

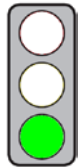
# INCLUSION OF AVIATION IN THE EU EMISSION TRADING SYSTEM

cepPolicyBrief No. 2014-05 of 27 January 2014

## KEY ISSUES

**Objective of the Directive:** The Commission wants to re-regulate the inclusion of aviation in the EU Emission Trading System (ETS) between 2013 and 2020 in order to take account of international opposition.

**Affected parties:** Airlines.



**Pro:** (1) With the EU Emission Trading System (ETS), the EU has opted for an effective instrument for reducing greenhouse gas emissions. The inclusion of aviation in the ETS increases its effectiveness.

(2) The rule that, in the case of flights to and from third party countries, certificates are required only for the distances flown over the European Economic Area (EEA) rather than for the entire route, improves the competitive situation for international airlines with hubs in the EEA.

**Contra:** –

## CONTENT

### Title

**Proposal COM(2013) 722** 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**

### Brief Summary

In the absence of any indication to the contrary, article numbers refer to Directive 2003/87/EC (ETS Directive) as amended by the proposal. Page numbers and recital numbers refer to the Proposal COM(2013) 722.

#### ► **Background: EU Emission Trading System (ETS)**

- Global CO<sub>2</sub> emissions from aviation
  - currently make up approx. 2.5% of total global CO<sub>2</sub> emissions and
  - are likely to increase by as much as 300% by 2036 as compared with 2006.
- The EU has undertaken to reduce its greenhouse gas emissions by 2020 by 20% as compared with 1990 (Art. 1 and 28 (1)). The EU Emission Trading System (ETS) will contribute to the reduction of greenhouse gas emissions.
- In the ETS, companies in certain industries are only permitted to discharge greenhouse gases if they own corresponding emission rights ("certificates") (Art. 12 (2a) and (3); see [cepDossier](#), page 12 et seq.). This has applied,
  - since 2005, to certain fixed industrial installations - particularly for supplying electricity and heat, metal production and processing, paper manufacture and the chemical industry - and also,
  - since 2012, to aviation.

#### ► **Existing rules in the ETS Directive (2003/87/EC)**

- **Area of Application**
  - Since 2012, all flights have, in principle, been subject to ETS obligations for the entire route (Art. 2, Annex I)
    - between two EU airports and
    - between an EU airport and a non-EU airport.
  - Exempt are, in particular (Annex I)
    - military, customs, police, search and rescue, fire-fighting and training flights
    - flights that return to the airport from which they took off without an intermediate landing, and
    - flights by airlines that are responsible for less than 10,000 tonnes of emissions overall or fewer than 243 flights in each of three consecutive four-month periods.
- **Quantity of certificates and their allocation and trade**
  - The total quantity of certificates for aviation corresponds (Art. 3c (1) and (2)),
    - for 2012, to 97 % of the average aviation emissions between 2004 and 2006 ("historical emissions", Art. 3 s) and
    - for 2013 and each subsequent year, to 95% of historical emissions.

