



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on the Environment, Public Health and Food Safety*

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**2012/0328(COD)**

21.12.2012

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## **DRAFT REPORT**

on the 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 (COM(2012)0697 – C7-0385/2012 – 2012/0328(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Peter Liese

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the 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  
(COM(2012)0697 – C7-0385/2012 – 2012/0328(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0697),
  - having regard to Article 294(2) and Article 192 (1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0385/2012),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of ...<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of ...<sup>2</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Transport and Tourism (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**Amendment            1**

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<sup>1</sup> OJ C ...

<sup>2</sup> OJ C ...

## Proposal for a decision

### Recital 2

*Text proposed by the Commission*

(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 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 ***arising before 1 January 2014 for reporting verified emissions and for the corresponding surrender of allowances from incoming 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.

*Amendment*

(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 arising prior to the 2013 ICAO Assembly. Action should therefore not be taken against aircraft operators in respect of requirements ***relating to the calendar years 2010 to 2012 for reporting verified emissions and for the corresponding surrender of allowances from incoming and outgoing flights to and from such aerodromes*** 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. Aircraft operators who wish to continue to comply with those requirements should be able to do so.

Or. en

### *Justification*

*This clarifies that the derogation from Article 16 of Directive 2003/87/EC only refers to requirements for the calendar years 2010 - 2012. In order to avoid the necessity of transposition of the decision by the Member States, the scope of the derogation should be made very clear to prevent any ambiguities.*

## Amendment 2

### Proposal for a decision

#### Recital 2a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) The European Union expects the***

***ICAO Assembly to agree on a global market-based measure (MBM) with a realistic timetable for implementation and on a framework for facilitating comprehensive application of national and regional MBMs to international aviation, pending application of the global MBM.***

Or. en

*Justification*

*It has to be clarified that the EU has very clear expectations on the ICAO Assembly and not every result can be seen as a success.*

**Amendment 3**

**Proposal for a decision**

**Recital 3**

*Text proposed by the Commission*

(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.

*Amendment*

(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 ***issued*** in respect of such activities ***for*** 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.

Or. en

*Justification*

*As mentioned above, the formulation should leave no space for interpretation. Therefore, it should be made clear that the number of allowances to be returned is based on the share of verified tonne-kilometres of the relevant flight activities based on the reference year 2010. Otherwise operators could interpret the amount differently. Furthermore, it should be made clear that only aviation allowances for 2012 qualify as allowances to be returned for*

*cancellation. Otherwise, there would be a distortion of the number of allowances in circulation as reference for the 15% to be auctioned (see amendment 4).*

#### **Amendment 4**

##### **Proposal for a decision**

##### **Recital 4**

*Text proposed by the Commission*

(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,**

*Amendment*

(4) **Aviation allowances for 2012** that are not issued to such operators or are returned should be cancelled. The number of aviation allowances that are auctioned **by the Member States should be reduced according to calculations of the Commission, resulting in 15% of the overall amount of 2012 aviation allowances in circulation.**

Or. en

##### *Justification*

*Without this change, there is no legal basis for the reduction of the amount to be auctioned. To enable the auctioning of a reduced number of allowances taking into account the cancellations of free allocations according to Art. 2, the decision has to include a derogation from Art. 3d of the Directive, especially from paragraph 1 and 3. As a result, 15% of the total amount of allowances in circulation shall be auctioned.*

#### **Amendment 5**

##### **Proposal for a decision**

##### **Recital 4a (new)**

*Text proposed by the Commission*

*Amendment*

**4a. In order to avoid distortion of competition and the weakening of the scheme's environmental integrity, the current derogation should apply for a maximum of one year. Further legislative action would only be appropriate if clear and sufficient progress on international aviation emissions were made at the ICAO Assembly, including reaching an**



***agreement on a global MBM with a realistic implementation timetable and on a non-discriminatory framework providing comprehensive coverage of international aviation emissions by national and regional MBMs, pending application of the global MBM.***

Or. en

#### *Justification*

*It has to be clarified that the proposal is only valid for one year and if there is no substantial solution at the ICAO Assembly in September 2013 the directive will be applied as foreseen including the coverage of intercontinental flights.*

#### **Amendment 6**

##### **Proposal for a decision Article 1**

###### *Text proposed by the Commission*

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*** 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, where such aircraft operators have not been issued free allocations for such activity in respect of 2012 or, if they have been issued such allowances, have returned ***a corresponding*** number of allowances to Member States for cancellation.

