircraft operator.

1.6. Can an operator have multiple ICAO designators?

There is no explicit requirement for an aircraft operator to have a *unique* identifier. Recital 15 of the Aviation Directive states that an aircraft operator *may be identified by the use of an ICAO designator or any other recognised designator used in the identification of a flight* and that if the identity of the operator is not known, then the owner of the aircraft should be deemed to be the operator unless proven otherwise. The crucial point for the operation of the EU emissions trading scheme is that the activities of a given aircraft operator can be attributed unequivocally to that operator. As such, and given the absence in Community law any requirement to be identified by a single and unique identifier, it follows that there is no legal obstacle for an aircraft operator to be identified by multiple ICAO designators so long as these are associated with a single aircraft operator. Obviously, it is administratively simpler if an operator uses only a single identifier when filing its flight plans.

1.7. Who is the operator under a "wet lease" arrangement?

Under a wet lease arrangement an aircraft is operated by the lessee for the benefit of the lessor who essentially remains responsible for the state and maintenance of the aircraft i.e. the lessor retains effective control of the flight. The presumption, therefore, is that the lessor is the aircraft operator and that the flight plan will contain the ICAO designator of the lessor/owner or the registration marking of the aircraft. However, the lessor and lessee may agree and indicate alternative responsibility for the flight activity by, for example, using the ICAO designator of the lessee in the flight plan.

1.8. Who is the operator under a "dry lease" arrangement?

Under a "dry lease agreement" an aircraft is operated by the lessee under the AOC of the lessees and control of the aircraft effectively passes to the lessee. The presumption, therefore, is that the lessee is the operator and the ICAO designator of the lessee should appear in the flight plan.

1.9. Can a management company be an aircraft operator?

Some aircraft operators employ the services of management companies to file flight plans and pay route charges on their behalf. Some management companies also provide services related to the ETS obligations of their clients. However, management companies are *not* aircraft operators for the purposes of the ETS Directive unless they also operate flights covered by Annex I of the ETS Directive.

1.10. Can a management company represent an aircraft operator regarding the EU ETS?

It is entirely possible for a service company to be empowered to represent an aircraft operator before the competent authorities of the administrating Member State in relation to EU ETS matters. The extent of the powers of the service company will depend upon what is agreed between the operator and the service company.

It is possible, therefore, for a management company to file monitoring reports, and applications for free allowances on behalf of a particular aircraft operator if the management company is duly empowered. The issue of allowances can only be made directly to a registry account held by the aircraft operator. However, the Registries Regulation permits an aircraft operator to nominate an "additional authorised representative" who has limited rights on the account (the exact scope of these limited rights can be set by the account holder). Naturally, administering Member States will wish to be certain about the identity of the aircraft operator represented by a management company

The Commission also has a duty to ensure the efficient operation of the EU ETS and so it will continue to identify and to include in the list of aircraft operators it publishes those operators who may nonetheless be represented by service companies for the matters relating to the EU ETS.

1.11. Are any flights exempted from the EU ETS?

There are several categories of flight which are exempt from the EU ETS. These are contained in Annex I of the EU ETS Directive and include activities such as search & rescue, state flights transporting heads of state and government ministers, police flights amongst others. There are special codes to designate these types of flight which should be inserted into the flight plan which is filed by the operator in order that the flight can be correctly excluded. More information about the types of flight excluded and the associated codes to be inserted in the flight plan can be found in the Annex I Decision[1].

1.12. Which flights of a commercial operator are considered for the de minimis exemption?

There is a *de minimis* exemption in subparagraph (j) of Annex I to the EU ETS Directive below which an entity ceases to be an aircraft operator covered by the provisions of the EU ETS. This exemption only applies to commercial air service operators. Flights may also be provided by commercial operators without remuneration but this factor is not relevant when determining whether the *de minimis* threshold is exceeded.

In summary, all flights of a commercial operator which are not covered by any of the other exemptions in Annex I of the EU ETS Directive must be considered when assessing whether the *de minimis* threshold is exceeded.

2. THE AIRCRAFT OPERATORS LIST

2.1. What is the role of the list of aircraft operators published by the Commission?

The primary function of the list of aircraft operators published by the Commission is to facilitate the good administration of the EU ETS by providing information on which Member State will be regulating a particular operator. This prevents double regulation.

It must be emphasised that inclusion on the list of aircraft operators published by the Commission is not determinative as to whether a natural or legal person is an aircraft operator. This is clearly spelled out in Part 1 paragraph (3) of the Annex to the Annex I Decision[1]. Moreover, a separate note has been published on the Europa web site on the role of the list whose primary function is to facilitate the good administration of the ETS by informing regulators and aircraft operators about who is regulating whom[2]. Conversely, aircraft operators that are on the list do not fall under the EU ETS if they only perform aviation activities that are exempt under Annex I to Directive 2003/87/EC.

