

**Decision of the Government of Flanders to amend the Decision of the Government of Flanders of 7 December 2007 concerning tradable greenhouse gas emission allowances**

THE GOVERNMENT OF FLANDERS

Having regard to the special Law for reforming the institutions, and in particular article 20;

Having regard to the Decree of 28 June 1985 concerning the environmental licence, especially articles 4 and 27, §3;

Having regard to the Decree of 2 April 2004 for reducing greenhouse gas emissions in the Flemish Region as a result of promoting the efficient use of energy, and the use of renewable sources of energy and the application of Kyoto Protocol flexible mechanisms, as most recently amended pursuant to the Decree of 8 May 2009 (hereinafter 'the REU Decree'), especially article 2, 38°, article 20, article 20ter, article 21, article 26bis and article 28, §1;

Having regard to the Decision of the Government of Flanders of 7 December 2007 concerning tradable greenhouse gas emission allowances;

Having regard to the advisory opinion of the Finance Inspectorate, issued on 25 May 2009;

Having regard to the advisory opinion 46.800/3 of the Council of State, issued on 30 June 2009 pursuant to article 84, §1, first subparagraph, 1°, of the laws of the Council of State, coordinated on 12 January 1973;

Whereas Directive 2008/101/EC of the European Parliament and the Council of 19 November 2008 to amend Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community;

Whereas Directive 2009/29/EC of the European Parliament and the Council of 23 April 2009 to amend Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community;

On the basis of a proposal by the Flemish Minister for the Environment, Nature and Culture;

After consultation,

DECISION:

**Article 1.** In article 1 of the Decision of the Government of Flanders of 7 December 2007 concerning tradable greenhouse gas emission allowances the following amendments shall be applied:

1° point 6°, 7°, 19° and 20° shall be cancelled;

2° point 11° shall be replaced by what follows:

“11° following commitment period: the period starting on 1 January 2013 and ending in 2020;”.

**Art. 2.** Point 41° to 55° is added to article 1 of the same decision, and reads as follows:

“41° decision: Commission Decision of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council;

42° aviation activity: an activity referred to in annex III of this decision;

43° termination of an aviation activity: the situation in which an aircraft operator no longer performs an aviation activity for at least one calendar year;

44° commercial air transport operator: an aircraft operator that, for remuneration, provides scheduled or non-scheduled air services to the public for the carriage of passengers, freight or mail;

45° reporting year: the calendar year in which tonne-kilometre data or CO<sub>2</sub> emissions have to be monitored and reported;

46° aerodrome pair: a pair comprising the aerodrome of departure and the aerodrome of arrival;

47° change in tonne-kilometre data or change in CO<sub>2</sub> emissions: a change in the content or the underlying procedures of the approved monitoring plan for tonne-kilometre data or the approved monitoring plan for CO<sub>2</sub> emissions which is not temporary and concerns the monitoring methodology or the rules and procedures for obtaining, processing, registering, reporting or securing the quality of the data with a view to reporting tonne-kilometre data or reporting CO<sub>2</sub> emissions;

48° substantial change in tonne-kilometre data: a change in tonne-kilometre data relating either to:

a) the start of the use of a new generic type of aircraft, including a new long-term leasing operation;

b) a change in the call sign used for air traffic management purposes for all or part of the fleet of the aircraft operator;

c) a change in the status of the aircraft operator;

d) a change in the method or procedures applied to determine the passenger mass, including the baggage;

e) a change in the method or procedures applied to determine the mass of transported freight or mail;

f) a change in the procedures which influence the methodology for registering, processing and securing data with a view to reporting tonne-kilometre data;

49° substantial change in CO<sub>2</sub> emissions: a change in CO<sub>2</sub> emissions which relates either to:

a) the start of the use of a new generic type of aircraft, including a new long-term leasing operation;

b) a change in the call sign used for traffic management purposes for all or part of the fleet of the aircraft operator ;

c) a change in the status of the aircraft operator;

d) a change in the formula used to determine the fuel consumption per flight;

e) a change in the data sources to determine the data of the fuel taken on board or the quantity of fuel in the aircraft fuel tanks, or a change in the methods for sending, storing and retrieving those data ;

f) a change in the method used to determine the density of the fuel for a particular type of aircraft;

g) the application of the fallback method by the aircraft operator in the absence of data and as a result of which at least one percent of the CO<sub>2</sub> emissions to be monitored on an annual basis is influenced;

h) a change in the procedures influencing the methodology for registering, processing and securing the data with a view to reporting CO<sub>2</sub> emissions;

i) a change in the average annual CO<sub>2</sub> emissions, which means the aircraft operator is obliged to apply another tier to determine the fuel consumption;

j) a change in the number of flights or in the total annual emissions which means the aircraft operator exceeds the limit determined for a small emitter;

k) a change in the fuels used to perform aviation activities;

50° a non-substantial change in tonne-kilometre data or a non-substantial change in CO<sub>2</sub> emissions: a change in tonne-kilometre data or a change in CO<sub>2</sub> emissions which does not

comply with the definition of a substantial change in tonne-kilometre data or with the definition of a substantial change in CO<sub>2</sub> emissions;

51° an abnormal circumstance for tonne-kilometre data or an abnormal circumstance for CO<sub>2</sub> emissions: a circumstance that cannot be foreseen by the aircraft operator, which is a one-off or time-limited circumstance and has the result that the monitoring methodology in the approved monitoring plan for tonne-kilometre data or in the approved monitoring plan for CO<sub>2</sub> emissions temporarily cannot be followed;

52° a high impact abnormal circumstance for tonne-kilometre data or a high impact abnormal circumstance for CO<sub>2</sub> emissions: an abnormal circumstance for tonne-kilometre data or an abnormal circumstance for CO<sub>2</sub> emissions whose effect is that the monitoring methodology in the approved monitoring plan for tonne-kilometre data or in the approved monitoring plan for CO<sub>2</sub> emissions cannot be applied for at least one percent of the tonne-kilometre data to be monitored or CO<sub>2</sub> emissions to be monitored on an annual basis;

53° a non-high impact abnormal circumstance for tonne-kilometre data or a non-high impact abnormal circumstance for CO<sub>2</sub> emissions: an abnormal circumstance for tonne-kilometre data or an abnormal circumstance for CO<sub>2</sub> emissions that does not comply with the definition of a high impact abnormal circumstance for tonne-kilometre data or the definition of a high impact abnormal circumstance for CO<sub>2</sub> emissions;

54° technically unfeasible: the aircraft operator cannot purchase the technical resources needed to meet the requirements of the proposed system within the time limit set by the competent authority;

55° small emitter: an aircraft operator operating fewer than 243 flights per period for three consecutive four-month periods or one operating flights with total annual emissions lower than 10,000 tonnes of CO<sub>2</sub> per year.

The definitions 41° to 55° shall be applicable solely to aviation activities.”

**Art. 3.** Added to the heading of chapter II in the same decision are the following words “to greenhouse gas installations”.

**Art. 4.** Articles 7/1, 7/2 and 7/3 are added to the same decision and these read as follows :

“Art. 7/1. §1. The operator of an installation performing an activity referred to in annex II has to report the greenhouse gas emissions, referred to in annex II, insofar as these are still not reported in the context of article 4.10.1.5, §1, of title II of the Flanders Environmental Legislation (VLAREM).

The Flanders Minister for the Environment shall propose further rules and procedures for the submission and the content of the report.

§2. Subsequent to an assessment by the department, the greenhouse gas emissions featured in the report pursuant to article 32/1, §4, shall be provided to the European Commission no later than 30 June 2010.

In the case of greenhouse gas emissions, other than CO<sub>2</sub>, a smaller quantity of emissions pursuant to the reduction potential of the activity, referred to in annex II of this decision, shall be provided to the European Commission.

Art. 7/2. In the case of an operator of an installation performing an activity referred to in annex II, the Flemish Minister for the Environment may impose a reporting obligation for data required to calculate the free allocation of emission allowances for the following commitment period.