###### *Amendment*

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 ***relating to the calendar years 2010 to 2012*** set out in Article 12(2a) and Article 14(3) of Directive 2003/87/EC 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, where such aircraft operators have not been issued free allocations for such activity in respect of 2012 or, if they have been issued such allowances, have returned ***the number of 2012 aviation allowances corresponding to the share of verified tonne-kilometres of such activity in the reference year 2010*** to Member States for cancellation.

Or. en

### *Justification*

*This clarifies that the derogation from Article 16 of Directive 2003/87/EC only refers to requirements for the calendar years 2010 - 2012. In order to avoid the necessity of transposition of the decision by the Member States, the scope of the derogation should be made very clear to prevent any ambiguities.*

### **Amendment 7**

#### **Proposal for a decision Article 2**

##### *Text proposed by the Commission*

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.

##### *Amendment*

The Member States shall cancel all 2012 **aviation** 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. **By way of derogation from Article 3d of Directive 2003/87/EC, Member States shall auction a reduced number of aviation allowances in respect of 2012. That reduction shall be proportional to the lower number of total aviation allowances in circulation.**

Or. en

### *Justification*

*Without this change, there is no legal basis for the reduction of the amount to be auctioned. To enable the auctioning of a reduced number of allowances taking into account the cancellations of free allocations according to Art. 2, the decision has to include a derogation from Art. 3d of the Directive, especially from paragraph 1 and 3. As a result, 15% of the total amount of allowances in circulation shall be auctioned.*

## **EXPLANATORY STATEMENT**

### ***The existing legislation:***

In 2008 the European Parliament and the Council of Ministers agreed after long and careful consideration on the inclusion of aviation in the EU-ETS.

**The Council** supported the legislation **unanimously**; the **Parliament with more than 90 percent** of the votes. The rationale for including aviation was the need to address the fast growing greenhouse gas emission from this sector. From 1990 on, the base year of the Kyoto

protocol, **the airline greenhouse gas emissions have increased by around 100 percent.** This contrasts dramatically with the imperative to reduce these greenhouse gas emissions and the 2 degree target, which has been endorsed by the international community for example in Cancun.

Not to address the airlines' emissions would also be irresponsible in respect to coherence and fairness to other industries and to other modes of transport which are subject to regulation in the EU and the member states. The ETS for airlines is **very moderate** compared to other industries in the European Union. The aviation industry should reduce their emissions only by 5 percent until 2020 compared to minus 21 percent for other industries, and it has access to reductions from other sectors. The airlines allowances are only 15 percent auctioned compared to 100 percent auctioning in the power sector and lower free allocation to many industries. The burden for passengers and airlines is very moderate. According to the European Commission the ticket price for an intercontinental flight would increase by less than 2 Euros if the airlines do not include in the price the certificates they got for free. Many European and non-European airlines have already moderately increased their prices because of the introduction of the EU-ETS. For example Ryanair has increased the ticket price by **25 cents per flight**<sup>1</sup>. Many taxes and fees introduced by EU member states and by third countries like the USA and India include a much higher burden.

"The price of the ETS for a flight from London Heathrow to Shanghai is less than a cup of coffee at Heathrow (J.G. Gerbrandy, vice chair of the ENVI committee).

The current **legislation covers all flights starting and/or landing in Europe** and third country airlines participate in the ETS when they start and/or land in Europe. The coverage of incoming and outgoing flights has been included mainly because of the environmental reasons as **two thirds of the emissions** are created by intercontinental flights and only one third by flights inside the European Union. This provision has been carefully examined by lawyers not only from the European Commission but also by independent lawyers and the assessment has indicated that it is completely compatible with international law.

