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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions - Commission replies to comments from delegations

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With a view to the WPE meeting on 22 November on the above, delegations will find in the Annexes to this note, for information and easy reference, information provided by the Commission with regard to questions and comments raised by delegations on the Commission proposal on the above <sup>1</sup> and its accompanying impact assessment <sup>2</sup>. More specifically:

- Annex I provides some additional analysis of the impact assessment;
- Annex II provides some answers to technical questions raised by delegations; and
- Annex III provides an overview on first third-country reactions to the Commission Proposal.

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<sup>1</sup> Doc. 15051/13

<sup>2</sup> Doc. 15051/13 ADD 1

**ADDITIONAL ANALYSIS OF IMPACT ASSESSMENT**

**15 NOVEMBER 2013**

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## 1. DESIGN OF THE EUROPEAN REGIONAL AIRSPACE APPROACH FOR THE EU ETS

The proposed scope for the European Regional Airspace should provide a balanced solution with regard to the following objectives:

- International political acceptance

The EU ETS was criticized by international partners as "extraterritorial" because it would cover emissions over third countries or the High Seas. The reduction to the European Regional Airspace should address these concerns by reducing the EU ETS coverage accordingly. The preference for airspace approaches was indicated by many of our key partners in the context of ICAO discussions relating to the framework for Market Based Measures leading up to the ICAO Assembly. Accordingly also written submissions were made in support of the airspace model by many key aviation States including the US.

- Fair competitive conditions (equal treatment of flights within EEA and to and from third countries)

The "stop-the-clock" scope (i.e. enforcement of obligations of intra-EEA flights only) was criticised by European low cost airlines as putting a disproportionate burden on airlines operating only within Europe. The association of low-cost airlines (ELFAA) filed a lawsuit in the UK against this limited scope.

The Commission proposal to amend the EU ETS for aviation aims to cover all emissions within the European Regional Airspace irrespective of whether they come from intra-EEA flights or from flights to and from third countries. This should ensure that all flights on any specific route are treated equally and that any potential competitive distortions are limited to the minimum.

- No increase in administrative costs

Changes to the scope should neither increase the administrative costs for national authorities nor for aircraft operators.

### 1.1. Coverage of flights within the EEA

As already implemented with the "stop-the-clock" decision in 2012, it is proposed that emissions are fully covered from flights operated between airports located in the EEA. This means that emissions from intra-EEA flights are also covering the part of the flight which goes over third countries (e.g. Albania, Bosnia, Serbia, or Montenegro) and over sea areas beyond the territorial waters of 12 nautical miles. E.g. all emissions from a flight from Rome to Madrid will be covered even if the flight crosses the Mediterranean Sea for a large part of the journey.

As compliance obligations were fulfilled for more than 98 % of the emissions in 2012, it can be concluded that the aviation sector and the large majority of third countries accept the "scope" of the "stop-the-clock" decision (including emissions coverage over adjacent sea areas). It is only Chinese, Indian, and Saudi-Arabian aircraft operators which have refused to participate in the EU ETS for 2012 emissions.

## 1.2. Coverage of flights to and from third countries

To achieve fair competitive conditions between direct flights and one-stop flights, all flights within the EEA and flights to and from third countries should be treated equally. This means that emissions from flights to and from third countries should be covered within the European Regional Airspace to the same extent as emissions from flights within the EEA. This will apply to all operators on the same route, independent of nationality.

### *1.2.1. Coverage based on border of 200 nautical miles discarded*

A European Regional Airspace for the EU ETS based on a 200 nautical-miles zone from the coastline into the high seas would have created a comprehensive "bubble" around the EEA and ensured equal treatment. However, such an approach would also have covered substantial parts of the Atlantic. Even though there are arguments to justify such a more extensive coverage with reference to the "Exclusive Economic Zone", it could nevertheless revive the argument of "extraterritoriality". To avoid such risks, the approach based on a 200-nautical-miles zone was discarded.

### *1.2.2. Proposed coverage based on border of 12 nautical miles*

The principal rule is that coverage extends from a point 12 nautical miles from the furthest point on the outer coastline of an EEA territory to the EEA aerodrome of departure or arrival. This means that, for a flight from New York that first enters the EEA over Ireland, the coverage under the EU ETS extends from a point 12 nautical miles off the outer coastline of Ireland to its arrival airport in the EEA. This should ensure equal treatment with flights within the EEA.

There are two exemptions to this rule (see also Table 1 in Annex I):

- If a flight first enters the EEA over Iceland or an outermost region (e.g. Canary Islands or Azores) the following distance over the High Seas will not be covered (400-nautical-miles rule). This means that, for a flight from Buenos Aires that first enters the EEA over the Canary Islands, the distance over the Atlantic from the Canary Islands until the entry into Portugal is not covered.
- Intermediate distances over third countries (e.g. Switzerland or Bosnia) are also excluded from coverage under the EU ETS. This means that, for a flight from Frankfurt to Dubai that crosses over Bosnia, the coverage under the EU ETS is interrupted for the distance over Bosnia.

In practice these two exemptions for flights to and from third countries mean that the EU ETS will not be extending to the international waters over the Atlantic and that pure over flight coverage over certain third country areas within Europe (e.g. Kaliningrad) is avoided. Even though the exemptions lead to lower emissions coverage and therefore a slightly more favourable treatment of third-country flights compared to flights within the EEA, the quantitative impact is considered minor because of the low number of traffic on the routes that enter over Iceland or other outermost regions and the small size of intermediate third country areas within the EEA.

*1.2.3. Full coverage of flights between airports located in the EEA and airports located in outermost regions*

The outermost regions of EEA Member countries are part of the EEA (see Table 2 in Annex I for a list). As a majority of them are located in similar distances to the European mainland as other islands that are part of the EEA (e.g. Iceland), it is proposed to fully include in the EU ETS the emissions of flights between EEA airports to and from the outermost regions.

*1.2.4. No coverage of flights between airports located in the EEA and airports located in overseas' countries and territories (OCT) of EEA Member countries*

The OCTs (see Table 3 in Annex I for a list) are not part of the EEA and the majority of them are located on other continents (far away from European mainland). As air traffic volume is rather limited for most of the OCTs, the proposed full exemption of flights between airports located in the EEA and airports located in OCTs will neither have a significant impact on the environmental effectiveness nor on competitiveness. At the same time the exemption offers the benefit of simplified administration and a geographically more compact scope for the European Regional Airspace, and again avoids any perception of extra-territorial coverage over the High Seas.

However, this also means that flights to and from some OCTs that are close to the European mainland (e.g. Faroe Islands and Channel Islands) will not be covered under this proposal.

*1.2.5. Switzerland treated as a third country*

It is expected that the agreement to link the EU ETS with the ETS of Switzerland will be signed in the first half of 2014. This means that, after entry into force of this agreement, all emissions from flights between airports located in the EEA and airports located in Switzerland will be fully covered and emissions from flights between airports located in Switzerland and airports located in third countries will be covered according to the distance within the European Regional Airspace.

In view of the imminent linking agreement, for the purposes of this proposal Switzerland is treated as a third country and does not benefit from any special rules. This means that emissions from flights between airports located in the EEA and airports located in Switzerland will benefit from a full exemption in 2013 and will be almost fully covered from 2014 onwards (because of the close distance of Swiss airports to the borders with the EEA Member countries).

## **2. CONSISTENCY OF EUROPEAN REGIONAL AIRSPACE APPROACH WITH ICAO RESOLUTION**

This section shall provide more assessment with regard to the consistency of the Commission proposal with the ICAO Assembly resolution.