Art.7/3. §1. The operator of an installation performing an activity referred to in annex II may, during the period from 31 March 2011 to 13 May 2011 at the latest, and provided the operator meets the conditions, referred to in paragraph 2, declare to the depart-

ment that the operator wishes to be excluded from the Community scheme for the following period of commitment.

§2. In order to be able to submit a declaration pursuant to paragraph 1 the operator performing an activity referred to in annex II must meet all the following conditions :

1° in each of the years 2008, 2009 and 2010 individually, the verified greenhouse gases emitted, referred to in annex II of this decision, shall be less than 25,000 tonnes of CO<sub>2</sub>-equivalent;

2° if the operator performs incineration activities the rated thermal input shall be less than 35 MW;

3° the operator shall be subject to measures ensuring an equally valid contribution to lowering emissions;

4° the operator shall confirm that the installation performing an activity referred to in annex II shall, during the following period of commitment, meet the monitoring and reporting requirements, referred to in chapter 4.10 of title II of the Flanders Environmental Legislation (VLAREM).

Hospitals may submit a declaration if they meet the condition referred to in the first subparagraph, 3°.

§3. The Flemish Minister for the Environment shall propose further rules and procedures for the submission and the content of the declaration, as well as when the condition, referred to in paragraph 2, 3°, is met and notify this to the Government of Flanders.

§4. After processing the declarations the department shall provide the European Commission with the declarations submitted and do so no later than 30 September 2011 and disclose them to the public.

§5. Starting from the day of the public announcement anyone shall be entitled, during 30 calendar days, to forward comments to the department.

§6. Once the European Commission has approved the declarations and without prejudice to the application of paragraph 7, the surrender obligation expires pursuant to the provisions in chapter 4.10 of title II of the Flanders Environmental Legislation (VLAREM) starting from the calendar year following the first calendar year of the following period of commitment.

§7. Should one or more of conditions, referred to in paragraph 2, 2°, 3° and 4°, no longer be met, or if the verified emissions of greenhouse gases referred to in annex II, amount to 25,000 tonnes of CO<sub>2</sub> equivalent or more in any calendar year of the following period of commitment, the installation performing an activity referred to in annex II, of this decision, shall be once more included in the Community scheme and the surrender obligation pursuant to the provisions in chapter 4.10 of title II of the Flanders Environmental Legislation (VLAREM), shall once more apply starting from the calendar year following the calendar year in which the conditions are no longer met.”

**Art. 5.** In article 15, §1, of the same decision the words “at the latest by 31 December 2012 shall be placed between the words “allocation request” and “notified”.

**Art. 6.** In article 23 of the same decision paragraph 2 is replaced by what follows :

“§2. If an establishments considered to be a nuisance loses its status as a greenhouse gas installation or should the activities of the greenhouse gas installation be ceased, the operator

should act within 14 days after this has come to the operator's knowledge or was able to take cognisance thereof, to send a registered letter to notify the authority which is competent for the environmental licence at first instance.

The registered letter should be accompanied with the following documents:

- 1° supporting documents to show the installation has lost its status as a greenhouse gas installation ;
- 2° or confirmation of the greenhouse gas installation ceasing its activities.

No later than 14 days after receiving the registered letter the competent authority shall establish the trueness and the permanence and, where appropriate, the environmental licence shall be adapted by no longer classifying the installation as a greenhouse gas installation, and by modifying the environmental licence for the CO<sub>2</sub> emission trade pursuant to article 23,§3.

The competent administration shall notify the competent authority thereof within five days at the most.”

**Art. 7.** In the same decision chapter IIbis, comprising article 27/1 to article 27/17, shall be added and this reads as follows:

“Chapter IIbis. - Aviation

Section I. General

Art. 27/1. The provisions in this chapter shall apply to the allocation, provision and surrender of emission allowances and the monitoring and reporting of tonne-kilometre data and CO<sub>2</sub> emissions for aviation activities, as referred to in annex III.

Section II. The monitoring plan for tonne-kilometre data, the report on tonne-kilometre data and provisions for the special reserve

Sub-section I. The monitoring plan for tonne-kilometre data

Art. 27/2. §1. The aircraft operator submits a monitoring plan for tonne-kilometre data to the competent authority, via a notification and a digital copy on an electronic medium. The hard copy shall feature a letter signed by the aircraft operator where the operator declares that the data provided digitally are fully consistent with the written version.

The competent authority shall confirm to the aircraft operator by means of a notification that the submitted monitoring plan has been received. The four-month period, referred to in article 20ter, §1, of the REU Decree, shall start on the date confirmation is given that the submitted monitoring plan has been received.

The competent authority shall immediately provide the submitted monitoring plan to the verification office.

§2. In the monitoring plan for tonne-kilometre data the scale of the aviation activity shall be calculated in tonne-km according to the following formula: tonne-kilometres = distance x payload, where:

1° distance = the great circle distance between the aerodrome of departure and the aerodrome of arrival, plus an additional fixed component of 95 km,

2° payload = the total mass of freight, mail and passengers being carried. To calculate the payload:

a) the number of passengers is the number of people on board, excluding the crew;

b) an aircraft operator may use in his documentation about mass and balance for the relevant flights, according to preference, the actual or standard masses for passengers and reg-

istered baggage, or a standard value of 100 kilograms for each passenger and the person's registered baggage.

The Flemish Minister for the Environment, may decide upon further rules for monitoring the tonne-kilometre data.

§3. During the verification, the verification office may get in touch with the aircraft operator to seek further information about the submitted monitoring plan. If need be, the verification office may carry out verification activities at locations the aircraft operator uses for performing the aviation activities. The verification process may result in an adjustment to the submitted monitoring plan.

Within three months after the date when the competent authority has confirmed that it has received the submitted monitoring plan, the verification office shall provide the competent authority with the verified monitoring plan plus an advisory opinion about the approval.

§4. Within one month after the date when the verified monitoring plan and advisory opinion have been received the competent authority shall approve or reject the verified monitoring plan, a) on the basis of the advisory opinion issued by the verification office and b) on the basis of the criteria the Flemish Minister for the Environment has decided upon.

The competent authority shall notify the aircraft operator about the approval of the plan or otherwise.

The competent authority may decide that the verified monitoring plan may enjoy temporary approval, as a result of which a number of conditions are set that have to be met within a certain time limit. The final approval or rejection is dependent on whether the conditions set have been met or otherwise within the time limit established. In order to assess this, the competent authority shall rely on the assistance of the verification office. Should the conditions not be met within the set period the competent authority shall reject the verified monitoring plan.

In the event of a rejection the tonne-kilometre data for the period for which the operator has a verified and temporarily approved monitoring plan shall not be able to be taken into account by the aircraft operator for the free allocation of emission allowances.

In the event of an approval the competent authority shall provide the verified and approved monitoring plan via a notification to the aircraft operator.

The approved monitoring plan for tonne-kilometre data shall be valid for one calendar year.

§5. The Flemish Minister for the Environment shall determine the template and the explanatory statement for the monitoring plan for tonne-kilometre data that the aircraft operator has to submit.

## Sub-section II. The report on tonne-kilometre data

Art. 27/3. §1. The aircraft operator has to submit a tonne-kilometre data report to the verification office, via a notification and a digital copy on an electronic medium. The hard copy shall feature a letter signed by the aircraft operator where the operator declares that the data provided digitally are fully consistent with the written version.

§2. In the report on tonne-kilometre data the tonne-kilometre data should be monitored in accordance with the monitoring plan for the tonne-kilometre data that is approved, as referred to in article 27/2, §4. Each aircraft operator should ensure the report on tonne-kilometre data features the following information:

1° the data for identifying the aircraft operator, including:

- a) the name of the aircraft operator;
- b) the address including the postal code and country, and the operator's contact address if this differs from this;
- c) the aircraft registration numbers and the types of aircraft used in the reporting year for the performance of the aviation activities, referred to in annex III, carried out by the aircraft operator;
- d) the number and the issuing authority for the air operator certificate and operating licence under which the aviation activities, referred to in annex III, carried out by the aircraft operator, are performed;
- e) the address, telephone number, fax and e-mail address of a contact person,
- f) the name of the owner of the aircraft ;

2° the tonne-kilometre data:

- a) number of flights per aerodrome pair;
- b) the number of passenger kilometres per aerodrome pair;
- c) the number of tonne-kilometres per aerodrome pair;
- d) the method chosen to calculate the passenger mass and registered baggage;
- e) the total number of tonne-kilometres for all flights that are carried out during the reporting year and are covered by aviation activities, referred to in annex III, carried out by the aircraft operator.