- 15% of certificates are auctioned by the Member States, 85% are allocated free of charge (Art. 3d (1) and (2), Art. 3f (8)).
- The Member States determine how to use auction revenues (Art. 3d (4)).
- The certificates can be traded between companies within the EU (Art. 12 (1)).
- **Surrender and cancellation of certificates**
  - The airlines must surrender, by 30 April each year, certificates equal to the emissions from flights in the preceding calendar year (Art. 12 (2a)).
  - To cover their emissions, airlines may surrender both certificates for aviation as well as certificates for fixed installations (Art. 12 (2a)).
  - To cover their emissions, operators of fixed installations may not surrender aviation certificates (Art. 12 (3)).
  - The surrendered certificates are cancelled (Art. 12 (2a)).
- **Sanctions**
  - Where an airline fails to surrender sufficient certificates it must pay a fine of € 100 for every tonne of CO<sub>2</sub> discharged. The Member States must publish the names of the airlines. (Art. 16 (3))
  - If an airline continuously fails to comply with the requirements, the Commission may, at the request of the "administrating Member State", impose an operating ban (Art. 16 (5)). The "administrating Member State" of an airline is the Member State (Art. 3q in conjunction with Art. 18a (1)).
  - that granted the operating licence to the airline, or
  - in whose territory the airline emitted the most CO<sub>2</sub>, if it received its licence from a third party state.
- **International opposition, "Stop-the-Clock" Decision of 2013 and ICAO negotiations**
  - The inclusion of aviation in the ETS has met with "significant international opposition" (page 2). Some third party states, particularly USA, China and India, have refused to recognise the inclusion of aviation in the ETS and have banned their airlines from taking part.
  - Against this backdrop, the EU decided, in April 2013, that no sanctions would be imposed against airlines that breached the ETS obligation in respect of flights to and from third party countries in 2012. (Art. 1, "Stop-the-Clock" Decision No. 377/2013/EU). In practice, this meant that the ETS 2012 only applied to flights between EU airports.
  - The purpose of this Decision was to facilitate the introduction of global measures to reduce CO<sub>2</sub> emissions under the auspices of the International Civil Aviation Organisation (ICAO) (Recitals 6 and 7, "Stop-the-Clock" Decision).
  - At its Assembly in October 2013, the ICAO resolved to devise, by 2016, a "global market-based measure" to reduce CO<sub>2</sub> emissions which would apply as from 2020 (ICAO Resolution A38-17/2).
- **Amendment of the ETS Directive for the period from 2013**
  - The Commission proposes an amendment to the ETS Directive in order to (Recital 1)
    - take account of the results of the ICAO Assembly and
    - limit climate change impacts from flights to and from EU airports until 2020.
  - Airlines need, for their emissions from flights to and from third party countries (Art. 28a (1))
    - in 2013, no certificates, and
    - between 2014 and 2020, certificates for distances flown over the European Economic Area (EEA) - including the 12-nautical-mile zone (EEA = EU, Iceland, Lichtenstein, Norway; Annex IIc).
  - The total number of certificates for 2013 to 2020 will be reduced in proportion to the reduction in the distances subject to ETS obligations, flown to and from third party countries (Art. 28a (2) and (3) in conjunction with Annex IIc).
  - Non-commercial airlines, that are responsible for less than 1000 tonnes of CO<sub>2</sub>, do not require a certificate before 2020 (Art. 28a (1)).
  - For flights between EU airports in 2013, the airlines do not have to surrender the certificates by 30 April 2014 but have until 30 April 2015 (Art. 28a (1)).
  - If the ICAO fails in 2016 to pass a "global measure" on the reduction of CO<sub>2</sub> emissions after 2020, the Commission will examine the extent to which emissions from flights to and from third party countries should be covered after 2020 (Art. 28a (7)).

### Main Change to the Status Quo

As a result of the "Stop-the-Clock" Decision, in 2012, in derogation from the ETS Directive, only flights between EU airports were subject to ETS obligations. Without an amendment to the ETS Directive, from 2013 onwards, the entire distance between an EU airport and any other airport would be subject to ETS obligations. Under the current proposal, for flights to and from third party countries, at least the distances flown over the EEA will be subject to ETS obligations.

## Statement on Subsidiarity by the Commission

According to the Commission, a Community ETS can only be achieved at EU level.

### Policy Context

In order to bring down greenhouse gas emissions by 2020 by 20% as compared with 1990 levels, the EU has created the ETS and taken numerous other measures (see [cepDossier](#) and [cepPolicyBriefs](#) on EU climate protection policy). In order to increase the price of certificates, the Commission wants to withdraw 900 million certificates from the market temporarily [COM(2012) 416, see [cepPolicyBrief](#)]. In addition, the Commission is calling for more far-reaching changes to the ETS Directive [COM(2012) 652, see [cepPolicyBrief](#)]. The Commission has initiated a discussion on EU climate and energy objectives for 2030 [Green Paper COM(2013) 169, see [cepPolicyBrief](#)]. By 2050, the energy system is to be largely de-carbonised and greenhouse gas emissions reduced by 85 to 90% [COM(2011) 112, see [cepPolicyBrief](#); COM(2011) 885, see [cepPolicyBrief](#)].