## 2.1. Outcome of the ICAO Assembly

### 2.1.1. Article 16 on Regional action

Based on a proposal by Russia, the ICAO Assembly resolution contains the following Article 16 on regional action pending the implementation of a global MBM:

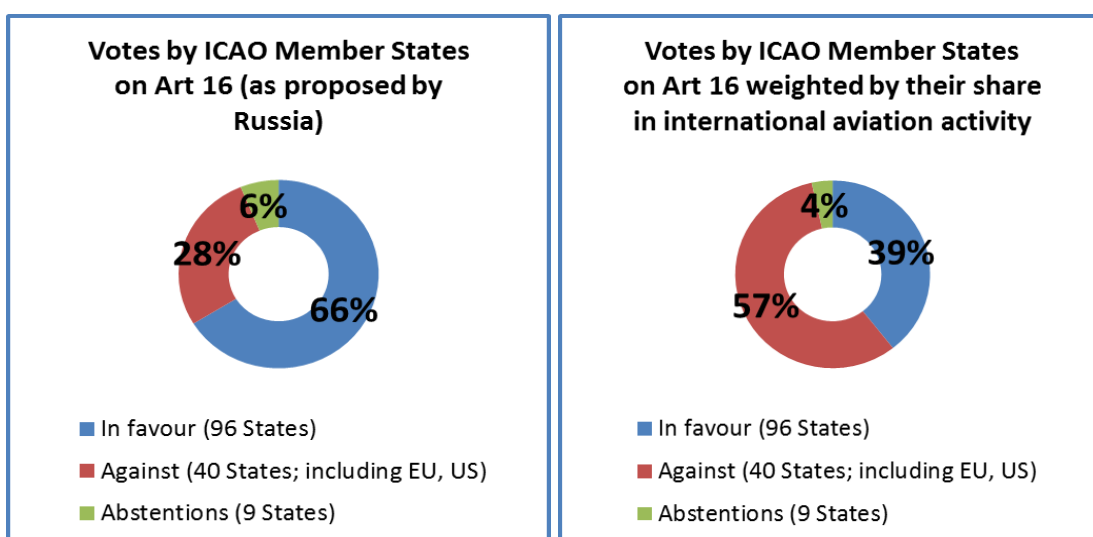
*16. Resolves that States, when designing new and implementing existing MBMs for international aviation should:*

*a) engage in constructive bilateral and/or multilateral consultations and negotiations with other States to reach an agreement,*

*b) grant exemptions for application of MBMs on routes to and from developing States whose share of international civil aviation activities is below the threshold of 1% of total revenue ton kilometres of international civil aviation activities, until the global scheme is implemented;*

The Russian proposal was voted by a majority of 96 ICAO Member States against 40 ICAO Member States (see Table 4 in Annex II for a complete overview of the voting behaviour).

For the analysis of the voting behaviour, it is important to note that besides the EEA Member States, major aviation nations (e.g. US, Japan, Australia) have voted against the Russian proposal. If the votes of the different states are weighted by their share in international aviation [i.e. expressed as their share in Revenue Ton Kilometres (RTK)] it shows that the majority of the votes in favour of the Russian proposal have come from ICAO Member States with a minor share in international aviation.



The number of reservations against Article 16 is even higher than the number of the votes against Article 16. In total, 51 States have up to now submitted reservations against Article 16 or Article 16 b (see Table 5 in Annex II): Besides the EEA Member States, 14 other Member States from the European Civil Aviation Conference (ECAC) and Singapore submitted a reservation against the complete Article 16. Eight countries (including US, UAE, and Qatar) reserved against the *de minimis* rule in Article 16b, but not against 16a.

### 2.1.2. *Global MBM*

The ICAO Assembly agreed on the development of a global MBM until the next Assembly in 2016 and its implementation in 2020. However, as the submitted reservations show, important differences remain with regard to the ambition level and the consideration of specific circumstances and responsibilities (see also Table 5 in Annex II).

Major aviation nations have reserved against the guiding principle on taking account of special circumstance and respective capabilities in the design of a global MBM. China and other developing countries have reserved against Article 7 on the aspirational goal of carbon-neutral growth from 2020 onwards.

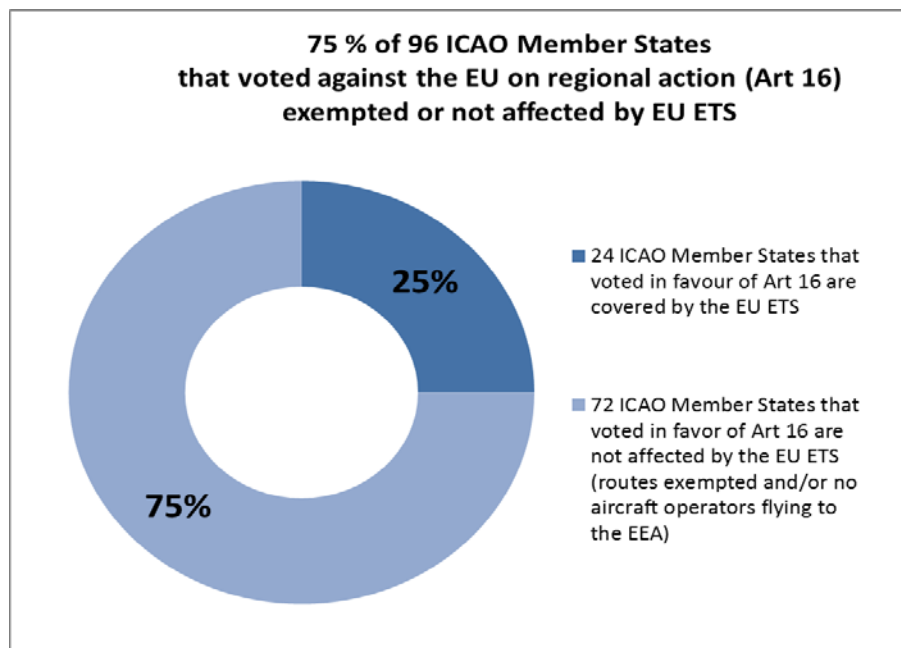
Even though 2016 was agreed as a target date for agreement on the global MBM, the high number of reservations illustrates the significantly divergent views on its design.

## 2.2. **Commission proposal responds to concerns of developing countries**

The Commission proposal responds to the concerns of developing countries by exempting routes to and from around 80 low and lower-middle income countries that have a share of less than 1 % of total revenue ton kilometres in international aviation activity.

As the following graph shows, 75 % of the ICAO Members that did not support the airspace scope for the MBM framework on national or regional MBMs at the ICAO Assembly are not affected by the EU ETS since the routes to and from these countries are exempted from the EU ETS and their national airlines are not operating flights to and from the EEA.

The Commission proposal responds therefore to the concerns of the majority of ICAO Member States:



On the other hand, it is important to note that airlines from all major aviation countries remain covered under the EU ETS. As the reservations against Article 16 show, maintaining fair competitive conditions is a major concern for many countries. The proposed exemption in the Commission proposal offers a balanced solution in this respect.

### **1.1. Commission proposal responds to concerns about "extra-territoriality" and respects engagement for constructive consultations**

The Commission proposal responds to the concerns with regard to the perceived "extra-territoriality" of the EU ETS that have been raised by third countries and discussed in many bilateral and multilateral meetings. The Commission proposal to reduce the scope of the EU ETS to the European Regional Airspace<sup>3</sup> is a major political concession that responds to Art 16 a) that requests to engage in constructive consultations.

The Commission has always been engaged in discussions with third countries. Since the adoption of the Commission proposal, the Commission has continued to consult with third countries and to explain the rationale of the new proposal. An overview of these outreach activities and the first reactions of third countries will be provided in a separate document.

<sup>3</sup> Furthermore, the Commission proposal foresees the possibility to base the emission reports for third-country flights on estimated emission data from Eurocontrol. Therefore, reporting for third-country flights would not any more apply.



Any further political concessions (e.g. exemptions for all or certain groups of non-EEA operators) would go against the basic principles of non-discrimination enshrined in EU law and the Chicago Convention. It is also clear – e.g. from Singapore's reservation on Art 16 – that a non-discriminatory treatment of all aircraft operators is expected under regional schemes like the EU ETS. Selective exemptions for aircraft operators from certain country groups would undermine the credibility of the EU ETS with all aircraft operators who fulfil their EU ETS obligations.

### 3. RISK OF NON-COMPLIANCE UNDER DIFFERENT OPTIONS

This section shall provide more assessment on the impact of the European Regional Airspace Approach on international political acceptability and the risks for non-compliance. Some Member States have referred to the "stop-the-clock" approach as an alternative option that may achieve higher political acceptability.

The Impact Assessment has assessed that both options have similar impacts on political acceptability. Both options counter the argument of "extra-territoriality" because emissions are not covered outside the European Regional Airspace and address therefore the major political argument that has been raised against the EU ETS.