The Flemish Minister for the Environment, may decide upon further rules for reporting tonne-kilometre data.

§3. Within two months, the verification office shall verify the report on tonne-kilometre data pursuant to article 32/3, and pursuant to the principles the Flemish Minister for the Environment has determined. The verification office shall immediately provide the verified report to the aircraft operator via a notification process.

§4. The verification of the report on tonne-kilometre data may show that errors, incorrect notions and such-like have occurred in the assessment of the tonne-kilometre data featured in the approved monitoring plan for tonne-kilometre data for the reporting year or pursuant to an alternative monitoring methodology approved by the verification office in the event of a high impact abnormal circumstance referred to in article 27/13, §4. In this event, the items shall be corrected conservatively in the report on tonne-kilometre data, before the report may be verified as satisfactory. This conservative correction means that the reported tonne-kilometre data shall be lowered by a percentage that is consistent with the uncertainty in the reported tonne-kilometre data as a result of these errors, incorrect notions and such-like.

§5. By 31 March 2011 at the latest the aircraft operator has to submit a verified tonne-kilometre data report to the competent authority, via a notification and a digital copy on an electronic medium. The hard copy shall feature a letter signed by the aircraft operator where the operator declares that the data provided digitally are fully consistent with the written version.

§6. The Flemish Minister for the Environment shall establish the template and the explanatory statement for the report on the tonne-kilometre data the aircraft operator has to submit.

Sub-section III. Special reserve provisions

Art. 27/4. §1. Pursuant to article 20ter, §2, of the REU Decree the aircraft operator should proceed, no later than 30 June 2015, to submit a request to the competent authority, via a notification and a digital copy on an electronic medium. The hard copy shall feature a letter

signed by the aircraft operator where the operator declares that the data provided digitally are fully consistent with the written version.

§2. The request should at least feature the following items:

1° a verified tonne-kilometre data report for 2014;

2° evidence to show that the aircraft operator complies with the criteria, referred to in article 20ter, §2, a) or b), of the REU Decree, as well as evidence of any contractual and organisational relations with other aircraft operators;

3° in the case of the aircraft operators, referred to in article 20ter, §2, b), of the REU Decree, the request should also feature :

a) the percentage increase in the number of tonne-kilometres undertaken by the aircraft operator between 2010 and 2014;

b) the growth in absolute terms in the number of tonne-kilometres undertaken by the aircraft operator between 2010 and 2014;

c) the growth in absolute terms above the percentage, referred to in article 20ter, §2, b) of the REU Decree, in the number of tonne-kilometres undertaken by the aircraft operator between 2010 and 2014.

The Flemish Minister for the Environment may determine further rules for the burden of proof the aircraft operator has to provide.

§3. The competent authority shall use a notification to confirm to the aircraft operator that the submitted request has been received.

Within three months after the submitted request has been received, the competent authority shall decide if the aircraft operator meets the allocation criteria, referred to in article 20ter, §2, a) or b), of the REU Decree. Towards this end, the competent authority shall take account of the detailed provisions for the operation of the special reserve, including verifying compliance with the allocation criteria, referred to in article 20ter, §2, a) or b), of the REU Decree which the European Commission pursuant to article 3septies, §9, of the Directive may take. The competent authority shall notify the aircraft operator about the decision concerning the approval or rejection of the request.

### Section III. The monitoring plan for CO<sub>2</sub> emissions and annual CO<sub>2</sub> emission report

Art. 27/5. Starting in 2010 all CO<sub>2</sub> emissions for aviation activities, referred to in annex III, must be monitored and reported pursuant to the monitoring plan approved according to article 27/7, §4, and pursuant to the rules the Flemish Minister for the Environment has established.

#### Sub-section I. The monitoring plan for CO<sub>2</sub> emissions

Art. 27/6. Pursuant to article 20ter, §6, second subparagraph of the REU Decree the aircraft operator that starts an aviation activity after 31 August 2009 and has a valid Belgian operating licence should have an approved monitoring plan for CO<sub>2</sub> emissions, no later than six months after the start of the aviation activity.

The aircraft operator that starts an aviation activity after 31 August 2009 and does not have a valid Belgian operating licence should have an approved monitoring plan for CO<sub>2</sub> emissions, no later than six months after the date the European Commission publishes the list of aircraft operators, referred to in article 18bis, third subparagraph of the Directive, where the aircraft operator is mentioned.

Art. 27/7. §1. The aircraft operator has to submit a monitoring plan on CO<sub>2</sub> emissions to the competent authority via a notification and a digital copy on an electronic medium. The hard



copy shall feature a letter signed by the aircraft operator where the operator declares that the data provided digitally are fully consistent with the written version.

The competent authority shall send a notification to the aircraft operator to confirm the submitted monitoring plan has been received. The four-month period, referred to in article 20ter, §6, of the REU Decree, shall start on the date when the receipt of the submitted monitoring plan has been confirmed.

The competent authority shall immediately provide the submitted monitoring plan to the verification office.

§2. In the monitoring plan for CO<sub>2</sub> emissions the emissions shall be monitored by means of calculations. The emissions are calculated according to the following formula: fuel consumption x emission factor.

The fuel consumption shall include the fuel consumed by the auxiliary power unit. As far as possible, the actual fuel consumption for each flight is used, calculated according to the following formula: amount of fuel contained in aircraft tanks once fuel uplift for the flight is complete, minus amount of fuel contained in aircraft tanks once fuel uplift for subsequent flight is complete plus fuel uplift for that subsequent flight.

If no data is available about the actual fuel consumption, a standardised tiered method shall be used so as to assess the data concerning fuel consumption on the basis of the best available information.

Unless activity-specific emission factors derived by independent accredited laboratories using accepted analytical methods are more accurate, default emission factors of the International Panel on Climate Change, hereinafter referred to as the IPCC, shall be used, taken from the IPCC guidelines for national inventories of greenhouse gases in 2006 or subsequent revisions of these guidelines. The emission factor for biomass is zero.

A separate calculation is made for each flight and for each fuel.

The Flemish Minister for the Environment may decide upon further rules for monitoring CO<sub>2</sub> emissions.

The Flemish Minister for the Environment shall establish default emission values pursuant to the IPCC guidelines for national inventories of greenhouse gases in 2006 or subsequent revisions of these guidelines.

§3. During the verification, the verification office may get in touch with the aircraft operator to seek further information about the submitted monitoring plan. If need be, the verification office may carry out verification activities at locations the aircraft operator uses for performing the aviation activities. The verification process may result in adjustments to the submitted monitoring plan.

Within three months after the date when the competent authority has confirmed that it has received the submitted monitoring plan, the verification office shall provide the competent authority with the verified monitoring plan plus an advisory opinion about the approval.

§4. Within one month of the date when the verified monitoring plan and advisory opinion have been received the competent authority shall approve the verified monitoring plan or otherwise, a) on the basis of the advisory opinion issued by the verification office and b) on the basis of the criteria the Flemish Minister for the Environment has decided upon.

The competent authority informs the aircraft operator via a notification of the reasoned decision about the approval of the plan or otherwise.

The competent authority may decide that the monitoring plan may enjoy temporary approval, as a result of which a number of conditions are set that have to be met within a certain time limit. The final approval or rejection is dependent on whether the conditions set have been met or otherwise within the time limit established. In order to assess this, the competent authority shall rely on the assistance of the verification office. Should the conditions not be met within the set period the competent authority shall reject the monitoring plan. The competent authority shall impose an administrative fine pursuant to article 26bis, §1, of the REU Decree, if the date on which the aircraft operator should have an approved monitoring plan pursuant to article 27/6 has expired.