It is possible that the list published by the Commission contains inaccuracies or does not reflect the most up to date information about aircraft operators' activities. The Commission will update the list from time to time and where appropriate bring inaccuracies to the attention of competent authorities. Member States are not bound only to regulate those entities contained in the list published by the Commission but have some flexibility to regulate "off-list", for example, where a Member State issues an operating licence to a new operator.

---

1 http://ec.europa.eu/environment/climat/aviation/index_en.htm

2 http://ec.europa.eu/environment/climat/aviation/operators_en.htm

2.2. What changes will be made to the list when the Commission updates annually?

The Commission intends to publish an updated list each year around the beginning of February. The aim of this update is to include new aircraft operators that have undertaken flight activities covered by Annex I of the ETS Directive in the previous calendar year. In addition, this represents an opportunity to correct manifest errors in the designation of operators or administering Member States.

It is not so important to remove operators that cease their activities given that obligations arise under the ETS from performing relevant flight activities in Annex I of the ETS Directive rather than from inclusion on the list. However, to keep the list manageable administratively, where operators have clearly ceased to be covered by the ETS and will not return to it because, for example, they are no longer in existence or because they have rescinded their operating licence, then the Commission will remove such operators from the list at the time of its update. It should be remembered that the activities of some operators may be such that in one year they are not covered by the ETS but activity levels may increase so that in subsequent years they are covered. It does not make sense to amend the list in such circumstances.

2.3. I use a service company to file flight plans and pay route charges and I am not on the list – how do I get assigned to a Member State?

Airspace users using services companies for flight planning and payment of route charges may not necessarily be included in the list.

Whilst an aircraft operator is defined by Article 3(o) of the EU ETS Directive, in practice the call sign used for Air Traffic Control (ATC) purposes has been used. The call sign appears in field 7 of the flight plan. The call sign either starts with the 3-letter ICAO designator of the operator or, if not available, represents the registration marking of the aircraft. In the latter case, the aircraft operator is identified by the operator indicated in field 18 of the flight plan or the operator identified by EUROCONTROL's Central Route Charges Office (CRCO) with alternate sources of information (such as States' registries or States' administrations).

An airspace user may not appear as a distinct aircraft operator in the current list if all of its flights have been (a) operated under the ICAO designator of a service company; or (b) identified by the aircraft registration marking and the service company has indicated to the CRCO that it is responsible for the payment of route charges. In such cases, all the flights of the airspace user have been attributed to the service company.

The Commission has now established a process to identify these airspace users. All service companies and their customers are invited to provide a declaration to the Commission. The declarations should include information on the fleet composition of the operators since 2004 as well as the name of the legal entity. Completed declarations should be sent to the Commission at the following email address:

ENV-EU-ETS-AIRCRAFT-OPERATOR-LIST@ec.europa.eu

Please indicate in the subject line the following: 'EU ETS Fleet List Form'.

After receiving this information it should be possible to identify flights of these operators and determine the administering Member State for them. For operators to be included in the list to be published in early 2010, declarations should be submitted as soon as possible.

In the meantime, if possible the intention is to include information on the operator and the administering Member State on the prior compliance list in advance of the full list being published in 2010. This will

enable contacts to be made at an earlier stage between the aircraft operators and the appropriate administering Member States.

2.4. I use service companies for air navigation services. How do I ensure that future flights are not attributed to a service company?

If an aircraft operator has a 3-letter ICAO designator, the aircraft operator should ensure that this code is used in its flight plans or that box 18 of the flight plan indicates its ICAO designator as the operator of that flight. Alternatively, the operator can place the registration marking of the aircraft in field 18 of the flight plan and submit to EUROCONTROL an annual declaration, including information on the composition of their fleet.

2.5. Subsidiaries of my company are not on the list, why is this?

The aircraft operator responsible for a flight has been identified on the basis of the information inserted in field 7 of the flight plan. Consequently, flights of subsidiaries operated under the ICAO 3-letter designator of the parent company will have been allocated to the parent company. Also, subsidiaries operating flights under their own ICAO 3-letter designator may also have been allocated to the parent company when the parent company took responsibility of the flights for air navigation charges purposes.

If the parent company has been identified as the aircraft operator for all the flights of a subsidiary, the latter will not appear as a distinct aircraft operator in the current list as there are no flights attributed to it. Aircraft operators which are subsidiary companies should ensure that they identify their flights using a separate ICAO designator and/or that they include all aircraft under their company in the fleet declaration submitted to EUROCONTROL's Central Route Charges Office (CRCO).

2.6. My aviation activities started in 2009. When will I be attributed to an administering Member State?

The latest version of the aircraft operators list includes data from all flights in 2006, 2007 and 2008. Therefore an aircraft operator that started flight activity in 2009 will not yet appear on the list.