It should not be presumed that a further reduction in scope from the European Regional Airspace to intra-EEA flights only will automatically result in lowering the risk for non-compliance:

- Even though the number of covered flights is lower under the "stop-the-clock" scope, the number of commercial aircraft operators is not significantly reduced. Almost all airlines from non-EEA countries that operate flights to and from third countries also operate flights within the EEA. Of the 145 airlines from non-EEA countries that operated flights to and from third countries in 2012, only 3 airlines (Air New Zealand, Lan Peru, and Air Asia X) did not operate flights within the EEA.

The Table 6 in Annex III lists the 30 airlines from non-EEA countries with the highest number of emissions from flights within the EEA in 2012. This table includes – inter alia – aircraft operators from the US, China, UAE, Russia, and Saudi-Arabia.

- Chinese and Indian operators have been instructed by their government to not even comply with their obligation under the "stop-the-clock" decision for flights within the EEA. Table 7 in Annex III shows some examples for routes that non-EEA airlines have operated within the EEA (e.g. regular passenger service on the route Hamburg-Frankfurt).

As these numbers and examples show, even with a reduction to the "stop-the-clock" scope, almost all airlines from non-EEA countries would continue to be subject to the EU ETS because they also operate flights within the EEA. In line with the expected growth in aviation traffic, it is likely that the number of flights within the EEA will also increase for non-EEA operators.

This analysis suggests therefore that a reduction in scope below the European Regional Airspace will not necessarily reduce the risk of non-compliance. It seems that the following actions will be more effective to reduce the risk of non-compliance:

- Continued outreach activities to third countries will increase the awareness about the new scope and the significant political concessions made by the EU.
- A firm approach to enforcement against non-compliance under the 2012 "stop-the-clock" decision will set a strong precedent and increase the credibility of the EU ETS with all operators.

#### **4. FURTHER ISSUES**

##### **4.1. Baseline scenario**

The Impact Assessment assumes the continuation of the full-scope EU ETS as baseline scenario because, in the absence of any further legal action, the EU ETS will apply in its full scope from 2013 onwards.

##### **4.2. Modelling of environmental impact**

The estimation of the emissions coverage under the different options is based on Eurocontrol data and their own emissions model. Eurocontrol estimated the coverage under the different options based on a representative data sample (e.g. traffic data from one week in 2012) that reflects the average traffic pattern over a year. Eurocontrol's results show which percentage of emissions are covered for routes to different countries (e.g. xx % of emissions are covered for flights to US under option Y). These coverage percentages were then used as an input to the AERO-MS model to estimate coverage over time taking into account traffic growth (see Table 5-1 and Annex IV of the Impact Assessment).

Table 5-2 of the Impact Assessment shows the effect of the different options on the emissions reduction within the aviation sector: e.g. the increase of aviation emissions in 2016 by 0.24 % through the Hybrid (12 nautical miles) option means that the total emissions from all flights arriving and departing in the EEA will increase by 0.24 % because the aircraft operators have less incentives to save fuel because of the lower EU ETS coverage under the Hybrid (12 nautical miles) option.

##### **4.3. Economic impact**

###### *4.3.1. Economic modelling*

Ricardo-AEA supported DG CLIMA in the preparation of the Impact Assessment and carried out the economic modelling based on the AERO-MS model. The report by Ricardo-AEA is attached to this note. However, as the Impact Assessment was carried out in close cooperation with DG CLIMA, the report by Ricardo-AEA is to a large extent identical to the Impact Assessment itself and does not provide additional explanation with regard to the economic modelling.

The Commission regrets that it is therefore not in a position to provide additional technical papers or data series. However, to the extent that the information is readily available, the more specific questions are answered in the following:

#### 4.3.2. Demand for general EU allowances

The estimated demand for the general EU allowances is based on the following time-series:

PRIMES	2013	2014	2015	2016	2017	2018	2019	2020
Emissions aviation	227,4	231,0	234,6	236,8	238,9	241,1	243,2	245,4
Cap aviation	208,5	208,5	208,5	208,5	208,5	208,5	208,5	208,5
Deficit	-18,9	-22,5	-26,1	-28,3	-30,4	-32,6	-34,7	-36,9

AERO-MS	2013	2014	2015	2016	2017	2018	2019	2020
Emissions aviation	238,0	253,3	268,6	283,9	299,1	314,4	329,7	345,0
Cap aviation	208,5	208,5	208,5	208,5	208,5	208,5	208,5	208,5
Deficit	-29,5	-44,8	-60,1	-75,4	-90,6	-105,9	-121,2	-136,5

The results presented in Table 5-3 are based on the deficit (=emissions less cap) in 2020. The demand under the different options is calculated in proportion to the coverage under the different options (e.g. the estimated demand of 23.2 million under the departing-flights options equals 63 % of the demand under full-scope).

#### 4.3.3. Auction revenues

The estimation of the auction revenues is explained in detail in Annex VI of the Impact Assessment.

##### 1.1.1. Impact on the EU allowance price

Due to the small demand from the aviation sector for general EU allowances, the price of the general EU allowances was assumed as fixed (see Table 5-4 of the Impact Assessment).

##### 1.1.1. Calculation of aviation cap

Annex VI of the Impact Assessment provides a simplified example for the adjustment of the aviation cap: The table in Annex VI of the Impact Assessment shows that the free allowances and the allowances to be auctioned are reduced in proportion to the lower scope. The sum of free allowances and allowances to be auctioned would equal the aviation cap in this simplified example (disregarding the special reserve).

Question 17 of the updated FAQs<sup>4</sup> provides a more detailed formula for the adjustment of the free allowances for an individual aircraft operator. As further explained in Question 19, the number of aviation allowances to be auctioned will be in proportion to the reduced number of total aviation allowances in circulation.

#### *1.1.2. Possible cross-subsidy in 2012*

The Impact Assessment has not analysed the situation in 2012 when the announcement of a reduced scope for the EU ETS was made in November 2012 and airlines may have already charged prices that included expected EU ETS charges for flights to and from third countries.

The economic analysis in the Impact Assessment is forward-looking and assumes that any cost savings from a reduced EU ETS charge are passed on to consumers. A cross-subsidy is therefore not possible.

However, Table 5-5 reveals the very low share of EU ETS charges compared to the total costs of an airline. Therefore, even if some airlines had enjoyed windfall profits in 2012 from the retro-active exemption of third-country flights those would not be of a magnitude to provide any significant competitive advantage.

#### **1.1. Small-Emitter study**

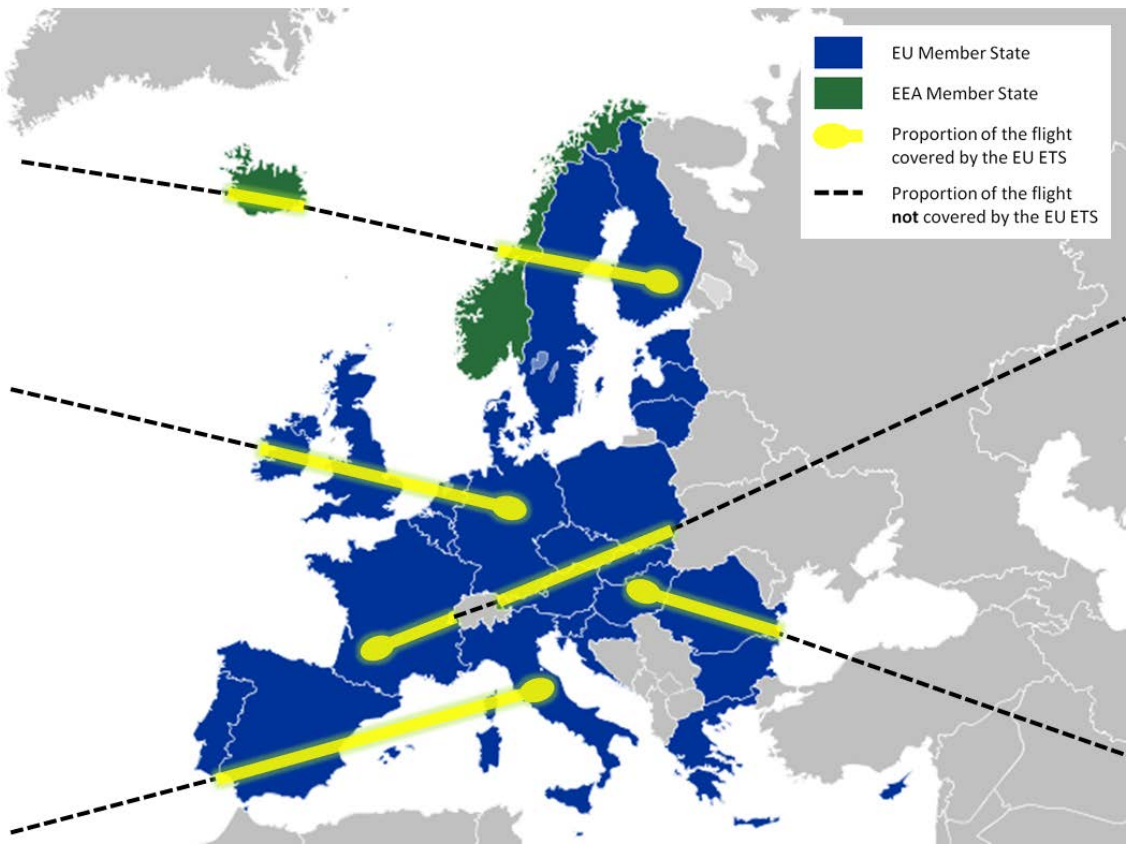
The Small-Emitter study by PWC is currently under final review and will be provided as soon as possible.