In the event of an approval the competent authority shall use a notification procedure to provide the approved monitoring plan to the aircraft operator.  
The approved monitoring plan for shall be valid for one calendar year.

§5. The Flemish Minister for the Environment shall establish the template and the explanatory statement for the monitoring plan for CO<sub>2</sub> emissions the aircraft operator has to submit.

#### Sub-section II. Updating the monitoring plan for CO<sub>2</sub> emissions

Art. 27/8. §1. The monitoring plan for CO<sub>2</sub> emissions has to be updated every year. At the end of the calendar year 'n' the aircraft operator must incorporate any approved substantial changes in CO<sub>2</sub> emissions and any non-substantial changes in CO<sub>2</sub> emissions applicable during the calendar year 'n' into the approved monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n'. This shall result in a draft monitoring plan for CO<sub>2</sub> emissions for the calendar year "n+1".

§2. The operator has to submit the draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1' to the competent authority, via a notification and a digital copy on an electronic medium. The hard copy shall feature a letter signed by the aircraft operator where the operator declares that the data provided digitally are fully consistent with the written version.

The competent authority shall confirm to the aircraft operator by means of a notification that the submitted draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1' has been received. A two-month period for verification and, where appropriate, for approval shall start on the date when the receipt of the submitted monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1' has been confirmed.

The competent authority shall immediately provide the verification office with the submitted draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1'.

§3. During the verification the verification office may get in touch with the aircraft operator for further information about the submitted draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1'. If need be, the verification office may carry out verification activities at locations the aircraft operator uses for performing the aviation activities. The verification process may result in adjustments to the submitted draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1'.

Within one month after the date on which the competent authority has confirmed receiving the submitted draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1', the verification office shall provide the competent authority with the verified draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1' plus an advisory opinion concerning the approval.

§4. Within one month after the date on which the verified draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1' and the advisory opinion have been received, the competent authority shall approve or reject the verified draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1', a) on the basis of the advisory opinion issued by the verification office and b) on the basis of the criteria the Flemish Minister for the Environment has decided upon.

The competent authority informs the aircraft operator via a notification of the reasoned decision about the approval of the plan or otherwise.

The competent authority may decide that the draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1' may enjoy temporary approval, as a result of which a number of conditions are set that have to be met within a certain time limit. The final approval or rejection is dependent on whether the conditions set have been met or otherwise within the time limit established. In order to assess this, the competent authority shall rely on the assistance of the verification office. Should the conditions not be met within the set period the competent authority shall reject the draft monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1'. The competent authority shall impose an administrative fine pursuant to article 26bis, §1, of the REU Decree, if the date on which the aircraft operator should have an approved monitoring plan pursuant to article 27/6 has expired.

In the event of an approval the competent authority shall use a notification procedure to provide the approved monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n+1' to the aircraft operator.

Art. 27/9. If, by derogation from article 27/8 of this decision, no changes have been applied to CO<sub>2</sub> emissions during the calendar year 'n', the aircraft operator has to use the notification process to declare this to the competent authority no later than 1 November of the calendar year 'n'.

Within two months after this declaration, the competent authority shall approve the approved monitoring plan for CO<sub>2</sub> emissions for the calendar year 'n' and do so for the calendar year 'n+1' whilst using a notification procedure to inform the aircraft operator about the approval decision.

#### Sub-section III. – The annual CO<sub>2</sub> emission report

Art. 27/10. §1. The aircraft operator has to submit an annual CO<sub>2</sub> emission report to the verification office, via a notification and a digital copy on an electronic medium. The hard copy shall feature a letter signed by the aircraft operator where the operator declares that the data provided digitally are fully consistent with the written version.

§2. The annual CO<sub>2</sub> emission report shall feature data monitored pursuant to the monitoring plan for CO<sub>2</sub> emissions approved according to article 27/7, §4, 27/8, §4 or article 27/9. The annual CO<sub>2</sub> emission report shall comprise all emissions emitted during the preceding calendar year as a result of the aviation activities, referred to in annex III, the aircraft operator performed.

Each aircraft operator should include the following information:

1° the data for identifying the aircraft operator, including:

a) the name of the aircraft operator ;

b) the address including the postal code and country, and the operator's contact address if this differs from this ;

- c) the aircraft registration numbers and the types of aircraft used in the reporting year for the performance of the aviation activities, referred to in annex III, carried out by the aircraft operator;
- d) the number and the issuing authority for the air operator certificate and operating licence under which the aviation activities, referred to in annex III, carried out by the aircraft operator, are performed;
- e) the address, telephone number, fax and e-mail address of a contact person,
- f) the name of the owner of the aircraft

2° for each type of fuel for which the emissions are calculated:

- a) the fuel consumption;
- b) the emission factor;
- c) the total aggregated emissions from all flights which are undertaken during the reporting year and are covered by the aviation activities, referred to in annex III, carried out by the aircraft operator;
- d) the aggregated emissions for :
  - 1) all flights which are undertaken during the reporting year and are covered by the aviation activities, referred to in annex III of this decision, carried out by the operator and where the starting point is an aerodrome on the territory of a Member State and the arrival point is an aerodrome on the territory of the same Member State ;
  - 2) any other flights which are undertaken during the reporting year and are covered by aviation activities, referred to in annex III, carried out by the operator,
- e) the aggregated emissions from all flights which are undertaken during the reporting year and are covered by aviation activities, referred to in annex III, carried out by the operator and which:
  - 1) departed from each Member State, and
  - 2) arrived in each Member State from a third country;
- f) uncertainty.

The Flemish Minister for the Environment, may decide upon further rules for reporting CO<sub>2</sub> emissions.

§3. The verification office shall verify the annual CO<sub>2</sub> emission report pursuant to article 32/2, and pursuant to the principles the Flemish Minister for the Environment has determined. Within two months starting from the date when the aircraft operator submitted the annual CO<sub>2</sub> emission report to the verifier, it shall take a decision on the satisfactory character or otherwise of the annual CO<sub>2</sub> emission report submitted to the office. The verification office shall immediately provide the verified report to the aircraft operator by means of a notification process.

§4. The verification of the annual CO<sub>2</sub> emission report may show that omissions, errors, incorrect notions and such-like have occurred in the emissions assessment, referred to in the approved monitoring plan for CO<sub>2</sub> emissions, for the reporting year or pursuant to an alternative monitoring methodology approved by the verification office in the event of a high impact abnormal circumstance referred to in article 27/13, §4. In this event, the items shall be corrected conservatively in the annual CO<sub>2</sub> emission report, before the report may be verified as satisfactory. This conservative correction means that the reported CO<sub>2</sub> emissions shall be increased by a percentage that is consistent with the uncertainty in the reported CO<sub>2</sub> emissions as a result of these omissions, errors, incorrect notions and such-like.

§5. Starting in 2011 the aircraft operator has to act no later 31 March in each year to submit an annual CO<sub>2</sub> emission report verified as satisfactory to the competent authority, via a notification and a digital copy on an electronic medium. The hard copy shall feature a letter signed by the aircraft operator where the operator declares that the data provided digitally are fully consistent with the written version.

If, starting in 2011, the aircraft operator has failed to submit an annual CO<sub>2</sub> emission report verified as satisfactory by 31 March in each year at the latest, the competent authority shall determine an alternative emission figure on the basis of instruments, implemented by Euro-control and approved by the European Commission or on the basis of the best available information. Thus correction factors may be applied to compensate for potential irregularities in the modelling methods.

The competent authority shall use the notification process to inform the aircraft operator about the estimated alternative emission figure.

§6. The Flemish Minister for the Environment shall establish the template and the explanatory statement for the CO<sub>2</sub> emissions report the aircraft operator has to submit.