Where a new aircraft operator possesses an operating license issued by an EU Member State, this Member State will automatically be the administering Member State. In such cases the operator should contact its administering Member State to discuss the submission of its monitoring plan. It is also recommended you provide a copy of the operating licence to EUROCONTROL.

If an aircraft operator does not have an operating license issued by an EU Member State, the administering Member State will be the EU Member State where the greatest estimated aviation emissions from flights to be performed over the whole of 2009 are attributed. In general it will be the Member State where the operator flies to the most often.

As all emissions over the calendar year must be taken into consideration, it is not possible formally to allocate new operators without an operating licence until the end of 2009. Therefore, the administering Member State for the new entrant will be formally determined next year. The operator will know its administering Member State after the publication of the updated list of aircraft operators on the 1 February 2010.

2.7. I am not on the list of aircraft operators but I expect to be covered by the scope of the EU ETS during 2010. I would like to participate in the tonne–km data monitoring in 2010. How can I be attributed to an administering Member State?

The list of aircraft operators published by the Commission is based on historic activity and will not include operators that are understood currently to fall below the *de minimis activity* threshold or new operators who start aviation activity covered by the EU ETS Directive. Although not legally binding in any way, a prior compliance list of aircraft operators has been established for such operators so that the competent authorities in the Member States can be alerted and operators can provisionally be attributed to an administering Member State so as to enable them to participate in the tonne-km and emissions monitoring in 2010.

Aircraft operators are allocated to the prior compliance list based on the principles in the EU ETS Directive that apply to all other operators in the scheme:

- If an aircraft operator possesses an operating license from an EU Member State, this Member State will be the administering Member State.
- If an aircraft operator does not have an operating license issued by an EU Member State, the administering Member State will be the State with the greatest attributed aviation emissions:
  - forecast to take place in 2009 or 2010 (for those not yet operating in the EU); or
  - undertaken so far in 2009 (for those not operating in the EU in 2008); or
  - performed in the previous calendar year (e.g. 2008)

It is important to note that for aircraft operators without an EU operating licence, the allocation to a Member State should be regarded as preliminary. It is possible that the Member State that finally regulates these operators will change as the final allocation will be made on the basis of the estimated emissions in the first calendar year of operation within the scheme. This can only be accurately calculated at a later stage.

The prior compliance list will be important for aircraft operators wanting to participate in the scheme in 2010, in particular for tonne-km data monitoring so as to be able to apply for the allocation of free allowances. Operators should be aware that their applications for free allowances will be eligible only if their flight activities in 2010 are included in the scope of the scheme (e.g. their annual emissions exceed the 10,000 tonnes of CO_2 threshold of the *de-minimis* exemption for commercial operators). Their verified emissions monitoring report for 2010 should demonstrate this.

The prior compliance list is available on the Commission website. It will be updated as necessary during 2009 and updated regularly following publication of a revised list. Aircraft operators who wish to be added to the prior compliance list should send applications to:

ENV-EU-ETS-AVIATION-PRIOR-COMPLIANCE-LIST@ec.europa.eu

In order for Member States to be able to accept and approve the monitoring plans as early as possible before 1 January 2010, aircraft operators are encouraged to apply as soon as possible. Aircraft operators on the prior compliance list should also check with their administering Member State the process that will be used to approve such applications and the deadlines for submission of such monitoring plans.

2.8. I should not be on the list because I am a commercial operator and should be exempt under point (j) of the Annex 1 of the ETS Directive ("*de minimis*")

Two conditions need to be fulfilled in order for an aircraft operator to benefit from the *de minimis* exemption under subparagraph (j) of Annex I to the ETS Directive:

- the operator is a commercial air transport operator; AND
- in EACH of the three reference years 2006, 2007 and 2008 the operator operated less than 243 flights per consecutive period of four months (Jan-Apr, May-Aug, Sep-Dec) or emitted less than 10,000 tonnes of CO_2 annually; AND

If these conditions are met, the most probable reason for inclusion in the list is that for its present functions EUROCONTROL does not retain comprehensive records about AOCs for all operators flying in the EU region. As a result, EUROCONTROL may not be aware of the commercial status of particular operators (as defined in Article 3 of the EU ETS Directive). When this AOC information is missing, the operator is deemed **not** to be a commercial air transport operator.

An operator may also be included in the list because the last condition above is not satisfied. This means that according to the air traffic information held by EUROCONTROL and the CO_2 emissions estimations produced by EUROCONTROL, in any of the years 2006, 2007 or 2008 either of the following conditions were fulfilled:

- in one of these years, the annual CO_2 emissions were estimated to be above 10,000 tonnes and in at least one of the four month periods Jan-Apr, May-Aug, or Sep-Dec of the same year you operated at least 243 flights;

If your AOC contains information confirming that you are a commercial air transport operator, please provide a copy of it to EUROCONTROL. Please also keep your competent authority informed that you have sent your AOC to EUROCONTROL. You do not need to obtain any additional confirmation from the European Commission that you are exempt from the scheme.