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<sup>4</sup> See [http://ec.europa.eu/clima/policies/transport/aviation/docs/faq\\_eraa\\_en.pdf](http://ec.europa.eu/clima/policies/transport/aviation/docs/faq_eraa_en.pdf)

# Annex I – Scope of European Regional Airspace Approach

**Table 1** Coverage of flights between aerodromes in the EEA and aerodromes in third countries



**Table 2** List of the outermost regions<sup>5</sup> of the EEA

<b>ES</b>	<b>Canary Islands, Ceuta, Melilla</b>
<b>FI</b>	<b>Aland Islands</b>
<b>FR</b>	<b>French Guiana, Guadeloupe, Martinique, Réunion, Saint Martin</b>
<b>PT</b>	<b>Azores, Madeira</b>
<b>NO</b>	<b>Jan Mayen</b>
<b>UK</b>	<b>Gibraltar</b>

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<sup>5</sup> See also section 2.1.1. of the Guidance on the implementation of Decision No 377/2013/EU, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:289:0001:0007:EN:PDF>. Please note that Mayotte will become an outermost region with effect of 1<sup>st</sup> January 2014.

**Table 3** List of overseas countries and territories of EEA Member countries<sup>6</sup>

<b>Greenland</b>	<b>Faeroe Islands</b>
<b>French Polynesia</b>	<b>Saint Barthélemy</b>
<b>Mayotte</b>	<b>Saint Pierre and Miquelon</b>
<b>New Caledonia</b>	<b>Wallis and Futuna</b>
<b>Aruba</b>	<b>Sint Eustatius</b>
<b>Bonaire</b>	<b>Curaçao</b>
<b>Saba</b>	<b>Sint Maarten</b>
<b>Svalbard</b>	
<b>Anguilla</b>	<b>Jersey</b>
<b>Bermuda</b>	<b>Montserrat</b>
<b>British Antarctic Territory</b>	<b>Pitcairn, Henderson, Ducie and Oeno Islands</b>
<b>British Indian Ocean Territory</b>	<b>Saint Helena</b>
<b>British Virgin Islands</b>	<b>Ascension and Tristan da Cunha</b>
<b>Cayman Islands</b>	<b>South Georgia and the South Sandwich Islands</b>
<b>Falkland Islands</b>	<b>Turks and Caicos Islands</b>
<b>Bailiwick of Guernsey</b>	<b>Akrotiri</b>
<b>Isle of Man</b>	<b>Dhekelia</b>

<sup>6</sup> See also section 2.1.2. of the Guidance on the implementation of Decision No 377/2013/EU for a list of overseas' countries and territories: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:289:0001:0007:EN:PDF>. Please note that Mayotte will become an outermost region with effect of 1<sup>st</sup> January 2014.

## Annex II – Consistency with ICAO Resolution

### ICAO Resolution text

#### Aspirational goal

7. Also resolves that, without any attribution of specific obligations to individual States, ICAO and its member States with relevant organizations will work together to strive to achieve a collective medium term global aspirational goal of keeping the global net carbon emissions from international aviation from 2020 at the same level, taking into account: the special circumstances and respective capabilities of States, in particular developing countries; the maturity of aviation markets; the sustainable growth of the international aviation industry; and that emissions may increase due to the expected growth in international air traffic until lower emitting technologies and fuels and other mitigating measures are developed and deployed;

#### Framework for regional and national MBMs

16. Resolves that States, when designing new and implementing existing MBMs for international aviation should:

- a) engage in constructive bilateral and/or multilateral consultations and negotiations with other States to reach an agreement,
- b) grant exemptions for application of MBMs on routes to and from developing States whose share of international civil aviation activities is below the threshold of 1% of total revenue ton kilometres of international civil aviation activities, until the global scheme is implemented;

17. Requests the Council to review the *de minimis*, including the *de minimis* threshold of MBMs mentioned in paragraph 16 b) above, taking into account the specific circumstances of States and to be presented for consideration by the 39th Session of the Assembly in 2016;

#### Global MBM

18. Decides to develop a global MBM scheme for international aviation, taking into account the work called for in paragraph 19;

19. Requests the Council, with the support of member States, to:

- a) finalize the work on the technical aspects, environmental and economic impacts and modalities of the possible options for a global MBM scheme, including on its feasibility and practicability;
- b) organize seminars, workshops on a global scheme for international aviation participated by officials and experts of member States as well as relevant organizations;
- c) identify the major issues and problems, including for member States, and make a recommendation on a global MBM scheme that appropriately addresses them and key design elements, including a means to take into account special circumstances and respective capabilities as provided for in paragraphs 20 to 24 below;
- d) report the results of the work in sub-paragraphs a), b) and c) above, for decision by the 39th Session of the Assembly;



20. Resolves that an MBM should take into account the special circumstances and respective capabilities of States, in particular developing States, while minimizing market distortion;

21. Also resolves that special circumstances and respective capabilities of developing States could be accommodated through de minimis exemptions from, or phased implementation for, the application of an MBM to particular routes or markets with low levels of international aviation activity, particularly those serving developing States;

22. Also resolves that, the administrative burden associated with the implementation of an MBM to States or aircraft operators with very low levels of international aviation activity should not exceed the benefits from their participation in the MBM, and that exemptions from the application of the MBM to such States or aircraft operators should be considered, while maintaining the environmental integrity of the MBM;

23. Also resolves that adjustments to MBM requirements for aircraft operators could be on the basis of fast growth, early action to improve fuel efficiency, and provisions for new entrants;

24. Further resolves that, to the extent that the implementation of an MBM generates revenues, it should be used in consistency with guiding principle n) in the Annex;

*New guiding principle p) for MBMs added to the Annex*

p) MBMs should take into account the principle of common but differentiated responsibilities and respective capabilities, the special circumstances and respective capabilities, and the principle of non-discrimination and equal and fair opportunities.