#### Section IV. Change in tonne-kilometre data or change in CO<sub>2</sub> emissions

Art. 27/11. §1. The aircraft operator has to act immediately to propose any substantial change in the tonne-kilometre data or any substantial change in CO<sub>2</sub> emissions to the competent authority and implement any non-substantial change in tonne-kilometre data or any non-substantial change in CO<sub>2</sub> emissions if:

- 1° as a result of this the precision of the data provided is improved, unless this is not technically feasible or leads to unreasonable costs;
- 2° the competent authority requires a change in tonne-kilometre data or a change in CO<sub>2</sub> emissions;
- 3° errors are discovered in the data as a result of the monitoring methodology ;
- 4° the approved monitoring plan or the underlying procedures are no longer consistent with the rules the Minister for Environment has determined.

Without prejudice to the application of the first subparagraph the aircraft operator may act upon its own initiative to propose a substantial change in tonne-kilometre data or a substantial change in CO<sub>2</sub> emissions to the competent authority or implement a non-substantial change in tonne-kilometre data or a non-substantial change in CO<sub>2</sub> emissions.

§2. The aircraft operator has to register, justify and document in detail any change in tonne-kilometre data or any change in CO<sub>2</sub> emissions and do so in the log book for changes in tonne-kilometre data or the log book for changes in CO<sub>2</sub> emissions.

§3. From the moment on which the aircraft operator is informed of this or could reasonably be expected to know about this, the aircraft operator has to include a non-substantial change in tonne-kilometre data or a non-substantial change in CO<sub>2</sub> emissions in the log book for changes in tonne-kilometre data or the log book for changes in CO<sub>2</sub> emissions.

Where appropriate the aircraft operator should proceed, every four months, starting from the beginning of the reporting year, to forward non-substantial changes in tonne-kilometre data to the verification office for information purposes. This should be undertaken via a notification process or e-mail, with an enclosure featuring a copy of the log book for tonne-kilometre data changes for the preceding four months plus an explanatory text.

Where appropriate, non-substantial changes to CO<sub>2</sub> emissions should be sent, every year and no later than 1 November, to the verification office for information purposes. This should be undertaken via a notification process or e-mail, with an enclosure featuring a copy of the log book for CO<sub>2</sub> emission changes, plus an explanatory text.

By derogation from the first subparagraph, from the moment on which the aircraft operator is informed of this or could reasonably be expected to know about this, the aircraft operator has to make a report to the competent authority about non-substantial changes in tonne-kilometre data or non-substantial changes in CO<sub>2</sub> emissions concerning contact data or other administrative data necessary for communication between the competent authority and the aircraft operator or concerning the performance of an aviation activity between a new aerodrome pair. The report should be made via a notification process or by e-mail.

§4. A substantial change in tonne-kilometre data or a substantial change in CO<sub>2</sub> emissions has to be declared and presented to the competent authority for approval starting from the time the aircraft operator is informed of this or could reasonably be expected to know about this.

The aircraft operator shall send to the competent authority the fully completed declaration form for a substantial change in tonne-kilometre data or the fully completed declaration form for a substantial change in CO<sub>2</sub> emissions, together with the proposal for a substantial change and, where appropriate, the proposal for an adjustment to the monitoring plan for tonne-kilometre data or the proposal for an adjustment to the monitoring plan for CO<sub>2</sub> emissions. This should be undertaken both via a notification and a digital copy on an electronic medium. The hard copy shall feature a letter signed by the aircraft operator where the operator declares that the data provided digitally are fully consistent with the written version.

The competent authority shall confirm to the aircraft operator by means of a notification that the declaration form for a substantial change in tonne-kilometre data or the declaration form for a substantial change in CO<sub>2</sub> emissions has been received. The competent authority shall immediately forward the verification office the declaration form for a substantial change in tonne-kilometre data or the declaration form for a substantial change in CO<sub>2</sub> emissions.

During the verification of the substantial change in tonne-kilometre data or of the substantial change in CO<sub>2</sub> emissions the verification office may get in touch with the aircraft operator for further information. Where appropriate the verification office may undertake verification activities at locations the aircraft operator uses for the performance of aviation activities. The verification office shall provide the competent authority with the verified substantial change in tonne-kilometre data or the verified substantial change in CO<sub>2</sub> emissions plus an advisory opinion about the approval.

On the basis of the advisory opinion provided by the verification office the competent authority shall approve or otherwise the substantial change and, where appropriate, the proposed adjustment to the monitoring plan. The competent authority informs the aircraft operator via a notification of the reasoned decision concerning the approval or rejection.

The competent authority may decide that the substantial change in the tonne-kilometre data or the substantial change in CO<sub>2</sub> emissions may enjoy temporary approval, as a result of which a number of conditions are set that have to be met within a certain time limit. The final approval or rejection of the substantial change in tonne-kilometre data or the substantial change in CO<sub>2</sub> emissions is dependent on whether the conditions set have been met or otherwise within the time limit established. In order to assess this, the competent authority shall rely on the assistance of the verification office. Should the conditions not be met within the set period the competent authority shall reject the substantial change in tonne-kilometre data or the substantial change in CO<sub>2</sub> data.

In the event of the approval of the substantial change in tonne-kilometre data or the substantial change in CO<sub>2</sub> emissions the change shall be added to the approved monitoring plan for tonne-kilometre data or to the approved monitoring plan for CO<sub>2</sub> emissions as an addendum. A substantial change may be applied only after this is approved by the competent authority.

Once the substantial change in the tonne-kilometre data or the substantial change in CO<sub>2</sub> emissions has been approved by the competent authority the aircraft operator shall proceed immediately to incorporate this into the log book for changes in tonne-kilometre data or in the log book for changes in CO<sub>2</sub> emissions.

Art. 27/12. The Minister for the Environment shall establish the following templates and the explanatory statements:

- 1° the template and the explanatory statement for the log book relating to changes in tonne-kilometre data ;
- 2° the template and the explanatory statement for the log book relating to changes in CO<sub>2</sub> emissions ;
- 3° the template and the explanatory statement for the declaration form for a substantial change in tonne-kilometre data ;
- 4° the template and the explanatory statement for the declaration form for a substantial change in CO<sub>2</sub> emissions.

Section V. Abnormal circumstance for tonne-kilometre data or abnormal circumstance for CO<sub>2</sub> emissions

Art. 27/13. §1. From the moment when the aircraft operator is informed of this or could reasonably be expected to know about this the aircraft operator has to register, justify and document in detail any high impact or non-high impact abnormal circumstance for tonne-kilometre data or any high impact or non-high impact abnormal circumstance for CO<sub>2</sub> emissions in the log book for abnormal circumstances in relation to tonne-kilometre data or in the log book for abnormal circumstances in relation to CO<sub>2</sub> emissions, referring to the measures taken and the alternative monitoring methodology.

§2. The aircraft operator must do its utmost to remedy the abnormal circumstance for tonne-kilometre data or the abnormal circumstance for CO<sub>2</sub> emissions as quickly as possible.

§3. No later than five working days following the day on which the aircraft operator is informed of this or could reasonably be expected to know about this the aircraft operator must report a high impact abnormal circumstance for tonne-kilometre data or a high impact abnormal circumstance for CO<sub>2</sub> emissions and present it to the verification office for approval.

The aircraft operator shall send the verification office the fully completed declaration form for an abnormal circumstance in relation to tonne-kilometre data or the fully completed declaration form for an abnormal circumstance in relation to CO<sub>2</sub> emissions, together with the proposal for an alternative monitoring methodology for tonne-kilometre data or the proposal for an alternative monitoring methodology for CO<sub>2</sub> emissions. This should be undertaken via a notification and a digital copy on an electronic medium. The hard copy shall feature a letter signed by the aircraft operator where the operator declares that the data provided digitally are fully consistent with the written version.

During the verification of the abnormal circumstance for tonne-kilometre data or of the abnormal circumstance for CO<sub>2</sub> emissions the verification office may get in touch with the aircraft operator to seek further information. If need be, the verification office may carry out verification activities at locations the aircraft operator uses for performing the aviation activities

Within two months after the receipt of the declaration form for an abnormal circumstance in relation to tonne-kilometre data or of the declaration form for an abnormal circumstance in relation to CO<sub>2</sub> emissions the verification office shall take a decision about approving or rejecting the proposed monitoring methodology.