This information will be taken into account for the next version of the list.

For non EU operators it may not be possible in all cases to determine your commercial status from your national certificate that is equivalent to the AOC (e.g. US Air Carrier Certificates). This is due to differences in the types of information that is contained in these certificates. However, you are still welcome to submit a copy of your certificate to EUROCONTROL, who may contact you for additional supporting documents.

2.9. Why am I on the list when I operate aircraft of less than 5.7 tonnes maximum take-off mass?

The maximum take-off mass that has been used to determine whether flights should be exempted under subparagraph (h) of Annex I to the EU ETS Directive was that held by EUROCONTROL for the calculation of route charges. If you consider that all the flights you have operated were flown only with aircraft of less than 5.7 tonnes, please discuss this issue with your competent authority. The Commission is not in a position to decide whether an operator is exempt from the EU ETS. You may also wish to contact EUROCONTROL for further information.

2.10. I am on the list but I only operate flights that are exempted under subparagraphs (a) to (i) of Annex I to Directive 2003/87/EC, e.g. training or circular flights.

If you are on the list it means that you have been identified as the aircraft operator of at least one flight in 2006, 2007 or 2008 that was not considered exempted according to Annex I of the ETS Directive.

This situation could be the case for ferrying flights operated, for instance, during the delivery of the aircraft or for bringing it to or back from maintenance facilities. Ferrying and positioning flights are not exempt from EU ETS. If you consider that all the flights you have operated are exempted under either of the subparagraphs of Annex I of the EU ETS Directive, please discuss this with your competent authority. The Commission is not in a position to decide whether an operator is exempt from the EU ETS. You may wish to contact EUROCONTROL for further information.

2.11. I am on the list but I have never flown to, from or within the EU.

If you are on the list it means that you have been identified as the aircraft operator of at least one flight in 2006, 2007 or 2008 that was flown to, from, or within the EU and that was not considered exempted according to Annex I of the ETS Directive.

This can be the case for ferrying flights operated, for instance, during the delivery of the aircraft or when bringing it to or back from maintenance facilities. If you consider that you have never operated any flight to, from or within the EU, or you do not plan to have any flights in the future, please discuss this with your competent authority. You may also wish to contact EUROCONTROL for further information.

2.12. The name of the operator is not correct

The name of the operator is the name used by EUROCONTROL's Central Route Charges Office (CRCO) when establishing the invoices for route charges. If you wish to correct the name of the operator on the list, please notify EUROCONTROL about the name change, providing sufficient evidence as to the correct name of the aircraft operator.

2.13. The operator is no longer in operation.

The list has been defined on the air traffic information for 2006, 2007 and 2008. An operator has been included in the list as long as it had operated at least one eligible flight in those years.

EUROCONTROL can determine when the most recent flight was flown by a given operator but does not hold comprehensive information on whether such operator is still in operation. If you consider that an operator should NOT be on the list because it does not exist any longer or because it has ceased or suspended its aviation actives in the EU, please inform the competent authority about this. Please also notify the European Commission by sending a message to:

ENV-EU-ETS-AIRCRAFT-OPERATOR-LIST@ec.europa.eu

You may wish to contact EUROCONTROL for further information (e.g. the date of the most recent flight in the EU).

2.14. The administering Member State is incorrect according to the (EU) operating licence

The EU ETS Directive stipulates the administering Member State for any given operator in receipt of an operating licence in the EU is the Member State that issued the operating licence. Unfortunately, a complete and comprehensive database of all the operating licences granted by Member States in accordance with the provisions of Council Regulation (EC) No. 1008/2008 is not available, nor does

EUROCONTROL hold this information. There is no definitive way, therefore, for the Commission or EUROCONTROL to check which Member State has issued AOCs and operating licences to particular operators and so there may be discrepancies in the list.

If you possess an operating licence from an EU Member State, but in the list you are allocated to a different Member State, please provide a copy of your operating licence to EUROCONTROL.

2.15. The administering Member State is incorrect as the operator does not fly (any more) from (or to) such State

The administering Member State has been determined on the basis of the information available for the operator's **base year** as defined by Article 18a(5) of the EU ETS Directive. The fact that an operator no longer operates or does not fly mainly from (or to) aerodromes located in such a State does not change the designation of the administering Member State.

2.16. Subsidiaries companies are allocated to different EU Member States, how can I avoid this?

Different companies operating flights covered by Annex I of the EU ETS Directive are considered as separate aircraft operators (see question 1.5). Administering Member States are attributed either on the basis of which Member State issued the operating licence or the State with the greatest attributed emissions for that operator. It is for the parent company to decide how to organise its corporate structure and flight activities in relation to the administration of the EU ETS and the allocation of administering Member States.