**Table 4** Voting behaviour by third countries at ICAO Assembly

Country	Vote on Russian proposal for Paragraph 16	Reservations Assembly Resolution (Paragraph)	Not affected (routes exempted and/or no aircraft operators flying to the EEA)
Afghanistan	In favour	16(b)	not affected
Algeria	In favour		
Angola	In favour		not affected
Argentina	In favour	7	
Armenia	In favour	7, 16, (p)	not affected
Bahamas	In favour		not affected
Bahrain	In favour	7	
Bangladesh	In favour		not affected
Barbados	In favour		not affected
Belarus	In favour		
Benin	In favour		not affected
Bhutan	In favour		not affected
Bolivia	In favour		not affected
Botswana	In favour		not affected
Brazil	In favour	7	
Brunei Darussalam	In favour		
Burundi	In favour		not affected
Cameroon	In favour		not affected
Cape Verde	In favour		not affected
Chad	In favour		not affected
China	In favour	7	
Colombia	In favour		not affected
Comoros	In favour		not affected

Congo, Rep.	In favour		not affected
Cook Islands	In favour		not affected
Costa Rica	In favour		not affected
Côte d'Ivoire	In favour		not affected
Cuba	In favour	7	not affected
Dominican Republic	In favour		not affected
Ecuador	In favour		not affected
Egypt	In favour		not affected
El Salvador	In favour		not affected
Ethiopia	In favour		not affected
Gabon	In favour		not affected
Gambia	In favour		not affected
Ghana	In favour		not affected
Guinea-Bissau	In favour		not affected
Guyana	In favour		not affected
Haiti	In favour		not affected
Honduras	In favour		not affected
India	In favour	7	not affected
Indonesia	In favour		not affected
Iran, Islamic Rep.	In favour		not affected
Iraq	In favour		not affected
Jamaica	In favour		not affected
Kenya	In favour		not affected
Kuwait	In favour		not affected
Kyrgyzstan	In favour		not affected
Lebanon	In favour		not affected
Lesotho	In favour		not affected
Libya	In favour		not affected

Malaysia	In favour	
Maldives	In favour	not affected
Mali	In favour	not affected
Mauritius	In favour	
Micronesia (Federated States of)	In favour	not affected
Morocco	In favour	
Mozambique	In favour	not affected
Myanmar	In favour	not affected
Namibia	In favour	not affected
Nepal	In favour	not affected
Nicaragua	In favour	not affected
Oman	In favour	
Pakistan	In favour	not affected
Panama	In favour	not affected
Paraguay	In favour	not affected
Peru	In favour	not affected
Qatar	In favour	16(b)
Russian Federation	In favour	7
Rwanda	In favour	not affected
Samoa	In favour	not affected
Saudi Arabia	In favour	7
Seychelles	In favour	not affected
Sierra Leone	In favour	not affected
Singapore	In favour	16
South Africa	In favour	
South Sudan	In favour	not affected
Sri Lanka	In favour	not affected

St. Kitts and Nevis	In favour		not affected
St. Vincent and the Grenadines	In favour		not affected
Sudan	In favour		not affected
Swaziland	In favour		not affected
Tanzania	In favour		not affected
Thailand	In favour		
Togo	In favour		not affected
Tonga	In favour		not affected
Trinidad and Tobago	In favour		not affected
Tunisia	In favour		
Uganda	In favour		not affected
United Arab Emirates	In favour	16(b)	
Uruguay	In favour		not affected
Uzbekistan	In favour		not affected
Venezuela, RB	In favour	7	not affected
Yemen, Rep.	In favour		not affected
Zambia	In favour		not affected
Zimbabwe	In favour		not affected
Australia	Against	Preambular 10, 6, 7, 16(b), 20, 21, (p)	not affected
Bosnia and Herzegovina	Against	7, 16, (p)	not affected
Canada	Against	16(b), (p)	
Chile	Against		
Japan	Against	16(b), (p)	
Korea, Rep.	Against	(p)	
Moldova	Against	7, 16, (p)	
New Zealand	Against	16(b), (p)	not affected

Senegal	Against		not affected
Switzerland	Against	7, 16, (p)	
United States	Against	16(b), (p)	
Burkina Faso	Abstain		not affected
Cambodia	Abstain		not affected
Fiji	Abstain		not affected
Kiribati	Abstain		not affected
Mexico	Abstain		
Nigeria	Abstain		not affected
Philippines	Abstain		not affected
Turkey	Abstain		
Ukraine	Abstain		not affected
Albania	not voted	7, 16, (p)	
Andorra	not voted		not affected
Antigua and Barbuda	not voted		not affected
Azerbaijan	not voted	7, 16, (p)	not affected
Belize	not voted		not affected
Central African Republic	not voted		not affected
Congo, Dem. Rep.	not voted		not affected
Djibouti	not voted		not affected
Equatorial Guinea	not voted		not affected
Eritrea	not voted		not affected
Georgia	not voted	7, 16, (p)	not affected
Grenada	not voted		not affected
Guatemala	not voted		not affected
Guinea	not voted		not affected
Israel	not voted		
Jordan	not voted		

Kazakhstan	not voted		
Korea, Democratic People's Rep.	not voted		not affected
Lao People's Democratic Rep.	not voted		not affected
Liberia	not voted		not affected
Macedonia, FYR	not voted	7, 16, (p)	not affected
Madagascar	not voted		not affected
Malawi	not voted		not affected
Marshall Islands	not voted		not affected
Mauritania	not voted		not affected
Monaco	not voted	7, 16, (p)	not affected
Mongolia	not voted		not affected
Montenegro	not voted	7, 16, (p)	
Nauru	not voted		not affected
Niger	not voted		not affected
Palau	not voted		not affected
Papua New Guinea	not voted		not affected
San Marino	not voted	7, 16, (p)	not affected
São Tomé and Príncipe	not voted		not affected
Serbia	not voted	7, 16, (p)	
Solomon Islands	not voted		not affected
Somalia	not voted		not affected
St. Lucia	not voted		not affected
Suriname	not voted		not affected
Syrian Arab Republic	not voted		not affected
Tajikistan	not voted		not affected
Timor-Leste	not voted		not affected

Turkmenistan	not voted	not affected
Vanuatu	not voted	not affected
Vietnam	not voted	not affected
Dominica	not a member of ICAO	not affected
Kosovo	not a member of ICAO	not affected
Puerto Rico	not a member of ICAO	not affected



**Table 5** Reservation on regional action and global MBM by ICAO Member States

ICAO Member State	% of international Revenue Ton Kilometres (RTK)	Regional MBM		Global MBM	
		Art 16 on regional MBMs	Art 16(b) on de minimis exemption on routes to and from developing states	Art 7 on 2020 level emissions as collective medium term global aspirational goal	Guiding principle (p) on Special Circumstances and Respective Capabilities
ECAC (42) <sup>1</sup>	30.62%	X		X <sup>2</sup>	X
United States	13.25%		X		X
China	8.52%			X <sup>3</sup>	
United Arab Emirates	7.78%		X		
Republic of Korea	4.56%				X
Singapore	3.98%	X			
Japan	2.61%		X		X
Qatar	2.34%		X		
Russian Federation	2.33%			X	
Australia	2.06%		X	X <sup>4</sup>	X <sup>4</sup>
Canada	1.97%		X		X
India	1.17%			X <sup>3</sup>	
Saudi Arabia	0.99%			X <sup>3</sup>	
Brazil	0.73%			X <sup>5</sup>	
New Zealand	0.66%		X		X
Bahrain	0.28%			X <sup>3</sup>	
Argentina	0.25%			X <sup>5</sup>	
Afghanistan	0.06%		X		
Cuba	0.03%			X <sup>5</sup>	
Venezuela	0.01%			X <sup>5</sup>	

- <sup>1)</sup> Lithuania on behalf of the EU-28 and 14 other Member States of ECAC (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Iceland, Moldova, Monaco, Montenegro, Norway, San Marino, Serbia, Switzerland, Macedonia (FYR))
- <sup>2)</sup> The 28 Member States of the European Union, and 14 other Member States of ECAC believe that the collective "aspirational" goal formulated to apply from 2020 is insufficiently ambitious.
- <sup>3)</sup> China, India, Saudi Arabia and Bahrain are of the view that the goal of carbon-neutral growth by 2020 will impede the future development of international aviation.
- <sup>4)</sup> Australia does not accept any understanding of the principle of Special Circumstances and Respective Capabilities based on differentiation between countries based on their status as developed or developing. Australia therefore reserved on preambular paragraph 10 as well as paragraph 6, 7, 20 and 21 and guiding principle (p).
- <sup>5)</sup> Argentina, Brazil, Cuba and Venezuela jointly reserve on paragraph 7 as they are of the view that the common aspirational goals still need reassessment and further analysis, as to reflect the different stages of development of ICAO's member states.