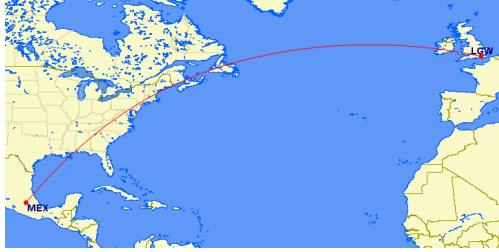
#### ***The challenge by third countries and a critical assessment:***

Already before the adoption of the legislation, third countries like the US and China have raised their opposition against the inclusion of flights of their respective airlines. Because of the legal assessment and the political and environmental arguments for equal treatment, the Parliament and the Council have nevertheless decided to include third country airlines on a non-discriminatory basis. The US Airline Association and three US airlines challenged the legislation under British law and the case was referred to the **European Court of Justice**. The Court decided clearly that **the legislation is in line with international law** (Judgment of ECJ in Case C-366/10, 21 December 2011). A claim by third countries was that the European Union would charge their airlines for using their own airspace, for example, to charge airlines when they fly over US territory. This is not the case, as the EU ETS relates arrival and departure from airports, and emissions *en route* are the measurement metric. This is not a specific characteristic of the EU ETS. Also national charges and taxes, for example by the UK and Germany, apply a similar principle. The British Air Passenger Duty (APD) is higher for a flight to Mexico City than for a flight to Toronto Canada.

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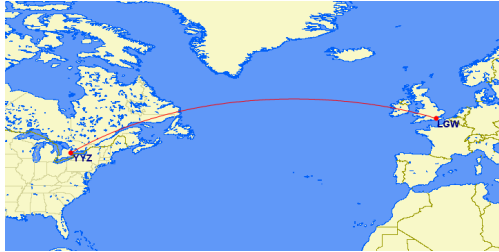
<sup>1</sup> Ryanair has mainly flights inside the European Union.

#### Flight from London to Mexico City



A flight in business class from London to Mexico City after the 1st April of 2012 (approximately 5000 miles) will be charged APD of £162 (195 € / \$ 257).

#### Flight from London to Toronto

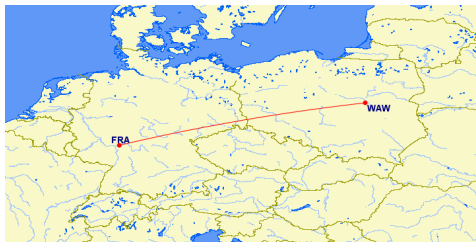


A flight to Toronto, Canada (approximately 3500 miles) is only charged APD of £130 (156 € / \$ 206).

The price difference is because of the difference of distance. A big part of the distance is US airspace. This means that the difference between APD of £ 130 and APD of £ 162 is because of the longer distance which mainly is across US-airspace.

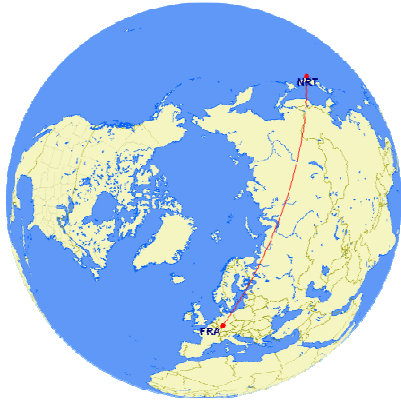
The same applies for the German Aviation Tax.

#### Flight from Frankfurt to Warsaw



A flight from Frankfurt to Warsaw is charged with 7.50 Euros (\$ 10) under the German Air Passenger Tax.

#### Flight from Frankfurt to Tokyo



A flight from Frankfurt to Tokyo is charged with 42.18 Euros (\$ 56) under the German Air Passenger Tax.

This means that the difference between very low German Air Passenger tax and very high tax is the much longer distance which is mainly over Russian airspace.

Both the German measure and the British passenger duty are accepted by third countries and are **not subject of such intensive criticism or to any kind of retaliation**. Like in the case of the EU ETS, the position of the States is that they are entitled to charge flights that start or land in their respective countries. This is also the justification for the US and the Indian taxes. This shows that there is **a major political element in the debate**. Some of the resistance may be motivated through the assumption that EU legislation is not as important as member states legislation. Also the aspect that the EU ETS is particularly justified for climate mitigation may be a reason for the harsh criticism from some third countries. For example the new majority in the US House of Representatives wants to demonstrate that their own climate bill which also covered international aviation (Waxman - Markey) is dead.

#### ***The ICAO Process:***

Already back in **1997 the International Civil Aviation Organization (ICAO) has been given the job to regulate emissions of aviation**.