2.17. Can an operator on the list be reattributed to a different administering Member State within the same trading period?

Article 18a(1) of the EU ETS Directive sets the rules on the initial attribution of an aircraft operator to an administering Member State. Attribution is done on the basis of which Member State has issued the operating licence or which is the Member State with the greatest attributed emissions from flights performed by that operator in the base year (2006).

However reattribution of an operator to a new Member State may be necessary if it turns out that the initial attribution does not meet the conditions set under Art 18a(1) of the EU ETS Directive.

Reattribution may be necessary where:

- the Commission together with EUROCONTROL changes the methodology used for the generation of the list of aircraft operators in order to improve the list's accuracy and better reflect the requirements of the Directive (such reattribution will not occur frequently after the initial set up of the scheme);
- there is an error in the list as a result of incomplete or inaccurate information held by the Commission or EUROCONTROL;
- the scope of the EU ETS is expanded to other countries, for instance the full integration of the EEA-EFTA States (Iceland, Liechtenstein and Norway) into the EU ETS or the accession of new countries to the EU (e.g. Croatia).

Reattribution is different from the transfer of aircraft operators based on Article 18a(2) of the EU ETS Directive. Such transfer occurs where in the first two years of any trading period, none of the attributed aviation emissions from flights performed by an aircraft operator without an operating licence granted by a Member State are attributed to its administering Member State. That aircraft operator must be transferred to another administering Member State in respect of the next period. The new administering

Member State will 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.

2.18. When an aircraft operator's administering Member State changes, can monitoring plans of an aircraft operator be transferred to a new administering Member State?

After an aircraft operator is reattributed on the basis of Article 18a(1) or transferred on the basis of Article 18a(2) of the EU ETS Directive to a new administering Member State, the monitoring plan will have to be transferred from one administering Member State to another, or resubmitted by an operator to the new administering MS. This process has to be agreed between the Member States on a case by case basis, taking account of the views of the aircraft operator affected and seeking to minimize the financial costs and administrative burden to aircraft operator.

The timing of the transfer or resubmission of the monitoring plan should also be agreed between the Member States and the operator.

2.19. What does the aircraft operator identification number signify?

The list now contains a unique identification number (code) for each aircraft operator. This code will be used for compliance purposes. The code coincides with the number used by EUROCONTROL's Central Route Charges Office (CRCO) for identifying airspace users in the route charges system. This identification number is shown in the reference of air navigation charges bills.

2.20. Why am I identified only by my ICAO designator or aircraft tail number?

In the list, a number of aircraft operators may be indentified only by their ICAO designator or the registration mark of the plane. The majority of such aircraft operators are associated with flights operated entirely outside of the region for which EUROCONTROL provides the Central Route Charges Office function, such as flights from the French overseas territories to the Americas. In these cases EUROCONTROL does not have full information about the identity of the operator at this stage. In future versions of the list, the intention is to replace these notations with a complete company name.

3. OBLIGATIONS AND PROCEDURES FOR NEW ENTRANTS

3.1. What does a new operator with an EU operator's licence have to do under the EU ETS?

For new entrants the EU ETS requirements will start from the moment an operator performs an aviation activity laid down in Annex I of the ETS Directive i.e. it departs or arrives at an aerodrome in the EU. The Administering Member State responsible for all aspects of administering the ETS in respect of the operator is the Member State that issued the operating licence. The following steps will need to be followed by the new aircraft operator and administering Member State for an activity which commences in Year X:

– Operators will have to submit a monitoring plan to the administering Member State as soon as possible after it falls within the ETS and request an account be opened at the ETS registry in that Member State.

– The administering Member State should approve the monitoring plan and the operator should monitor its emissions according the methods in the monitoring plan, the Monitoring Decision and relevant aspects of the Member States national rules and procedures.

– The operator should draft an emissions report for the calendar year X and has it verified by a verifier at the end of year X.

– The operator submits the verified emissions report to the administering Member State by 31 March of year X+1.

– The operator must surrender sufficient emissions allowances to cover its emissions in calendar year X

3.2. What does a new operator without an EU operator's licence have to do under the EU ETS?

The same basic procedure in 3.1 above should be followed. However, the administering Member State is determined according to the greatest attributed emissions in the first year of operation which may not be immediately clear and may not be established definitively until the operator is included in a revised list published by the Commission. As such, the operator cannot submit a monitoring plan for approval to its administering Member State.

In such circumstances, the operator is required to determine its emissions with retrospective effect for the time it falls under the scope of EU ETS. For the period when it has not been attributed to an administering Member State, the operator can determine its emissions according to the approach in section 5 of Annex XIV of the Monitoring Decision to fill "data gaps". This allows an operator to determine its emissions which are missing for reasons beyond its control by a simplified method.