### Annex III – Risk of non-compliance

**Table 6** The 30 airlines from non-EEA countries with the highest number of emissions from flights within the EEA in 2012

AIRCRAFT OPERATOR	COUNTRY OF ORIGIN	CO2 tons from flights within EEA in 2012	Number of flights within EEA in 2012
FEDERAL EXPRESS	USA	174,492	10,028
UNITED PARCEL SERVICE CO	USA	148,652	7,835
KOREAN AIR LINES CO., LTD.	KOREA	44,615	1,139
SINGAPORE AIRLINES	SINGAPORE	40,973	1,088
EMIRATES INTL	UNITED ARAB EMIRATES	38,743	961
CATHAY PACIFIC	<b>CHINA</b>	34,522	1,056
LAN AIRLINES SA	CHILE	33,306	771
ETHIOPIAN AIRLINES	ETHIOPIA	19,291	1,203
ASIANA AIRLINES	KOREA	17,468	463
IRANAIR	IRAN	17,123	649
KUWAIT AIRWAYS	KUWAIT	16,807	633
SAUDIA	<b>SAUDI ARABIA</b>	14,337	546
CAL CARGO AIRLINES	ISRAEL	14,130	118
VOLGA-DNEPR AIRLINES LLC	<b>RUSSIAN FEDERATION</b>	12,243	218
QATAR AIRWAYS	QATAR	12,029	1,465
ATLAS AIR, INC.	USA	11,112	268
NIPPON CARGO	JAPAN	10,039	250
OMNI AIR INTERNATIONAL	USA	9,760	206
SIA CARGO PTE LTD	SINGAPORE	8,668	250
AIR CHINA LIMITED	<b>CHINA</b>	8,257	218
WORLD AIRWAYS	USA	7,479	144
SIK-AY HAVA TASIMACILIK A.S.	TURKEY	6,525	875
UKRAINE INTL AIRLINE	UKRAINE	6,293	530

PAKISTAN INTERNATIONAL AIRLINES	PAKISTAN	6,030	315
NORTH AMERICAN AIRL	USA	5,970	139
CHINA SOUTHERN	<b>CHINA</b>	5,853	158
CA "AIR MOLDOVA" IS	MOLDOVA	5,526	632
YANGTZE RIVER EXP	<b>CHINA</b>	4,455	187
ULS AIRLINES CARGO	TURKEY	4,233	118
KALITTA AIR	USA	4,177	73

**Table 7** Examples for flight routes within EEA operated by airlines from non-EEA countries

- **China Cargo Airlines:**

Regular air cargo flight on the city pair Copenhagen-Paris

- **Air China Limited:**

Regular passenger flights on the city pair Athens-Munich

- **China Southern:**

Regular passenger flights on the city pair Amsterdam-Vienna

- **China Eastern:**

Regular passenger flights on the city pair Frankfurt-Hamburg

- **Aeroflot:**

Regular cargo flights on the city pair Frankfurt-Helsinki

- **Saudia:**

Regular passenger flights on the city pair Milan-Madrid

## **Responses to technical questions by Member States (DK, IE, NL, UK) on the Commission proposal amending the EU ETS Aviation for aviation**

**15 November 2013**

### **1. Geographic and temporary scope**

- *In defining Y in Annex IIc it is stated that the 400 nautical miles exclusion only applies to sea areas, not land areas. However, in the FAQ (para 3.1) is suggested that the 400 nautical miles also apply to land areas. Which one is correct?*
- *28a1b Please clarify which years exactly; are 2014 and 2020 included?*

The proposal is for a 400 nautical-miles border only applying to sea areas.

The article 28a 1 (b) applies to each calendar year between 2014 and 2020. This means that 2014 and 2020 are included.

### **2. Calculation of coverage percentages**

- *What is the rationale behind the decision to use country pairs with time zones?*
- *What input to / oversight of the calculations will the MS have?*

Eurocontrol will calculate the coverage percentages to be inserted in Annex IIc. Working on the basis of country-pairs<sup>7</sup> means that separate coverage percentages are applicable for flights on the routes from each Member State to each third country. Where flights operate to multiple time zones in a third country, a separate percentage will be included for each time zone to which flights operate, for each Member State.

As explained in detail in section 5.4.2. of the Impact Assessment, the use of country pairs provides a balanced solution between accuracy and administrative simplicity. The use of additional coverage percentages per time zones for larger countries (in particular US and Canada) can be done at low administrative costs and increases the accuracy.

Eurocontrol will deliver by beginning of December a first list of the coverage percentages. These data will be presented to WP Environment with a view to the completion of Annex IIc.

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<sup>7</sup> Country pair means that there is a single percentage for flights to each third country. This is defined based on the Great Circle Distance from the aerodrome in the relevant EEA Member countries with the highest number of flights to and from all destinations in a third country in 2012 ('the reference EEA Member countries aerodrome') to the aerodrome in the relevant third country with the highest number of flights to and from all destinations in the EEA Member countries in 2012 ('the reference third country aerodrome').

### 3. Exemption for developing countries whose share of total revenue ton kilometres of international civil aviation activities is less than 1%

- *The Commission have confirmed that the approach proposed is 1% of total revenue ton kilometres of international civil aviation activities. We will need to correct the text of the proposal, which refers to less than 1% of global aviation emissions*
- *Can the Commission explain how the existing frequency threshold interacts with the 1% de minimis and the new CO2 thresholds for non-commercial operators?*
- *We assume that the list which you published recently which includes all of the routes which are included/exempted will be updated and finalised on agreement of the proposal?*

To accommodate the special circumstances of developing countries, it is proposed that flights between the EEA and low-income and lower-middle income countries, which benefit from the EU's Generalised System of Preferences<sup>8</sup> (GSP) and have a share of less than 1 % of total revenue ton kilometres of international civil aviation activities, be fully exempted from the EU ETS.

The recently published list is only provisional and based on the current wording of recital 10. It is important to note that only countries that benefit from the GSP<sup>9</sup> are currently on the beneficiary list. Low and lower-middle income countries benefiting from a Free Trade Agreement (FTA), which offers different preferential market access, are not included on the published beneficiary list.

The definition of the beneficiary countries could be considered to be expanded to include low and lower-middle income countries benefiting from a FTA and with a share of less than 1 % of total revenue ton kilometres of international civil aviation activities. Furthermore, to have a more up-to-date income classification, World Bank data from 2013 could be considered to be used instead of data from 2010 to 2012 (which is used for the GSP regulation).

Such changes in the definition of beneficiary countries would lead to an overall larger number of exempted routes, while excluding routes to/from some countries from the exemption due to a higher income classification in 2013:

**Additional routes that would be exempted:** routes to and from low and lower-middle income countries in 2013 benefiting from a FTA and with a share of less than 1 % of total revenue ton kilometres of international civil aviation activities

Cameroon
Côte d'Ivoire
Egypt
Ghana
Guyana
Kenya
Morocco
Papua New Guinea
Swaziland
Zimbabwe

<sup>8</sup> In accordance with Regulation (EU) No 978/2012

<sup>9</sup> See Annex II of the GSP regulation.

**Routes that would not any longer be exempted:** relating to routes to/from countries which have changed to upper-middle income classification in 2013

Angola
Belize
Ecuador
Iraq
Jordan
Maldives
Tunisia
Turkmenistan

The proposed exemption for routes to and from certain developing countries does not impact existing or proposed exemptions for small-emitters. The small-emitter thresholds are defined with regard to the full-scope EU ETS and therefore are not changed by the proposal to temporarily exempt certain routes to and from developing countries.

#### 4. Free allowances

- *When does the Commission intend to announce the total number of aviation allowances and the method to be used by member States to recalculate the national allocations of free allowances*

As explained in Question 17 updated FAQs<sup>10</sup>, the number of free allowances will be reduced in proportion to distances not covered on flights to and from third countries.

Reduction in free allocations for a flight to and from a third country =

*= (100% minus coverage percentage) multiplied by the benchmark value multiplied by verified 2010 tonne kilometre (tkm) reported for flights to and from this third country.*

The sum of these reductions calculated per aircraft operator entitled to receive free allocation will be deducted from the concerned free allocations calculated and published by the Member States in 2011. The free allocations for the year 2013 and the years 2014 to 2020 will be recalculated according to the different applicable scopes.

After entry into force of the amending Directive, the Commission will provide the competent authorities with the recalculations of the free aviation allowances.