Art. 27/14. The Minister for the Environment shall establish the following templates and the explanatory statements:

1° the template and the explanatory statement for the log book for abnormal circumstances in relation to tonne-kilometre data;

2° the template and the explanatory statement for the log book for abnormal circumstances in relation to CO<sub>2</sub> emissions;

3° the template and the explanatory statement for the declaration form for a high impact abnormal circumstance in relation to tonne-kilometre data;

4° the template and the explanatory statement for the declaration form for a high impact abnormal circumstance in relation to CO<sub>2</sub> emissions.

#### Section VI. The aircraft operator's termination of an aviation activity

Art. 27/15. §1. As soon as the aircraft operator is informed of this or could reasonably be expected to know about this the aircraft operation must report any cessation of its activities to the competent authority. This is undertaken via a notification, mentioning the period when the aircraft operator shall not perform any aviation activity.

The competent authority shall use a notification process to confirm to the aircraft operator that the report about the cessation of the aviation activity has been received.

§2. In the event of a report concerning the cessation of the aviation activity pursuant to paragraph 1 and starting from the time the competent authority confirms having received the notification, the aircraft operator no longer has to have an approved monitoring plan for CO<sub>2</sub> emissions for the calendar years during which the aircraft operator does not perform any aviation activities. Nor does the aircraft operator have to submit a verified annual CO<sub>2</sub> emission report for the calendar years during which the aircraft operator does not perform any aviation activities.

§3. An aircraft operator which, pursuant to paragraph 1, has reported the cessation of an aviation activity and resumes an aviation activity during the 2013-2020 period must have an approved monitoring plan for CO<sub>2</sub> emissions no later than six months after the date when the aircraft operator's aviation activity is resumed.

#### Section VII. Issuance of emission allowances allocated to aircraft operators

Art. 27/16. Every year and no later than 28 February the emission allowances that are allocated for that year shall be issued to the aircraft operator.

Starting in 2017, every year and no later than 28 February the emission allowances from the special reserve which are allocated for that year shall be issued to the aircraft operator..

#### Section VIII. The aircraft operator's surrender of emission allowances

Art. 27/17. Starting on 1 January 2013 the aircraft operator shall be required to proceed, no later than 30 April of each calendar year to surrender emission allowances via a transfer in the national registry.

The number of surrendered emission allowances must correspond to the quantity of CO<sub>2</sub> emissions generated by the aviation activity performed by the aircraft operator in the preceding calendar year, as featured in the annual CO<sub>2</sub> emission report verified as satisfactory for the aforementioned year or, where appropriate, should correspond to the alternative emission figure that has been determined pursuant to article 27/10, §5, second subparagraph.



In the event the aviation activity is ceased, the surrender obligation shall continue to apply for the period in which the aircraft operator still performed an aviation activity.”

**Art. 8.** In article 28 of the same decision the sentence “In the event of change to the identity of the operator the competent authority shall adjust the definitively approved allocation plan by referring to the name and address of the new operator.” shall be deleted.

**Art. 9.** In article 31 of the same decision the following amendments shall be made:

1° the words “operator of a greenhouse gas installation” and the word “operator”, shall be replaced in each case by the words “operator of a greenhouse gas installation or the aircraft operator”;

2° in paragraph 1 the words “by the greenhouse gas installation” shall be deleted;

3° the words “or pursuant to article 27/17 of this decision” shall be added to paragraph 1, first subparagraph;

4° in paragraph 6 the words “or referred to in article 27/17 of this decision” shall be inserted between the words “referred to in article 4.10.1.2. of title II of the Flanders Environmental Legislation (VLAREM)” and the word “, annually,”

**Art.10.** Articles 31/1 and 31/2 shall be added to chapter IV of the same decision and read as follows :

“Art. 31/1. §1. Starting in 2010, pursuant to article 26bis, §1, first subparagraph, of the REU Decree, an administrative fine shall be imposed on the aircraft operator which, on 1 January of each year, does not have an approved monitoring plan for CO<sub>2</sub> emissions.

By derogation from the first subparagraph pursuant to article 26bis, §1, second subparagraph, of the REU Decree an administrative fine shall be imposed on the aircraft operator which starts an aviation activity after 31 August 2009, has a valid Belgian operating licence and does not have an approved monitoring plan for CO<sub>2</sub> emissions within a maximum of six months after the start of the aviation activity.

By derogation from the first subparagraph pursuant to article 26bis, §1, second subparagraph of the REU Decree an administrative fine shall be imposed on the aircraft operator which, subsequent to ceasing to perform an aviation activity resumes the aviation activity and does not have an approved monitoring plan for CO<sub>2</sub> emissions within a maximum of six months after the date on which the aircraft operator's aviation activity is resumed.

By derogation from the first subparagraph pursuant to article 26bis, §1, second subparagraph, of the REU Decree an administrative fine shall be imposed on the aircraft operator which starts an aviation activity after 31 August 2009, does not have a valid Belgian operating licence and within a maximum of six months after the date the European Commission publishes the list of aircraft operators, referred to in article 18bis, third subparagraph, of the Directive, does not have an approved monitoring plan for CO<sub>2</sub> emissions.

§2. The administrative fine shall be calculated on the basis of the following formula:  $E \times \text{Euro } 0.50$ , where:

1° E = the estimated CO<sub>2</sub> emissions, expressed in tonnes CO<sub>2</sub>, emitted as a result of the aircraft operator's aviation activities during the reference monitoring period. The CO<sub>2</sub> emissions shall be estimated on the basis of the European Commission-approved instruments implemented by Eurocontrol. The Flemish Minister for the Environment shall indicate the European Commission-approved instruments.

In the first subparagraph the reference monitoring period is understood to mean: the most recent period, which is as long as the monitoring period and precedes the date on which the aircraft operator must have an approved monitoring plan. Should the aircraft operator not have performed aviation activities during the entire reference monitoring period the emissions for this period shall be estimated and extrapolated to the duration of the monitoring period. The monitoring period is the period between the date on which the aircraft operator should have a monitoring plan approved pursuant to article 20ter, §6, of the REU Decree and the end of calendar year in which the date falls.

§3. The procedure, referred to in article 31, §2 to §5, shall apply to §§ 1 and 2.

Art. 31/2. §1. Pursuant to article 26bis, §2, of the REU Decree an administrative fine shall be imposed on the aircraft operator which has failed on 31 March of each year to submit an annual CO<sub>2</sub> emission report verified as satisfactory.

The administrative fine shall be calculated on the basis of the following formula: E x Euro 0.50, where:

1° E = the estimated CO<sub>2</sub> emissions, expressed in tonnes CO<sub>2</sub>, emitted as a result of an aviation activity by the aircraft operator during the reporting year when no annual CO<sub>2</sub> emission report was submitted. The CO<sub>2</sub> emissions shall be estimated on the basis of the European Commission-approved instruments implemented by Eurocontrol.

§2. The procedure, referred to in article 31, §2 to §5, shall apply to §§ 1 and 2.

§3. If the aircraft operator, pursuant to article 20ter, §7, fails to submit an annual CO<sub>2</sub> emission report verified as satisfactory by 31 March in each year at the latest, starting in 2011, an alternative emission figure shall be determined by the competent authority.

The aircraft operator whose annual CO<sub>2</sub> emission report from the preceding calendar year is not verified as satisfactory by 31 March at the latest in the current year, may, pursuant to article 20ter, §7 of the REU Decree, no longer transfer emission allowances until the report is verified as satisfactory.”

**Art. 11.** Articles 32/1, 32/2 and 32/3 shall be added to chapter V of the same decision and read as follows :

“Art.32/1. §1. During the verification process the verification office shall examine the report, referred to in article 7/1, §1. In doing so, the reliability, the credibility and the accuracy of the reported greenhouse gas emissions shall be assessed, and an examination shall be made of the information about the greenhouse gas emissions, in particular :

1° the reported activity data and the related measurements and calculations;

2° the choice and use of emission factors;

3° the calculations resulting in the determination of the total emissions ;

4° if measurements are used, the trueness of the choice and the way the measuring methods are applied.