Where the administering Member State is clear from the nature of the operator's flight activity, operators can submit monitoring plans on an informal basis to the administering Member State before formal inclusion on a revised list of operators published the Commission.

4. ALLOCATION OF EMISSIONS ALLOWANCES

4.1. Do competent authorities need to assess the applications made by aircraft operators for free allowances?

An operator must apply to its administering Member State by 31 March 2011 for free allowances and provide verified tonne-kilometre activity reports to support the application. Before forwarding the applications to the Commission by 30 June 2011, the Member State should assess the admissibility of the reports and check for potential irregularities. This could be complemented by inspections of the monitoring activities of the operator during the monitoring year as well as supervision of verifiers. Nonetheless, the Member States should also be able to rely upon the verification process to establish the reliability and correctness of the activity data submitted by the operator.

5. SPECIAL RESERVE

5.1. Should the administering Member State check the eligibility of any application for the allocation of allowances from the special reserve?

Article 3f of the ETS Directive permits new operators who commence flight activity after 2010 or operators who experience a growth in tonne-kilometre activity in excess of 18% on average annually between 2010 and 2014 to apply for free allowances from the "special reserve". Any application must be made by 30 June 2015 and be supported by verified tonne-kilometre activity data and documentary proof that the operator meets the either of the two eligibility criteria. Before forwarding the application to the Commission (within 6 months) the administering Member State should assess compliance with the eligibility criteria using the material provided by the operator in support of the application as required by Article 3f(3) of the ETS Directive. The Commission may provide further guidance on how to perform this assessment at a later date.

5.2. Allowances from the special reserve will not allocated for the continuation of activities carried out in whole or in part by another aircraft operator. What does this mean?

Article 3f(1) states that allowances in the special reserve will not be allocated in respect of the flight activities of a new operator or the sharply increased growth of an existing operator if this new activity or increase in activity is a continuation of the activity (either in part or in whole) of another aircraft operator.

The above provision is designed to prevent the free allocation of allowances for flight activities that have already been the subject of a free allowance allocation albeit to a different operator. As such the competent authorities in the administering Member States will need information to establish that:

- There has been no acquisition by share sale of another aircraft operator or acquisition of business assets from another operator;
- There has been no internal corporate reorganisation or creation of a subsidiary company that involves the transfer of flight activity within the corporate group;
- There has been no restructuring as a consequence of an insolvency, scheme of arrangement or bankruptcy resulting in the creation of a new operator performing flight activity previously undertaken by another operator or the transfer of significant flight activity to an existing operator;
- There has been no outsourcing or leasing arrangements whereby existing flight activity of an operator in receipt of free allowances is transferred to a third party who becomes the effective operator of the flights.

6. SMALL EMITTERS

6.1. What is a small emitter and why is there a distinction?

A small emitter is a non-commercial air transport operator (i) whose flights in aggregate emit less than 10 000 tonnes of CO_2 per annum; or (ii) which operates fewer than 243 flights per period for 3 consecutive 4-month periods. A small emitter can take advantage of a simplified procedure to monitor its emissions of CO_2 from its flight activity. This procedure is described in Section 4 of Annex XIV of the Monitoring Decision and involves the use of a calculation tool developed by EUROCONTROL or similar tool developed by other organisations.

7. PENALTIES & ENFORCEMENT OF THE EU ETS - AVIATION LEGISLATION

7.1. Why are penalties applied in the Member States not harmonised?

Article 16 of the EU ETS Directive establishes a limited harmonisation of the financial penalties that will be paid by operators that fail to surrender the necessary number of emissions allowances (i.e. €100 per tonne of CO_2). More generally, the co-legislators decided that the Member States should adopt rules on penalties for breaches of national legislation which transpose the Directive's requirements and that these penalties should be "*effective, proportionate and dissuasive*". This formulation allows the Member States to choose between criminal or administrative penalties and provides flexibility to implement a system of penalties that best fits with their national legal systems whilst respecting the obligation to treat breaches of Community law in a manner that is similar to a breach of a wholly national rule or law. The degree of harmonization decided by the co-legislators is arguably sufficient whilst at the same time respecting the principles of subsidiarity and proportionality by which action is to be taken only in so far as it cannot be sufficiently taken by the Member States alone and does not exceed what is absolutely necessary to achieve the desired objective.

Further harmonisation of administrative penalties could be envisaged under the EU ETS Directive but that would have to be decided by the co-legislators following a proposal from the Commission. There is also scope for establishing certain common criminal offences and penalties under the new Treaty on the Functioning of the European Union but again this will require a proposal from the Commission or a quarter of the Member States.

