

FREQUENTLY ASKED QUESTIONS

**WITH REGARD TO COMMISSION PROPOSAL TO DEFER EU ETS
INTERNATIONAL AVIATION COMPLIANCE BY ONE YEAR (COM(2012) 697)**

10 DECEMBER 2012

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1. DECISION MAKING PROCESS AT EU LEVEL

1.1. What is the "stop the clock" proposal about?

The proposal from the Commission is draft legislation in the form of a Decision. It proposes a derogation from Article 16 of the EU ETS Directive so that action will not be taken against aircraft operators that do not meet the Directive's reporting and compliance obligations arising before the ICAO Assembly for non-European flights. As such it would cover obligations arising in respect of emissions in 2010, 2011 and 2012.

The only condition for the deferral of the compliance obligations and the respective non-compliance sanctions, is that the concerned aircraft operators will either not have received, or have returned, their share of the 2012 free allowances granted to meet the obligations for flights to and from third countries and Europe based on the verified tonne kilometres data of the reference year 2010. Proper monitoring, reporting and verification of greenhouse gas emissions from such flights is welcomed, but compliance sanctions would not be taken in case of the non-reporting of such emissions.

1.2. What is the reason for this proposal?

At the International Civil Aviation Organisation (ICAO) Council meeting of 9 November 2012, significant progress was made in view of agreeing global action on aviation and climate change. In particular through recognising that a global market-based measure (MBM) is technically feasible and commitments made to adopt a framework for market-based measures applicable to international aviation emissions. It was agreed to set up a high-level group which will take forward this policy area as a matter of urgency.

The EU considers that an agreement on a global market-based measure for addressing international aviation emissions is within reach at the ICAO Assembly scheduled for September 2013. This proposal is being made by the European Commission in order to provide time for the 2013 ICAO Assembly to agree on a global market-based measure with a realistic timetable for further development and implementation, and the adoption of a framework for facilitating States' application of MBMs to international aviation pending the global measure's application. This proposal to "stop the clock" for flights to and from Europe demonstrates goodwill towards the successful conclusion of these ICAO processes.

1.3. How long might the proposal take to be agreed?

The proposal from the Commission is co-decision legislation which requires approval by EU Member States and the European Parliament. This proposal should be agreed between the European Parliament and Council during the first quarter of 2013.

The Environment Working Group of the Council has already met to consider the proposal and will continue to meet regularly.

Other important milestones are the opinion that the lead committee of the European Parliament has to deliver and possible trilogues between the Parliament, the Council and the Commission.

1.4. What happens if the legislative process is not finished before April 2013?

The Commission confirms that pending completion of the legislative process, aircraft operators which have either not received, or have returned for cancellation the relevant share of their free allowances for 2012, should not expect the Commission to require enforcement activities to be taken against them by Member States in respect of reporting emissions or surrendering allowances in respect of flights to or from third countries and airports in the EEA and closely connected areas.

1.5. Would there be a possibility of retro-active enforcement for 2012 once the proposal will have been adopted?

No, the derogation for flights operated to and from 3rd countries in 2012 will be permanent.

1.6. Does the legislation require transposition into national law?

The decision does not specifically require transposition. It requires Member States not to enforce certain requirements of the Directive if certain conditions are met. Whether Member States consider that they need to make changes to national law for this purpose will depend on national legal frameworks.

1.7. What will happen after the 2013 ICAO Assembly?

The proposed Decision gives space for progress to be made at the ICAO Assembly that takes place in September 2013. If clear and sufficient progress is made at the ICAO Assembly, the Commission will propose appropriate further legislative action.

2. GEOGRAPHICAL SCOPE OF THE EXEMPTION FROM ENFORCEMENT

2.1. What flights are covered by the proposed exemption from enforcement?

This proposed derogation relates to flights to and from airports in third countries outside the EEA and closely connected areas with a shared commitment to tackle climate change.

Flights between airports located in EEA States, Switzerland, Croatia and the territories and dependencies of Member States, will continue to be covered by the legislation as before (hereinafter referred to as "intra-European flights").

Flights from EEA States, Switzerland, Croatia, and the territories and dependencies of Member States to 3rd countries as well as flights from 3rd countries into EEA States, Switzerland, Croatia, and the territories and dependencies of Member States remain outside the scope of the EU ETS (hereinafter referred to as "extra-European flights").

