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Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

At the International Civil Aviation Organisation (ICAO) Council's meeting of 9 November 2012, significant progress was made towards the goal of the global regulation of aviation emissions.

This proposal for a Decision is intended to reinforce this positive momentum, and to enhance the chances of a successful outcome of the 2013 ICAO Assembly in terms of developing a global market-based measure (MBM) and adopting a framework facilitating States' application of market-based measures to international aviation.

The Decision would "stop the clock," by temporarily deferring enforcement of the obligations of aircraft operators in respect of incoming and outgoing flights under the European Union's Emission Trading System (ETS). This proposal thus demonstrates the EU's strong political commitment to facilitate and drive forward the successful conclusion of these ICAO processes.

The Decision derogating temporarily from the ETS Directive is designed to ensure that action is not taken against aircraft operators which do not meet the Directive's reporting and compliance obligations arising before 1 January 2014 in respect of incoming and outgoing flights. The condition for this is that they have either not received, or have returned, 2012 free allocations granted for such activities to or from aerodromes outside the EU and closely connected areas with a shared commitment to tackle climate change. Proper monitoring, reporting and verification of emissions from such flights is welcomed, but no compliance sanctions will be applied in respect of the non-reporting of such emissions.

The Directive continues to apply in full in respect of flights between aerodromes in the EU and closely connected areas with a shared commitment to tackle climate change. Consequently, all aircraft operators which have performed aviation activities falling within the Directive between such aerodromes in 2011 and in 2012 are required to comply with monitoring, reporting and verification requirements. By 30 April 2013, all aircraft operators which operated such flights in 2012 are required to surrender allowances or international credits in respect of emissions from those flights.

This 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. Article 25a of the Directive would enable amendments to be made to the aviation activities covered for requirements arising after 1 January 2014. Aircraft operators which intend to operate flights to and from aerodromes in the EU should be aware that, in the absence of such modifications, they are responsible for emissions from flights to and from those aerodromes from 2013 onwards. The free allocations made by February 2013 in respect of 2013 emissions are also subject to potential modification in the event that measures are adopted pursuant to Article 25a.

Other obligations in respect of such flights remain unaffected, and the percentage of auctioning remains at 15% as laid down in the Directive. Consequently, a lower quantity of aviation allowances will be auctioned for 2012, reflecting the proportionately lower number of total allowances in circulation.

To provide further momentum to the international discussions and continue EU leadership in this process, it is important that this proposal is agreed between the European Parliament and

Council swiftly and ideally by March 2013. The Commission confirms that pending completion of the legislative process, aircraft operators which have either not received free allocations for 2012, or have returned, such free allocations to the appropriate account, should not expect the Commission to require enforcement activities to be taken against them by Member States in respect of emissions from flights to or from aerodromes outside the EU and closely connected areas.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Significant progress has been made in the International Civil Aviation Organisation towards the adoption at the 2013 ICAO Assembly of a framework facilitating States' application of market-based measures to emissions from international aviation, and on developing a global market-based measure.
- (2) In order to facilitate this progress and provide momentum, it is desirable to defer enforcement of requirements relating to flights to and from aerodromes outside of the Union and areas with close economic connections to the Union and a shared commitment to tackle climate change<sup>1</sup> arising prior to the 2013 ICAO Assembly. Action should therefore not be taken against aircraft operators in respect of requirements resulting from Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community<sup>2</sup> arising before 1 January 2014 for reporting verified emissions and for the corresponding surrender of allowances from incoming

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<sup>1</sup> Including EFTA States, countries which have signed a Treaty of Accession with the Union and the dependencies and territories of EEA Member States

<sup>2</sup> OJ L 275, 25.10.2003, p.32.

and outgoing flights to and from such aerodromes. Aircraft operators who wish to continue to comply with those requirements should be able to do so.

- (3) In order to avoid distortions of competition, this derogation should only apply in respect of aircraft operators that have either not received or have returned all free allocations which have been allocated in respect of such activities in 2012. For the same reason, these allowances should not be taken into account for the purposes of calculating entitlements to use international credits within the framework of Directive 2003/87/EC.
- (4) Allowances that are not issued to such operators or are returned should be cancelled. The number of aviation allowances that are auctioned will respect Article 3d(1) of Directive 2003/87/EC,

HAVE ADOPTED THIS DECISION:

#### *Article 1*

By way of derogation from Article 16 of Directive 2003/87/EC, Member States shall take no action against aircraft operators in respect of requirements set out in Article 12(2a) and Article 14(3) of Directive 2003/87/EC arising before 1 January 2014, where such aircraft operators have not been issued free allocations in 2012 in respect of activity to or from aerodromes in countries outside the European Union that are not members of EFTA, dependencies and territories of EEA Member States or countries having signed a Treaty of Accession with the Union or, if they have been issued such allowances, have returned a corresponding number of allowances to Member States for cancellation.

#### *Article 2*

The Member States shall cancel all 2012 allowances in respect of flights to or from aerodromes referred to in Article 1 that have either not been issued or, if issued, have been returned to them.

#### *Article 3*

Allowances cancelled pursuant to Article 2 shall not be taken into account for the purposes of calculating entitlements to use international credits within the framework of Directive 2003/87/EC.

#### *Article 4*

This Decision is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*