7.2. Is there mutual recognition of financial penalties in the Member States?

The Council has put into a place a framework for the mutual recognition of financial penalties in the form of Framework Decision 2005/214/JHA[3]. This means that financial penalties due to *offences* arising from breaches of instruments adopted to comply with Community law that are committed in one Member State (the issuing State) can be recognised and enforced in another Member State (the executing State). A central authority is responsible in each Member State for the administration of the scheme. Monies obtained from the enforcement go the executing Member State unless there is a contrary agreement between the two Member States concerned.

8. EXTENSION OF THE EU ETS TO THE EEA EFTA STATES (ICELAND, LIECHTENSTEIN AND NORWAY)

8.1. Why will the scope of the EU ETS be extended to the EEA EFTA States (Iceland, Liechtenstein and Norway)?

The Agreement on the European Economic Area (EEA), which entered into force in 1994, is an agreement between the 27 EU Member States and three of the Member States of the European Free Trade Association (EFTA). The latter states, which are Iceland, Liechtenstein and Norway, are collectively called the 'EEA EFTA States'. The EEA Agreement provides for the extension of selected EU legislation to the EEA EFTA States.

The EEA EFTA States have been part of the EU ETS since October 2007, when the EU ETS Directive was incorporated into the EEA Agreement. The EU and the EEA EFTA States consider the Aviation

[3] Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties; OJ L 76, 22.3.2005, p. 16.

Directive EEA relevant and will, therefore, incorporate it into the EEA Agreement. It will consequently become legally binding for the 3 EEA EFTA States in addition to the 27 EU Member States.

8.2. When will the scope of the EU ETS be extended to the EEA EFTA States?

For EU legislation to enter into force in the EEA EFTA States, it has to be incorporated into the EEA Agreement by an EEA Joint Committee Decision (EEA JCD). All EEA EFTA States have now formally declared their intention to be bound by the Aviation Directive 2008/101/EC. Negotiations on implementation issues are in progress and are expected to result in an EEA JCD during 2010.

Decision 2009/339/EC (amendment to the Monitoring Decision) was incorporated into the EEA Agreement by EEA JCD No 148/2009 from 4 December 2009. A legal basis is thus provided for data collection from 2010 for the additional flights that will fall under the scope of the scheme due to the extension to the EEA EFTA States.

8.3. What additional flights will be covered by the EU ETS following the extension?

The extension of the scheme entails that in addition to the 27 EU Member States the EU ETS will henceforward also cover the 3 EEA EFTA States (Iceland, Liechtenstein and Norway). As a result, flights which depart from or arrive in an aerodrome situated in the territory of an EEA EFTA State, collectively called 'EEA additional flights', will be subject to EU ETS rules. More precisely, EEA additional flights are:

- Domestic flights within the EEA EFTA States;
- Flights between the EEA EFTA States;
- Flights between the EEA EFTA States and third countries outside the EEA.

The list of exemptions from the scope of the EU ETS in Annex I of the EU ETS Directive also applies for the EEA additional flights.

8.4. How will the extension impact aircraft operators which are already covered by the scope of the EU ETS?

Aircraft operators which are already covered by the EU ETS will only be affected by the extension of the system if they perform EEA additional flights (see answer to question 8.3). These operators will from now on have to include their EEA additional flights into their monitoring and reporting activities. They should thus start monitoring annual emissions and tonne-kilometre data related to EEA additional flights from 1 January 2010.

These operators should have already submitted their monitoring plans. Due to the extension of the EU ETS, they will now have to update their monitoring plans to cover their EEA additional flights. Operators which update their monitoring plans should notify their competent authority without delay of any changes made. In case of substantial changes to the monitoring methodology, the operators need to submit their updated plans for re-approval. Substantial changes are described in the EU ETS monitoring and reporting guidelines and include:

- Change of the average reported annual emissions which causes the operator to exceed the threshold for applying tier 1 uncertainty for the determination of fuel consumption;

– Change in the number of flights or in the total annual emissions which cause the aircraft operator to exceed the threshold for small emitters, so that the operator is no longer eligible to benefit from the simplified monitoring procedures;

– Substantial changes to the type of fuels used.

8.5. How will the extension affect aircraft operators from the EEA EFTA States which are currently not covered by the EU ETS?

Aircraft operators which perform EEA additional flights (see answer to question 8.3) may be covered by the scope of the EU ETS for the first time as a result of the extension to the EEA EFTA States. These operators should submit monitoring plans for annual emissions and tonne-kilometre data as soon as possible. The monitoring plans should be submitted to a competent authority in the state which will become the administering state of the operator, *e.g.* the EEA EFTA State which granted the operating licence. The operators should start monitoring annual emissions and tonne-kilometre data from 1 January 2010.

8.6. How will the extension affect aircraft operators that are currently exempt from the EU ETS Directive under point (j) of Annex I (*de minimis*)?