2.2. What about flights between airports in Europe?

The EU ETS Directive will continue to apply in full respect of intra-European flights between airports located in EEA States, Switzerland, Croatia and the territories and dependencies of Member States.

All aircraft operators which have operated such flights in 2010, 2011 and 2012 will still be required to comply with all monitoring, reporting and verification obligations associated with these flights.

Aircraft operators which operated such flights in 2012 are required to surrender allowances or international credits in respect of emissions from those flights by 30 April 2013.

2.3. Will the Commission publish a full list of countries and territories in respect of which the law remains unchanged?

Yes. The Commission will publish in due course a more detailed list in cooperation with Member states.

3. MONITORING, REPORTING AND VERIFICATION

3.1. Will the list of aircraft operators be adjusted?

No. There is no need to adjust the list of aircraft operators to reflect the exemption from enforcement.

3.2. Do monitoring plans need to be adjusted?

No. The proposed legislation does not require any changes to be made to monitoring plans. The proposed legislation is a temporary measure so the monitoring plans for all operations should be in place for reporting on the 2013 emissions.

3.3. What is the scope of the reporting for 2012?

The proposed exemptions will effectively remove sanctions associated with reporting of emissions and surrender of allowances for extra-European flights (as defined in section 2). Therefore aircraft operators will not have sanctions applied if 2012 verified emissions data for such flights are not provided to the competent authority.

If an aircraft operator opted for the derogation but continued to report all emissions it would be recommendable to present separately the total emissions of intra-European flights from total emissions of extra-European flights.

3.4. Shall aircraft operators, who decide to only comply with regard to flights to which the EU ETS Directive continues to fully apply, also report emissions for extra-European flights?

While proper monitoring, reporting and verification of emissions is obligatory for flights to which the EU ETS will continue to fully apply, aircraft operators are welcomed to also report emissions for extra-European flights. The aircraft operators shall arrange with their verifiers the best way to proceed further.

3.5. What is the situation with emissions from flights in 2013?

The proposed legislation provides for a temporary exemption for enforcement of compliance obligations for emissions generated up to the end 2012 and the associated April 2013 surrender obligation. Emissions related to flights in 2013 continue to be

covered by the EU ETS and free allowances for 2013 are scheduled to be allocated in February 2013. Aircraft operators will need to monitor and report verified data for all flights carried out in 2013.

3.6. How do the *de minimis* thresholds in the Directive apply to the emissions that are monitored and reported?

The proposed derogation does not alter the *de minimis* thresholds in the legislation because those thresholds come from Annex 1 of the EU ETS Directive which remains the same. Accordingly there are no changes to the aircraft operators to which the thresholds set for commercial operation in the legislation apply. The proposal makes no change in respect of a commercial aircraft operator above the *de minimis*, but derogates from the Directive's requirements for reporting and surrendering allowances for certain flights other than flights between European airports.

3.7. How do the thresholds for the application of the small emitters' methodology apply to the activities that are monitored and reported?

The proposed derogation does not alter the thresholds for application of the small emitter's methodology, this remains the same. Accordingly there is no change to the aircraft operators to which the threshold applies.

4. RETURN OF ALLOWANCES

4.1. Which free allowances will need to be returned?

To take advantage of the exemption from enforcement, free allowances associated with activity in respect of which there is an exemption will need to be returned to Member States for cancellation. Free allowances associated with activity for which there is no exemption are to be retained.

4.2. Do all aircraft operators need to return free allowances?

Return of allowances is not required if an aircraft operator decides to comply with the legislation in full and does not make use of the exemption.

4.3. How many allowances could be returned in total?

The precise number of allowances that are returned will depend on the number of aircraft operators that choose to make use of the exemption. If all relevant aircraft operators choose to return allowances, preliminary estimates suggest that over two thirds of the allowances allocated for free in 2012 could be returned and cancelled.

4.4. How is the number of free allocations to be returned calculated?

The number of free allowances to be returned relates to activity undertaken, and is calculated based on the verified tonne kilometre (tkm) benchmarking data reported for 2010. The adjustment will be proportionate to the amount of tkm activity recorded on intra-European and extra-European flights.