§2. The verification office shall draw up a report about the verification process, referring to whether the reported greenhouse gas emissions may be verified as satisfactory.

The report shall feature all subjects of relevance for the work performed. The report may be declared as verified as satisfactory if the verification office is of the opinion that the total greenhouse gas emissions are not materially misstated.

If the report is not verified as satisfactory, the verification office may determine an alternative emission figure in its report.

§3. The verification office shall provide the report to the department.

Art. 32/2. §1. During the verification process the verification office shall examine the annual CO<sub>2</sub> emission report, referred to in article 20ter, §7, of the REU Decree, and the monitoring during the preceding year.

In doing so, the reliability, the credibility and the accuracy of the monitoring systems and the reported data shall be assessed and an examination shall be made of the information about the emissions, in particular :

- 1° the reported activity data and the related measurements and calculations;
- 2° the choice and use of emission factors;
- 3° the calculations resulting in the determination of the total emissions ;
- 4° if measurements are used, the trueness of the choice and the way the measuring methods are applied.

§2. The emissions reported in the annual CO<sub>2</sub> emission report may be approved only if reliable, credible data and information allow the emissions to be determined with a high degree of certainty.

For a high degree of certainty, the operator must have demonstrated that:

- 1° the information reported is free of inconsistencies;
- 2° the data collected is consistent with the applicable scientific standards;
- 3° the relevant documents for the aircraft used for the performance of the aviation activities and which are covered by the annual CO<sub>2</sub> emission report are complete and consistent.

§3. The verification office shall take into account the issue of whether the aircraft operator is registered in the context of EMAS, the community eco-management and auditing scheme, or has an equivalent environmental or energy management system in place.

§4. The verification must be based on a strategic analysis of all the aviation activities the aircraft operator has performed and which are covered by the annual CO<sub>2</sub> emission report. Towards this end the verifier shall require an overview of all the activities and their relevance for the emission level of all aviation activities the aircraft operator has performed and which are covered by the annual CO<sub>2</sub> emission report.

The verification office must ascertain in particular that :

- 1° the annual CO<sub>2</sub> emission report contains data about all flights covered by aviation activities, referred to in annex III. The verification office shall be assisted in this task by means of data about scheduling and other data about the aircraft operator's traffic, including data it has sought from Eurocontrol;
- 2° the cumulative data about fuel consumption and data about fuel purchased or otherwise provided for the aircraft performing the aviation activity are consistent.

§5. Where appropriate, the information submitted shall be verified at locations that the aircraft operator has used for the performance of the aviation activities and which are covered by the annual CO<sub>2</sub> emission report. The verifier shall take random samples to establish the reliability of the reported data and information. The verifier shall receive access to all the locations and all the information in connection with the subject of the verification.

§6. The verification office has to evaluate all sources of emissions from each aircraft for which the aircraft operator is responsible, with a view to the reliability of the data from any source contributing to the total emissions of each aircraft for which the aircraft operator is responsible.

§7. With this analysis, the verification office shall expressly identify the sources with a high potential for error, and other aspects of the monitoring and reporting procedure that may contribute to errors in determining the total emissions. In particular this shall involve the choice of emission factors and the calculations required to establish emissions from separate emission sources. Special attention has to be paid to sources with a high potential for error and the relative aspects of the monitoring procedure.

§8. The verification office shall take account of all the risk management methods the aircraft operator applies to minimise the degree of uncertainty.

§9. The verification office shall draw up a report about the verification process, stating whether the annual CO<sub>2</sub> emission report, referred to in article 20ter, §7, of the REU Decree, is satisfactory.

The report shall cover all subjects relevant to the work performed. The annual CO<sub>2</sub> emission report, referred to in article 20ter, §7, of the REU Decree, may be declared satisfactory if in the opinion of the verification office the total emissions are not substantially presented as incorrect.

§10. The verification office shall be independent of the aircraft operator, carry out its activities in a sound and objective professional manner, and be familiar with:

1° the standards and guidelines for monitoring and reporting CO<sub>2</sub> emissions via aviation activities approved by the European Commission pursuant to article 14, first subparagraph of the Directive ;

2° the legislative and regulatory provisions applicable to the aviation activities being verified;

3° the generation of all information about any emission source from any aircraft for which the aircraft operator is responsible, in particular as regards collecting, measuring, calculation and reporting data.

Art. 32/3. §1. The general principles and method for verifying the annual CO<sub>2</sub> emission report, referred to in article 32/2, shall also apply insofar as this is applicable to the verification of the report on tonne-kilometre data.

§2. The verification office must ascertain in particular that :

1° the report on tonne-kilometre data solely features data about flights covered by aviation activities, referred to in annex III, for which the aircraft operator is responsible and are actually performed. The verification office shall be assisted in this task by means of data about the aircraft operator's traffic, including data sought from Eurocontrol by the aircraft operator;

2° the freight reported by the aircraft operator corresponds with the documents about freight the operator keeps for safety purposes.”

**Art. 12.** A section Ibis shall be inserted in chapter VI of the same decision and comprising article 35/1, which reads as follows:

“Section Ibis. The aircraft operator's surrender of CERs and ERUs

Art. 35/1. For the year 2012 the aircraft operator may use CERs and ERUs, except those referred to in article 35, up to 15 percent of the number of emission allowances that the operator must surrender pursuant to article 27/17.”

**Art.13.** An annex II is added to the same decision, which is added as annex 1 of this decision.

**Art.14.** An annex III is added to the same decision which is added as annex 2 of this decision.

**Art.15.** This decision shall come into force on the day of its notification in the Belgian Official Gazette.

**Art.16.** The Flemish Minister for the Environment shall be responsible for the implementation of this decision.

Brussels,.....

The Minister-President of the Government of Flanders,

Kris PEETERS

The Flemish Minister for the Environment, Nature and Culture,

Joke SCHAUVLIEGE

## Annex 1.

### Annex II. Categories of activities

1. Installations or parts of installations used for research, development and testing of new products and processes and installations using exclusively biomass are not covered by this annex.
2. The threshold values given below generally refer to the production capacity or performance. Where several activities falling under the same category are carried out in the same installation, the capacities of such activities are added together.
3. If the total rated thermal input of an installation is calculated, the rated thermal input of all the technical units forming part of the installation and in which fuels are burned are added together. In particular, the units may comprise all kinds of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units. Units with a rated thermal input under 3 MW and units which use exclusively biomass shall not be taken into account for the purposes of this calculation. "Units using exclusively biomass" includes units which use fossil fuels only during start-up or shut-down of the unit.
4. If a unit serves an activity for which the threshold is not expressed as total rated thermal input, the threshold of this activity shall take precedence.
5. When the capacity threshold of any activity in this annex is found to be exceeded in an installation, all units in which fuels are combusted, other than units for the incineration of hazardous or municipal waste, shall be included.