<sup>10</sup> See [http://ec.europa.eu/clima/policies/transport/aviation/docs/faq\\_eraa\\_en.pdf](http://ec.europa.eu/clima/policies/transport/aviation/docs/faq_eraa_en.pdf)



## 5. Two-year compliance cycle for 2013 and 2014 emissions

- |   |
|---|
| <ul style="list-style-type: none"><li>- <i>What assessment has the Commission made of the proposed two-year deferral on the verification market, and on Competent Authorities (CA)?</i></li></ul> |
|---|

An extraordinary two-year compliance cycle for aviation emissions from 2013 and 2014 is proposed. These emissions would be reported only by 31 March 2015 (two emission reports) and allowances for 2013 and 2014 emissions to be surrendered by 30 April 2015. Starting with emissions of 2015, the annual compliance cycle will resume.

This two-year cycle is appropriate to enable transposition of the amending Directive and that the Commission can provide the calculations necessary for the Competent Authorities to adjust the free allocations. However, as it would be a legal deadline it would be possible to submit emission reports and surrender allowances before the deadline. Therefore the aircraft operators do not have to wait until 31 March 2015 to submit their verified emission report for 2013; they can do it already in 2014.

## 6. Monitoring and reporting

### **a) reporting based on current MRV system**

- |  |
|--|
| <ul style="list-style-type: none"><li>- <i>Will the Commission also propose to change the Regulation on the monitoring and reporting of greenhouse gas emissions? What would be the implications for the AE MP's; would these need adjustment and approval?]</i></li></ul> |
|--|

The Commission is neither planning to propose changes to the MR regulation nor to the AV Regulation. The only change will concern the template for the reports of annual emissions that need to incorporate the coverage percentages from Annex IIc for the period from 2014 to 2020. As the template for the reports of annual emissions is not part of the AV or MR regulation but published on DG CLIMA's website, the changes to the template will be introduced and discussed in the Working Group 3 of the Climate Change Committee.

The aircraft operators do not need to change their monitoring plans for annual emissions as no changes to the monitoring of the emissions are foreseen.

### **b) reporting based on Eurocontrol's ETS Support Facility for flights to and from third countries**

- |   |
|---|
| <ul style="list-style-type: none"><li>- <i>Allowing the aircraft operator (for non-EEA flights only) to require the CA to calculate and report emissions without additional verification is an additional workload for the CA and also creates a potential conflict between the role of the CA as a regulator and the potential role as a verifier/calculator of emissions. Why is this approach being proposed?</i></li><li>- <i>Can commercial operators make use of the SE tool (5.2b of Commission FAQs)</i></li><li>- <i>Can intra-EU operators make use of the SE tool? The first para of 5.2b indicates that it can't be used – is there a reason for this?</i></li><li>- <i>Using a small emitters tool approved by the Commission and populated by Eurocontrol with data from its ETS support facility, [Remark NL39: Please clarify that this means the use of the Eurocontrol ETS-SF.]</i></li></ul> |
|---|

To provide further flexibility concerning monitoring, reporting and verification, it is proposed to offer a choice to all aircraft operators (commercial and non-commercial) in respect of emissions reporting for flights to and from third countries. Regarding such flights, an aircraft operator would be able to choose not to report emissions from these flights based on the percentage of the actual total flight emissions, but instead to rely upon a determination of estimated emissions taking place within EEA Member countries from such flights that is as accurate as possible.

This calculation shall be carried out by the respective Member States' competent authority and take into account data from Eurocontrol's ETS Support Facility. Calculations of emissions made in these circumstances shall be considered to be the verified emissions of third country flights operated by the aircraft operator for the purposes of Articles 11a, 12, 14 and 28a of the 2003 ETS Directive. That means no verification by independent verifiers would be needed for these flights.

## 7. Verification

- *Could the Commission explain the thoughts behind Art 28 (e)? Is it a reference to art. 28a 6. through art. 28a 1.(b)? and is the goal to exempt emissions from extra EU flights from verification? If so, this is unwanted as it complicates the annual reporting making it possible to divide the annual emission reports into two parts. DK would like to see a clarification of the present wording or a complete deletion if art. 28a 6. is deleted.*

Article 28a 1 last sentence clarifies that the emissions, which are calculated using the coverage percentages provided in the Annex IIc, will be used for the purposes of Articles 11a, 12 and 14. Otherwise, it would not be clear whether full-scope emissions or emissions calculated using the coverage percentage from Annex IIc would be considered as verified emissions for the purpose of the EU ETS.

## 8. Proposed exemptions for small emitters

- *Will the 1000 mtCO<sub>2</sub> de-minimis for non-commercial flights apply for 2013 onwards or from 2014-2020.*
- *Have the Commission considered backdating the 1000 mtCO<sub>2</sub> (except where there are borderline cases i.e. operator with emissions of 950 tonnes) exemptions for the previous three calendar years from the requirements in Article 3g to avoid a continued administrative burden on CAs and on aircraft operators emitting less than 1000 mtCO<sub>2</sub>?*
- *Para 5.3.1 of FAQs – Will the derogation on enforcement apply retrospectively for 2011, 2012 and 2013?*
- *5.3.3 of FAQs – What sort of simplified procedures are envisaged here?*
- *Art 28a5, simplified procedure: Could the Commission specify (a) How to assess whether these procedures are less accurate; (b) Whether member states must apply for an approval for using these procedures; (c) Whether a number of procedures specific to each member states may eventually lead to the need for harmonisation at community level.*
- *The legal question of how to deal with non-compliance for those emitting less than 1000t CO<sub>2</sub> for 2012 needs to be resolved.*

**a) Small non-commercial aircraft operators emitting less than 1 000 t**

An additional simplification in the proposal is that the Directive's requirement should be considered to be met in each calendar year up to 2020 regarding non-commercial aircraft operators emitting less than 1000 tonnes of CO<sub>2</sub> per annum. The current wording does not refer to a starting date, and more explicit reference to the start of the exemption could be considered. Furthermore, in this respect, an explicit derogation from Article 3g on monitoring and reporting plans could be considered.

This proposal is expected to reduce the number of aircraft operators regulated by Member States by around 2,200, representing 0.2% of emissions. Alongside other measures being taken to simplify administration for small aircraft operators, this is a significant lightening of administrative tasks for aircraft operators and for Member States' competent authorities, in line with the EU's Better Regulation agenda.

**b) Small aircraft operators emitting less than 25 000 tonnes per year**

As of 2013, small operators – whether commercial or non-commercial – emitting less than 25 000 tonnes of CO<sub>2</sub> per year can use simplified procedures.

By way of derogation from Articles 3g, 12, 15 and 18a of the ETS Directive, where an aircraft operator has total annual emissions lower than 25 000 tonnes, its emissions shall be considered to be verified if determined using data from Eurocontrol's ETS Support Facility.

**c) Small non-commercial aircraft operators emitting less than 25 000 tonnes per year**

In addition, Member States may implement further simplified procedures for small non-commercial aircraft operators emitting less than 25000 tonnes per year as long as there is no less accuracy than the Eurocontrol's ETS Support Facility provides. It would be up to the Member States to decide whether to benefit from this simplification and to develop appropriate simplified procedures.

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# **Update on 3<sup>rd</sup> country reactions on Commission proposal for European Regional Airspace Approach**

**15 NOVEMBER 2013**

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## 5. INTRODUCTION

This paper is aimed at providing an overview of the early reactions from 3<sup>rd</sup> countries on the Commission proposal for the European Regional Airspace Approach.

The Commission has undertaken outreach activities on several levels:

- Meetings with associations from the aviation sector, civil society and third-country embassies in Brussels
- Bilateral meetings of EU delegations with their third-country counterparts (either dedicated meetings or within the demarche for the preparation of the COP in Warsaw)
- Bilateral meetings during the COP in Warsaw
- A dedicated side-event at the COP in Warsaw (13/11/13)
- Discussions in preparation to EU Summits (e.g. EU-China, EU-Japan, EU-Russia)
- Topical discussions in the margins of Trade and Economic committee meetings, Climate change joint committees, and other regular third country meetings
- Briefings for all EU delegations
- Provision of lines-to-take to Member States' delegations (e.g. at COP and recently in China)

The Annex provides a more detailed list of the activities undertaken so far and scheduled for the near future.

## 5. REACTIONS FROM THIRD COUNTRIES

### 5.1. Public reactions

On 22 October 2013, **India's** aviation secretary was reported to have said that the Commission's proposal is "*in total conflict*" with the agreement reached at the ICAO Assembly.<sup>11</sup> The Indian representative at the Embassy briefing arranged in Brussels by the Commission read out a Statement objecting to the application of the EU ETS to Indian carriers and confirming that the Indian Carriers would not be allowed to comply.