Tkm reported in 2010 in respect of extra-European flights will be multiplied by the already determined benchmark for 2012 to calculate the amount of allowances that an operator should return for cancellation.

4.5. Do the same allowances which were originally allocated need to be returned?

Allowances may have been sold so the aircraft operator will need to ensure that the total amount of allowances returned is exactly the same as that calculated by the Competent Authority. All returned allowances should be aviation allowances from 2012. Consequently in the case that aviation allowances have already been sold, additional 2012 aviation allowances will have to be bought and returned. No CERs or ERUs can be returned instead of allowances.

4.6. Can aircraft operators surrender CERs and ERUs that they have already bought?

Aircraft operators can use CERs and ERUs in an amount of up to 15 % of the total number of allowances that they will surrender.

4.7. How should the allowances be returned?

Allowances should be returned through the registry account to the administering Member State for cancellation. The Commission is currently working on guidance for the timing of those returns.

4.8. Will Member states be expected to take full enforcement actions provided for in the EU ETS Directive against aircraft operators who have not returned their allowances for flights to and from 3rd countries?

Yes, an aircraft operator will only benefit from the derogation from enforcement if he returns his free allowances.

4.9. What about the Aircraft Operators that did not submit a verified TKM Report? How do they avail of the derogation?

Aircraft Operators that did not make a verified TKM application for the base year 2010 are not due an allocation of free allowances and therefore have none to return. Such Aircraft Operators are entitled to report only the intra-European flights, the same as these who have returned their free allocations. A number of smaller Aircraft Operators after applying the derogation may find that they have no reporting obligations for 2012, as they had no intra-European flights in 2012.

5. AMOUNT OF ALLOWANCES TO BE AUCTIONED AND AUCTIONING SHARES

5.1. What effect does this cancellation have on the total number of aviation allowances to be auctioned?

The percentage of aviation allowances to be auctioned remains at 15% as laid down in Article 3d of the Directive. Consequently, a lower quantity of aviation allowances will be auctioned for 2012 that proportionately reflects the lower number of total aviation allowances in circulation.

5.2. What does this change mean in terms of arrangements already made particularly in respect of auctioning volumes and calendars?

The auctions of aviation allowances will be adjusted to reflect the lower volume of aviation allowances that will be auctioned for 2012. The auctions for 2012 have been postponed until details of the free allowances to be cancelled have been determined by the Competent Authorities with the support of the European Commission.

5.3. What is the value of already auctioned aviation allowances?

Aviation allowances that have already been auctioned remain fully valid to be surrendered in respect of emissions from aircraft activities or to be returned to benefit from the exemption of enforcement (see also question 4.5).

6. FURTHER IMPLEMENTATION ISSUES

6.1. What about the additional charges that aircraft operators have already applied to their customers?

The Commission has generally expected that the aviation industry would pass on the cost of allowances to their customers. The impact that EU ETS inclusion has had on ticket prices is considered to be rather limited. Aircraft operators will clearly benefit financially from charges already paid by customers which aircraft operators will then not need to pay for additional allowances. It is a question for individual aircraft operators as to how this financial benefit is used, for example to invest in emission reductions or returned to customers in the form of lower prices.

6.2. What implications does deferral from enforcement in 2012 have in respect of the implementation of the special reserve?

The implementation of the special reserve will not be affected because the deferral from enforcement is limited to the year 2010 to 2012. The special reserve is supplied with allowances created under the 2013 to 2020 timeframe and not from 2012.

7. THE EU'S POLICY POSITION

7.1. What does the Commission expect from the 2013 ICAO Assembly?

The Assembly should agree on a global market-based measure (MBM) with a realistic timetable for further development and implementation. It should also endorse an ICAO MBM framework for facilitating States' application of national and regional market based measures to international aviation pending application of the global measure. Building on the 2010 ICAO Resolution and its recognition that some States may take action on international aviation emissions prior to 2020, this MBM framework should urge States to avoid market distortions, limit administrative complexity, and promote comprehensive coverage of international aviation emissions. The framework should enable the harmonisation of different measures and facilitate linkage between current and future MBMs.

We are also looking for progress on the development, submission and review of State action plans, outlining States' respective policies and actions, including annual reporting

on international aviation CO₂ emissions to ICAO, and information in relation to achieving the Resolution's global goals. Specific capacity building should be available for countries which need this.