| Activities  | greenhouse gases                    |
|---|-------------------------------------|
| 1. Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste)   | Carbon dioxide                      |
| 2. Refining of mineral oil.   | Carbon dioxide                      |
| 3. Production of coke.  | Carbon dioxide                      |
| 4. Metal ore (including sulphide ore) roasting or sintering, including pelletisation  | Carbon dioxide                      |
| 5. Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour.   | Carbon dioxide                      |
| 6. Production or processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling. | Carbon dioxide                      |
| 7. Production of primary aluminium.   | Carbon dioxide and perfluorocarbons |
| 8. Production of secondary aluminium where combustion units with a total rated thermal input exceeding 20 MW are operated.  | Carbon dioxide                      |
| 9. Production or processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 MW are operated.                                       | Carbon dioxide                      |
| 10. Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day.   | Carbon dioxide                      |
| 11. Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day.   | Carbon dioxide                      |

|   |                                  |
|---|----------------------------------|
| 12. Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day.   | Carbon dioxide                   |
| 13. Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day.                                 | Carbon dioxide                   |
| 14. Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day.  | Carbon dioxide                   |
| 15. Drying or calcination of gypsum or production of plaster boards and other gypsum products, where combustion units with a total rated thermal input exceeding 20 MW are operated.  | Carbon dioxide                   |
| 16. Production of pulp from timber or other fibrous materials   | Carbon dioxide                   |
| 17. Production of paper or cardboard with a production capacity exceeding 20 tonnes per day.  | Carbon dioxide                   |
| 18. Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues, where combustion units with a total rated thermal input exceeding 20 MW are operated. | Carbon dioxide                   |
| 19. Production of nitric acid.  | Carbon dioxide and nitrous oxide |
| 20. Production of adipic acid.  | Carbon dioxide en nitrous oxide  |
| 21. Production of glyoxal and glyoxylic acid.   | Carbon dioxide en nitrous oxide  |
| 22. Production of ammonia.  | Carbon dioxide                   |
| 23. Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day   | Carbon dioxide                   |



|  |                |
|--|----------------|
| 24. Production of hydrogen (H <sub>2</sub> ) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day. | Carbon dioxide |
| 25. Production of soda ash (Na <sub>2</sub> CO <sub>3</sub> ) and sodium bicarbonate (NaHCO <sub>3</sub> ).  | Carbon dioxide |

Seen to be annexed to the Decision of the Government of Flanders of (...) to amend the Decision of the Government of Flanders of 7 December 2007 concerning tradable greenhouse gas emission allowances.

Brussels,.....

The Minister-President of the Government of Flanders,

Kris PEETERS

The Flemish Minister for the Environment, Nature and Culture,

Joke SCHAUVLIEGE

Annex 2.

### Annex III. List of aviation activities

All flights that arrive at or depart from an aerodrome situated in the territory of a European Union Member State are covered by “the *aviation activity*”.

The concept *flight* means one flight sector, that is a flight or one of a series of flights which commences at a parking place of the aircraft and terminates at a parking place of the aircraft.

The concept *aerodrome* means a defined area on land or water, including buildings, installations and equipment, intended to be used either wholly or in part for the arrival, departure and surface movement of aircrafts.

If an aircraft operator performs an aviation activity listed in this annex, it falls under the Community scheme independently of whether it is on the list of aircraft operators published by the Commission pursuant to Article 18bis, third subparagraph of Directive 2003/87/EC.

#### This activity shall not cover:

1° 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.

This exemption shall be interpreted according to the exclusive purpose of the flight.

*Immediate family* comprises exclusively the spouse, any partner considered as equivalent to the spouse, the children and the parents.

*Government ministers* are the members of the government as listed in the national official journal of the country concerned. Members of regional or local governments of a country do not qualify for exemption under this point.

*An official mission* means a mission in which the person concerned is acting in an official capacity.

Flights for the positioning or ferrying of the aircraft are not covered by this exemption.

Flights that Eurocontrol's Central Route Charges Office has identified for route charges exemption applicability (hereinafter CRCO exemption code) as 'S' are presumed to be 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 substantiated by an appropriate status indicator in the flight plan;

2° military flights performed by military aircraft and customs and police flights.

*“Military flights”* mean flights directly related to the conduct of military activities

Military flights performed by civil registered aircraft are not covered by this exemption. Similarly, civil flights performed by military aircraft are not covered by point 2°.

Flights with the CRCO exemption code 'M' or 'X' are presumed to be exempted military flights.

Customs and police flights performed by both civil registered and military aircraft are exempted.

Flights with the CRCO exemption code 'P' are presumed to be exempted customs and po-

lice flights;

c) flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate competent authority.

In relation to the below categories of flight, flights for the positioning or ferrying of the aircraft and the flights carrying exclusively equipment and personnel directly involved in providing the related services are covered by the exemption. Furthermore, these exemptions do not distinguish between flights performed through the use of public and private resources.

*"Flights related to search and rescue"* mean flights offering search and rescue services. *Search and rescue service* means the performance of distress monitoring, communication, coordination and search and rescue functions, initial medical assistance or medical evacuation, through the use of public and private resources, including cooperating aircraft, vessels and other craft and installations.

Flights with the CRCO exemption code 'R' and flights identified with STS/SAR in field 18 of the flight plan are presumed to be exempted search and rescue flights

*"Firefighting flights"* mean flights performed exclusively to provide aerial firefighting services, which means the use of aircraft and other aerial resources to combat wildfires

Flights identified with STS/FFR in field 18 of the flight plan are presumed to be exempted firefighting flights.

*"Humanitarian flights"* mean flights operated exclusively for humanitarian purposes which carry relief personnel and relief supplies such as food, clothing, shelter, medical and other items during or after an emergency and/or disaster and/or are used to evacuate persons from a place where their life or health is threatened by such emergency and/or disaster to a safe haven in the same State or another State willing to receive such persons.

Flights with the CRCO exemption code 'H' and flights identified with STS/HUM in field 18 of the flight plan are presumed to be exempted humanitarian flights.

*"Emergency medical service flights"* mean flights the exclusive purpose of which is to facilitate emergency medical assistance, where immediate and rapid transportation is essential, by carrying medical personnel, medical supplies, including equipment, blood, organs, drugs, or ill or injured persons and other persons directly involved.

Flights identified with STS/MEDEVAC or STS/HOSP in field 18 of the flight plan are presumed to be exempted emergency medical service flights.

3° flights performed exclusively under visual flight rules as defined in annex 2 to the Chicago Convention.

4° flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;

5° 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.

Flights with the CRCO exemption code 'T' and flights identified with RMK/'Training flight' in field 18 of the flight plan are presumed to be exempted pursuant to point 5°.

6°) 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

In relation to the below categories of flights, flights for the positioning or ferrying of the air-

craft are not covered by this exemption.

This category exempts flights the only purpose of which is to carry out scientific research. The scientific research must be partially or totally performed in-flight for the exemption to apply. The transport of scientists or research equipment is not in itself sufficient for a flight to be exempt.

Flights with the CRCO exemption code 'N' and flights identified with STS/FLTCK in field 18 of the flight plan are presumed to be exempted pursuant to point 6°.

7° flights performed by aircraft with a certified maximum take-off mass of less than 5,700 kg;

8° 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.

This shall be interpreted as applying to the regions listed in Article 299(2) of the EC Treaty and comprises exclusively public service obligation flights within one outermost region and flights between two outermost regions;

j) flights which, but for this point, would fall within this activity, performed by a commercial air transport operator operating 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

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.

All commercial air transport operators must hold an air operator's certificate (AOC) under Part I of Annex 6 to the Chicago Convention. Operators without such a certificate are not commercial air transport operators.

For the application of the *de minimis* rule, the characteristic of being commercial is linked to the operator and not to the flights in question. That means in particular that the flights provided by a commercial operator shall be taken into account for deciding whether that operator falls above or below the exemption thresholds even if those flights are not provided for remuneration.

Only flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies shall be taken into account for deciding whether the aircraft operator falls above or below the exemption thresholds of the *de minimis* rule.. Flights exempted under point 1° to point 10°, shall not be taken into account for the same purposes..

Flights performed by a commercial aircraft operator operating fewer than 243 flights per period for three consecutive four-month periods are exempted. The four-month periods are: January to April; May to August; September to December. The local time of departure of the flight determines in which four-month period that flight shall be taken into account for deciding whether the aircraft operator falls above or below the exemption thresholds of the *de minimis* rule.

A commercial operator operating 243 flights per period or more is included in the Community scheme for the whole calendar year in which the threshold of 243 flights is reached or exceeded.

A commercial operator operating flights with total annual emissions equal or higher than 10,000 tonnes per year is included in the Community scheme for the calendar year in which the threshold of 10,000 tonnes is reached or exceeded.

Seen to be annexed to the Decision of the Government of Flanders of (...) to amend the Decision of the Government of Flanders of 7 December 2007 concerning tradable greenhouse gas emission allowances.

Brussels,.....

The Minister-President of the Government of Flanders,

Kris PEETERS

The Flemish Minister for the Environment, Nature and Culture,

Joke SCHAUVLIEGE