On 29 October 2013, ministers of the **BASIC countries** in a joint statement stressed that "*the principles of common but differentiated responsibilities and mutual agreement should underpin the work of designing and implementing the market-based measures for emissions from international civil aviation*" and reiterated "*their strong objection to any unilateral measures regarding emissions from international civil aviation.*"<sup>12</sup>

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<sup>11</sup> <http://uk.reuters.com/article/2013/10/22/us-eu-airlines-carbon-idUKBRE99L16I20131022>

<sup>12</sup> [https://www.environment.gov.za/mediarelease/17thbasic\\_ministerial\\_meeting](https://www.environment.gov.za/mediarelease/17thbasic_ministerial_meeting)

On 5 November 2013, US Senators John Thune and Claire McCaskill published a letter to US Secretary for Transportation Anthony Foxx and the US delegation to ICAO, urging them to *"reinforce a key component of the final resolution that specifically requires ICAO member states to engage in discussions to reach agreement with other member states before designing and implementing new or existing market based measures (MBMs) for aviation emissions."*<sup>13</sup>

## **5.2. Bilateral intelligence**

### *5.2.1. China*

The Chinese authorities are still studying the Commission proposal and reflecting on it internally and with international partners.

China welcomed the willingness of the EU to discuss with partner countries and is aware of the EU's position that the Assembly decision does not represent a legal restraint on regional MBMs. However, in China's view – and despite of China's insistence in the general UNFCCC negotiations that developed countries take the lead – the EU should refrain from any 'unilateral action' and respect Article 16 of the ICAO Assembly Resolution as regards consultations with third country partners. Unilateral action would not be conducive to the multilateral process in ICAO. It was pointed out that China has no bilateral air transport agreement with the EU but rather with EU MS – in this respect the situation is different from that of the US.

The Civil Aviation Administration of China (CAAC) has accepted DG CLIMA's offer to send senior experts to Beijing in December for a bilateral meeting to discuss the Commission proposal in more detail.

### *5.2.2. Russia*

Russia notes that the implementation of the EU ETS unilaterally against the ICAO Resolution will be difficult. Russia indicates that it is strange that a developed country like Germany (which would collect the emission permits from Russian carriers) would be using the money in climate change projects in Germany and in developing countries, when this money is collected from economic operators from a country with an economy in transition. Russia takes the view that the EU should sign a bilateral agreement with Russia on the issue of aviation emissions.

### *5.2.3. United States*

The US administration is still studying the proposal. Its main concern expressed is the potential impact on the work leading up to the 2016 arrangement on the global MBM. It seems to acknowledge that the Commission proposal is legally sound, but at the same time notes that there might be consequences of a political nature, irrespective of the legal question.

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<sup>13</sup> [http://www.thune.senate.gov/public/index.cfm/files/serve?File\\_id=e86beead-7fa8-4acf-842a-24f6f327b56c](http://www.thune.senate.gov/public/index.cfm/files/serve?File_id=e86beead-7fa8-4acf-842a-24f6f327b56c)

US airlines seem to have adjusted their lobbying in Washington: They are no longer focussing on sovereignty issues but are switching back to "illegal tax" lines, highlighting that the EU legislation is out of line with the ICAO Assembly Resolution (i.e. not implementing mutual agreement).

US airlines are also lobbying around the idea that the legislation would be discriminatory against US airlines and that the Thune bill should be invoked. They are stressing that the EU would have failed to enforce the legislation against Chinese and Indian airlines and therefore US airlines are being put at a disadvantage relative to those airlines.

## **5.2 Results from the demarche in preparation of the COP in Warsaw**

### *5.2.4. Chile*

The Commission proposal was well received by Chile.

### *5.2.5. Egypt*

Egypt is well aware of the developments in this respect within ICAO and seriously preparing itself to meet the agreed commitments. Egypt would however like to see its implementation conducted in a fair manner that does not threaten the competitiveness of its industry.

### *5.2.6. India*

India's understanding of the ICAO Assembly Resolution – although not legally binding – is that it was agreed that regional systems can only be implemented bilaterally, and only between states, not groups of states. India is of the view that the EU court ruling does not make it mandatory for other countries to follow it.

### *5.2.7. Kenya*

The Kenyan authorities observe that the "EU aviation tax" has not been well-received and that subsequent decisions on international aviation should be done in the context of multilateral meetings involving all parties.

### *5.2.8. Morocco*

Morocco welcomed the EU decision to limit the application of the EU ETS as a positive step in the right direction and is committed to finding a negotiated solution within ICAO.



#### *5.2.9. New Zealand*

New Zealand supports the ICAO taking the lead to develop and implement emission reduction measures (technical, operational or economic) to effectively reduce emissions from international aviation. The progress made toward development at the recent Assembly meeting was positive, and New Zealand acknowledges the strong leadership of the EU on this issue. However, New Zealand remains wary of blunt differentiation between developed and developing countries and will watch developments in the EU-ETS with interest.

#### *5.2.10. Singapore*

Singapore's concern on paragraph 16 of the Assembly Resolution is that it may be construed to allow different application of national or regional market-based measures on different States and their air operators, based on the outcome of bilateral or multilateral consultations and negotiations, thus leading to an uneven playing field. Singapore is of the view that market-based measures should not lead to significant market distortion. Such measures should be applied equally, fairly and indiscriminately on all relevant air operators.

#### *5.2.11. UAE*

Despite some disagreements in the past regarding international aviation emission agreements and emission trade, the UAE sees common perspectives in an international framework and welcomed very positively the outcome of the ICAO Assembly in October 2013.

#### *5.2.12. Venezuela*

Venezuela argues that the ICAO measures should be applicable exclusively for developed countries. Independently, Venezuela's National Aviation Institute has formulated its national plan for emission and energy consumption reduction in aviation, already in place. Before getting involved in the debate inside ICAO on a new working plan, Venezuela will first launch a debate at national level and define its national plan for 2013-2016.

#### *5.2.13. Bilateral contacts with countries that have not yet shared their views on the proposal*

Argentina, Brazil, Cuba, Colombia, Costa Rica, Ghana, Kazakhstan, Malaysia, Peru, Saudi Arabia, South Africa, Tanzania, Vietnam

## Annex

**Table 8** Outreach activities by Commission services

<b>Date</b>	<b>Meeting</b>	<b>Participants (no.)</b>
21-Oct-13	Debrief video conference with EU Delegations	EU Delegations (13)
21-Oct-13	Video conference with Switzerland	Third country representatives
22-Oct-13	Meeting with aviation associations and NGOs	Aviation associations and NGOs (17)
24-Oct-13	Meeting with EBAA	Aviation associations
24-Oct-13	Meeting with EEAS	EEAS
25-Oct-13	10th meeting of EU-Russia Climate Change Subgroup	Third country representatives
28-Oct-13	Meeting with 3rd Country Embassy representatives	Third country representatives (27)
29-Oct-13	Debrief video conference with EU Delegations	EU Delegations (7)
05-Nov-13	EEAS meeting Russian Minister of Transport	Third country representatives
08-Nov-13	European Air Law Association annual conference	Aviation associations
13-Nov-13	EU Side event on aviation at COP19	Third country representatives
19-Nov-13	EU-Japan Summit	
21-Nov-13	EU-China Summit	
27/28 Jan-13	EU-Russia Summit	
11-22 Nov-13	COP 19/CMP 9 (bilaterals)	
2014 1st Q	EU-Brazil Summit <i>(date tbc)</i>	
28/29 Nov-13	Eastern Partnership Summit	
8-Jan-14	EU-US joint Committee on Open Skies	
22-Jan-14	India Emerging Aviation Issues Conference	

<b>9/10 Feb-14</b>	<b>Singapore Airshow Aviation Leadership Summit</b>	
<b>11/12 Feb-14</b>	<b>EU-ASEAN Aviation Summit</b>	
<b>tbc</b>	<b>EU-Ukraine Summit (<i>date tbc</i>)</b>	
<b>tbc</b>	<b>EU-Canada Summit (<i>event and date tbc</i>)</b>	

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