7.2. Why does the Commission consider that a MBM framework for international aviation according to which States regulate departing flights makes sense?

Firstly, this is one of the approaches which have been considered practical in ICAO. It provides the basis for a MBM framework which, over time, would have comprehensive coverage of aviation emissions, and it is workable.

This approach is a pragmatic way to further reconcile views on non-discriminatory action and common but differentiated responsibilities and respective capabilities because equal responsibility is taken by the country of arrival and departure, and the country of departure can take actions which it considers appropriate to limit the growth of aviation emissions from departing flights. In addition, this is also the coverage of international aviation emissions that has been foreseen in proposals outside the EU for economy-wide climate change legislation.

From the perspective of the airline, it has the advantage that every flight it operates is reported only once, and it provides the assurance that all other airlines operating the same flights are regulated in a consistent manner.

Finally, this approach is consistent with the EU commitment to a 20% reduction in emissions below 1990 levels, which includes CO₂ emissions from international aviation from flights departing from the EU.

7.3. What contribution should aviation make by 2020 to levels of emission reductions?

By 2020, global international aviation emissions are projected to be around 70% higher than 2005 levels, even with the 2% per year fuel efficiency improvement foreseen in the Resolution. Allowing aviation emissions to peak only in 2020 would result in ten years of considerable growth in emissions and would not see aviation contributing adequately to attain the maximum 2°C temperature rise which requires global emissions to peak well in advance of 2020. Accordingly the European Union has consistently advocated that the global reduction target for greenhouse gas emissions from international aviation should be a 10% reduction by 2020 compared to 2005 levels. Europe remains committed to its more ambitious goals for net emission reductions.

The EU also shares this commitment with the US, to limit global aviation emissions to 2005 levels or below by the year 2020. As international aviation emissions have increased since 2005 and are expected to rise even further, further action needs to be taken without delay to achieve this goal for 2020.

7.4. What does the proposed derogation mean in terms of other policy decisions currently under consideration, such as the proposal for backloading of allowances?

There is no linkage between this proposal and the proposal on the backloading of allowances.

7.5. What does deferral from enforcement in 2012 mean for the EU's overall 20% greenhouse gas reduction commitment for 2020?

The EU's commitment to reduce emissions by 20% compared to 1990 levels includes CO₂ emissions from international flights from the EU between 2013 and 2020¹. This proposal does not undermine the EU's 20% reduction commitment by 2020, because it is only applies in respect of emissions taking place in 2012.

7.6. What does this mean in respect of sustainable biofuels used by airlines in 2012?

The development of sustainable biofuels is encouraged by the EU ETS because they are considered to have zero emissions for compliance purposes. This incentive will remain in place for all flights for which aircraft operators surrender allowances.

7.7. What about other actions that the EU takes to reduce aviation emissions?

The EU has adopted a 'comprehensive approach' to reducing environmental impacts of aviation, and market based instruments such as the EU ETS are part of this approach. Other aspects include air traffic management measures, such as the Single European Sky programme; promotion of the research and development in cleaner aeronautics, for instance with the Clean Sky Programme and through work to promote the development of sustainable biofuels. In this regard, it should be noted that the Commission supported the aviation industry with €109 million for sustainable aviation in 2011 alone.

The EU and its Member States are responsible for a majority of the Action Plans on aviation and climate change which have so far been submitted to ICAO.

7.8. Why is a proposal being made for aviation but not for other sectors of the economy?

All sectors of the economy should contribute to tackling climate change. This proposal for temporarily deferring aviation's contribution is only justified because of the clear prospects for achieving global outcomes through ICAO that should lead to a greater environmental benefit than the application of the EU ETS as it stands now.

8. WHERE CAN I FIND FURTHER INFORMATION?

Announcement of the legislative proposal

http://ec.europa.eu/clima/news/articles/news_2012112001_en.htm

Aviation and climate change:

http://ec.europa.eu/clima/policies/transport/aviation/index_en.htm

EU ETS:

¹ See Staff working document at http://ec.europa.eu/clima/policies/g-gas/docs/swd_2012_353_en.pdf for more details.

http://ec.europa.eu/clima/policies/ets/index_en.htm