### Legislative Procedure

16 October 2013 Adoption by the Commission

Open Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

### Options for Influencing the Political Process

Leading Directorate General	DG Climate
Committees of the European Parliament:	Environment, Public Health and Food Safety (leading), Rapporteur Peter Liese (EVP Group, D);
Federal Ministries:	Transport (leading)
Committees of the German Bundestag:	TBA
Decision mode in the Council:	Qualified majority (Adoption by a majority of the Member States and with 260 of 352 votes; Germany: 29 votes)

### Formalities:

Legislative competence:	Art. 192 TFEU (Environment)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

## ASSESSMENT

### Economic Impact Assessment

#### Ordoliberal Assessment

**With the EU Emission Trading System (ETS), the EU has opted for an effective and efficient instrument for reducing greenhouse gas emissions.** It provides all companies that are subject to the obligations with a reduction target and leaves it up to these companies to find out where reductions are possible at the lowest cost. **The inclusion of aviation into the ETS,** together with a corresponding increase in the number of certificates, **increases its effectiveness** because the more sectors of an economy that are included, the broader the spectrum for finding more cost-effective avoidance potential.

The ETS must allow for the situation that there is no global climate protection policy. **The proposed rule that, in the case of flights to and from third party countries, certificates are required only for the distance travelled over the European Economic Area (EEA) rather than for the entire route, improves the competitive situation for international airlines whose hubs are in the EEA,** particularly with respect to airlines with hubs in neighbouring countries such as Turkey. This is because, under the original rule, these companies only needed certificates for the feeder flights to their hubs; they could, however, operate the flight to the destination without a certificate. Airlines with hubs in the EU, on the other hand, needed certificates for both flights, to the hub and from the hub to the destination. The "Stop-the-Clock" procedure currently being applied, also distorts competition to the detriment of airlines with their hubs in the EU because their feeder flights to the hub would require certificates although the feeder flights of airlines with their hub outside the EU would not.

The proposed rule that, for flights to and from third party countries, certificates are only required for the distance over the EEA rather than for the entire distance, does increase CO<sub>2</sub>-Emissions as compared with the original rule, because fewer certificates have to be used and thus the incentive for developing and using climate-friendly technologies declines. However, this comparison is misleading because the original rule is not realistically practicable.

It is likely that a succession of third party countries will refuse to participate in the now amended ETS and/or will take retaliatory measures such as by hindering trade relations. By comparison with the original rule, the EU has however made some concessions to their objections.

#### Impact on Efficiency and Individual Freedom of Choice

The efforts of the Commission and the ICAO to agree on a "global market-based measure" on CO<sub>2</sub> emissions from aviation, are appropriate as the climate can only be effectively protected at a global level. In addition, a solution at ICAO level would remove any competitive distortions. In this regard, the ICAO should, for reasons of efficiency, also opt for an emission trading system. In addition, when introducing such a system, it should ensure compatibility with other emission trading systems such as the ETS and that the certificates can thus be traded openly with those of other systems. Otherwise the most important feature of emission trading, namely finding out which sectors allow emissions reduction at the lowest cost, will be lost.

#### Impact on Growth and Employment

Negligible.

#### Impact on Europe as a Business Location

Negligible.

### Legal Assessment

#### Legislative Competency

Unproblematic. The EU is empowered to issue environmental measures for the protection of the climate (Art. 192 TFEU). In particular, it can regulate greenhouse gas emissions which – as here – take place within the EU. According to the view of the ECJ, the EU can also include in the ETS emissions arising outside the EU from flights to or from EU airports (cf. ECJ, Case C-366/10 of 21 December 2011).

#### Subsidiarity

Unproblematic.

### Conclusion

With the EU Emission Trading System (ETS), the EU has opted for an effective instrument for reducing greenhouse gas emissions. The inclusion of aviation in the ETS increases its effectiveness. The rule that, in the case of flights to and from third party countries, certificates are required only for the distance over the European Economic Area (EEA) rather than for the entire route, improves the competitive situation for international airlines with hubs in the EEA.