Unfortunately, until now there has not been any solution. The EU has always argued that our preferred option is of course an international agreement, and the duty to continue negotiations is included in the existing EU ETS legislation. At an **ICAO Council meeting on November 9th 2012** significant progress was made towards the goal of the global regulation of emissions from aviation. A High Level Group has been set up to prepare a solution at the next ICAO General Assembly. The ICAO General Assembly meets only every three years, the next meeting takes place in September 2013. Third countries opposing the European scheme always said that they want a global solution under ICAO.

Unfortunately, until now those opposing the EU ETS have not been able to agree on how exactly ICAO should solve the problem. But one has to recognize the **very strong commitment of ICAO leadership**.

#### ***The Stop the Clock Proposal:***

In light of the ICAO Council decision from November 9th 2012, the European Commission announced a proposal to suspend the application of the EU ETS for intercontinental flights.

On November 20th the Commission submitted a proposal to Parliament and Council to stop the clock. This proposal is **intended to reinforce the positive momentum in ICAO and to enhance the chances for a successful outcome at the 2013 ICAO General Assembly**. Firstly, in terms of developing a global market based measure and secondly, adopting a framework facilitating states' application of market based measures to international aviation in the time before the global market based measure enters into force.

The proposal foresees **not to implement the EU ETS for intercontinental flights in respect of emissions during 2012. Flights inside the European area will be covered by the obligation of the directive as decided by the Parliament and Council in 2008. All measures are non-discriminatory which means that the same rules apply for EU and non-EU carriers**. That means an EU carrier that flies from an EU airport to a third country airport is exempted and a third country carriers flying inside the European area will be covered by the obligations of the directive.

***Rapporteur's recommendation:***

Your rapporteur in principle **welcomes the Commission proposal** and recommends a **quick adoption**. Under the current directive until April 30th 2013 airlines must submit their allowances. So for legal clarity the legislative procedure should be concluded before this date, recognising that the arguments need to be assessed carefully and colleagues in ENVI and TRAN should have the possibility to propose amendments.

Some amendments seem to be necessary for legal reasons. They only clarify the intention of the proposal as laid down in the explanation, the recitals and the accompanying communication by the Commission.

As the Commission envisages no transposition in national legislation by Member States, the decision has to be worded precisely and there should be no leeway for interpretation. By stating explicitly which requirements will be covered by the derogation and how many and which kind of allowances operators have to return to make use of the derogation, legal security is created.

It is also necessary to have a legal basis for the reduction of auctioning amounts, which is so far not given, as the proposal only includes a derogation from Art. 16. If the calculation of the amount to be auctioned is not changed, the same number would need to be auctioned by Member States, which is clearly not intended. Instead, the auctioning amount should be 15% of the overall amount of aviation allowances in circulation in the year 2012 (see amendments 1, 3, 4, 6, 7).

It has to be clarified that an application of the scheme only inside the EU **cannot be an option for more than one year**. There is equal treatment for all airlines flying the same routes. The allowances to be surrendered by April 30th 2013 cover the year 2012, a year when the carbon price was very low (between 6 and 8 Euros), and when airlines can use up to 15% CDM credits (around 0.4 Euros). That is why any potential distortion of competition between EU and third country carriers in terms of incentive for flying different routes is limited, for example 13.6 Cent for a flight from Hamburg to Frankfurt. Any prolongation of this situation could however cause significant distortion of competition and would not be environmentally ambitious enough. That is why it needs to be clarified that the Stop the Clock cannot be prolonged after the 31st December 2013. It has also to be clarified **what the EU expects from**

**the ICAO Assembly.** Not any result can be seen as a satisfactory result. Already in the existing legislation it is indicated that we are ready to amend our legislation when a global agreement is reached. It has to be clarified that a global agreement that satisfactory covers airlines' emissions will not be in place by the end of 2013. That is why **in the meantime a framework** for regional and national schemes needs to be adopted. However, the EU should not accept a situation where the current legislation is just abolished in the light of an only potential agreement under ICAO (see amendments 2, 5).

The Commission proposal gives the opportunity **to make unambiguously clear that it is not the EU which stands in the way of an international agreement.** If even after the adoption of this proposal third countries are not really compromising at ICAO level this is an unambiguous signal that those that always ask for an international solution at ICAO are not really committed. On the other hand, if ICAO comes to an agreement this would be the preferred option for everybody including the European Union.