If a commercial aircraft operator is exempted from the scope on grounds of point (j) of Annex I of the EU ETS Directive, (*i.e.* because it operates either fewer than 243 flights per period for three consecutive four-month periods or flights with total annual emissions lower than 10 000 tonnes per year (*de minimis* rule)), the exemption could cease to apply if EEA additional flights cause the aircraft operator to exceed the aforementioned limits. In such cases, the aircraft operator should submit draft monitoring plans as soon as possible to the competent authority in its administering state. The aircraft operator should start monitoring annual emissions and tonne-kilometre data from 1 January 2010.

8.7. Who will be the administering Member State for additional EEA EFTA flights? Will different rules apply?

Aircraft operators with an operating licence granted by an EEA EFTA State which is covered by the EU ETS for the first time due to the extension of the scope, will be administered by the relevant EEA EFTA State from the start of their participation in the scheme.

Aircraft operators with an operating licence granted by an EEA EFTA State which are already covered by the EU ETS due to their EU flights will continue to be administered by the EU State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator in the base year. However, it is foreseen that these aircraft operators will be transferred to the relevant EEA EFTA State administration following the formal adoption of an EEA JCD, (see answer to question 8.2). This will be followed by the publication of an updated list of aircraft operators expected in mid-2010.

Such transfer will not affect the validity of monitoring plans already submitted by the aircraft operators or application for free allowances.

The Commission may establish guidelines concerning the transfer of operators between administering Member States.

8.8. Will the Commission's list of aircraft operators be updated in light of the extension of the EU ETS to the EEA EFTA States?

Yes, the list will be updated by the Commission to cover operators performing EEA additional flights. This update is likely to come in mid-2010 and after the usual annual update of the list in February.

8.9. Will same rules be applied for the EEA additional flights as for other flights covered by the EU ETS?

Equal treatment of aircraft operators is a fundamental element of the EU ETS for aviation. The EU and the EEA EFTA States therefore aim at ensuring that the design of the scheme will not be altered by the extension to the EEA EFTA States. In particular, they intend for the same benchmark and harmonized allocation rules to be applied for the EEA additional flights as for other flights covered by the scheme.

8.10. How will the extension of the EU ETS to the EEA EFTA States affect the calculation of historical aviation emissions and total quantity of allowances?

Data from the EEA EFTA States will be taken into account when calculating historical aviation emissions. The total quantity of allowances will thus increase to reflect the extended scope of the EU ETS. Likewise, the total amount of allowances to be allocated free of charge, the total amount of allowances to be auctioned and the size of the special reserve will increase proportionally.

8.11. Will aircraft operators which perform EEA additional flights have to submit separate application for free allowances for those flights?

No. The EU and the EEA EFTA States aim at ensuring that same allocation rules will apply for all flights in the 30 States of the European Economic Area, irrespective of their origin. Aircraft operators can therefore expect to be able to submit one single application for all their flights covered by the EU ETS to their administering state.

8.12. Why is it important to ensure that 2010 data on the EEA additional flights are collected?

It is considered important that the extension of the scheme does not alter the harmonization which is provided for in EU ETS rules on aviation. In that respect, it is useful that same benchmark can be used for all flights covered by the scheme. According to the Aviation Directive, the benchmark for free allocation is calculated by dividing the number of allowances to be allocated free of charge by the sum of tonne-kilometre data of the year 2010 from all applicants. The 2010 tonne-kilometre data on the EEA additional flights are thus necessary as a basis for application for free allowances for these flights. Futhermore, collection of 2010 data on emissions is important in order to determine the number of allowances to be auctioned by each EEA EFTA State.

8.13. Will the templates for monitoring and reporting tonne-kilometre data and annual emissions need to be changed to include the EEA EFTA states?

Yes, some minor changes are needed. The following note has been added on the Commission's website on aviation:

'Please note that all references to Member States on the templates should be interpreted as including all 30 EEA States. The EEA comprises the 27 EU Member States, Iceland, Liechtenstein and Norway.'

In addition to this, a reference to the EEA EFTA States will be added to the list of Member States in several places in the templates:

- Where the aircraft operator indicates administering Member States;
- Where the aircraft operator indicates the state that has accredited the verifier;
- In the domestic flights emissions table under 9 (c) in the annual emissions report;

– As state of departure and state of arrival in tables 9 (d) and 9 (e) in the annual emissions report.

8.14. Have relevant operators been informed about the extension of the EU ETS to the EEA EFTA States?

All commercial aircraft operators registered in Iceland and Norway have been informed about the extension. Information has been sent to the EU Member States administering other operators who are known to be affected by the extension, including a standard letter that can be used to inform these operators. In addition the EEA EFTA States, the EFTA Secretariat and the European Commission hosted an information meeting with European and international aviation associations on 11 December 2009 to inform them of the changes.

For further information about the extension, inquiries can be sent to the Environment Agency of Iceland (flug@ust.is) or the Norwegian Pollution Control Authority (ETSaviation@sft.no).