

## II

*(Information)*

## EUROPEAN COMMISSION

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

**Communication from the Commission — Guidance on the implementation of Decision No 377/2013/EU of the European Parliament and of the Council derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community**

(2013/C 289/01)

## 1. INTRODUCTION

In order to facilitate progress towards a global approach to tackle aviation emissions at the International Civil Aviation Organisation, the Council and the European Parliament decided to defer the enforcement of certain obligations arising prior to the 38th session of the ICAO Assembly under Directive 2003/87/EC <sup>(1)</sup> which established the EU's emissions trading system (ETS). Decision No 377/2013/EU <sup>(2)</sup> ("Stop-the-clock" Decision) relates only to 2012 aviation emissions.

The Commission has prepared guidance pursuant to Article 4 of the Decision with the aim to achieve a more consistent application of the Decision by the competent authorities in the Member States thereby preventing possible abuses or distortions of competition. It has been drafted with input from the Member States and takes into account the discussions within the implementation workshop on 18 March 2013, as well as comments made during several meetings of WGIII of the Climate Change Committee (CCC) and written comments received from experts from the Member States. It should be noted that only the European Court of Justice can provide a definitive interpretation of Union law.

## 2. GEOGRAPHICAL SCOPE OF THE DEROGATION

## 2.1. Flights for which compliance obligations remain unchanged ('intra-flights')

Obligations under the ETS continue to be enforced in respect of the following flights (hereinafter referred to as 'intra-flights'):

2.1.1. *Flights between airports located in the 30 EEA States*

The territorial scope of the EEA also includes the following outermost regions and territories:

ES	Canary Islands, Ceuta, Melilla
FI	Aland Islands
FR	French Guiana, Guadeloupe, Martinique, Réunion, Saint Martin

<sup>(1)</sup> OJ L 275, 25.10.2003, p. 32.

<sup>(2)</sup> OJ L 113, 25.4.2013, p. 1.

PT	Azores, Madeira
NO	Jan Mayen
UK	Gibraltar

The airport Basel-Mulhouse-Freiburg (ICAO Aerodrome Codes LFSB and LSZM) is located in French territory.

2.1.2. *Flights between airports located in the EEA and airports located in closely connected areas with a shared commitment to tackle climate change*

The compliance obligations also continue to be enforced for flights that connect airports in the EEA with airports located in Switzerland, Croatia, and EEA-States' overseas countries and territories (see list below).

Similarly, obligations under the ETS continue to be enforced in respect of flights connecting an EEA airport and an airport situated in one of the following countries and territories:

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

The same applies to flights to and from offshore installations located outside territorial waters, such as oil and gas production or exploration platforms.

2.1.3. *Full compliance requirements for intra-flights*

All aircraft operators which have operated intra-flights in 2010, 2011 or 2012 are required to comply with all monitoring, reporting and verification obligations associated with these flights. Aircraft operators

which operated intra-flights in 2012 are required to surrender allowances (or international credits up to a certain limit) by 30 April 2013 in respect of the emissions from those flights.

## 2.2. Flights that may be covered by the derogation ('extra-flights')

The following flights may be covered by the derogation and thus not be subject to enforcement of EU ETS compliance obligations for the period from 2010 to 2012 (hereinafter referred to as 'extra-flights'):

- flights from airports located in the 30 EEA States (including the regions and territories listed in Section 2.1.1) to third countries,
- flights from third countries into airports located in the 30 EEA States (including the regions and territories listed in Section 2.1.1).

Flights within the countries and territories listed in Section 2.1.2 and flights between these countries and territories and third countries were not included in the original scope of the EU ETS, and remain excluded.

## 2.3. States without an airport

Currently the following States have no airport:

AN	Andorra
LI	Liechtenstein
MC	Monaco
SM	San Marino
VA	Vatican

## 3. ALLOCATION FOR 2012

### 3.1. Account opening

Where an aircraft operator has expressed a willingness to open an aircraft operator holding account (AOHA) but has not been able to do so before the deadline of 30 April 2013 when allowances have to be surrendered because of on-going documentation gathering and/or checking, national administrators have provided the following further flexibilities:

- Advising small aircraft operators of the possibility to use a mandate to open the AOHA (see Article 17(3) of Registry Regulation No 389/2013 <sup>(1)</sup>).
- In agreement with the aircraft operator concerned, Member States have opened the AOHA on behalf of the aircraft operator and temporarily appointed national administrators as account representatives pending the approval of the account representatives nominated by the aircraft operator.
- In agreement with the aircraft operator concerned, Member States have opened the AOHA without giving access to the authorised representatives and surrendered allowances on behalf of the aircraft operator.

### 3.2. Issuance of aviation allowances for 2012 to aircraft operators

The issuance of aviation allowances to aircraft operators is not possible unless an AOHA has been opened. An AOHA is also required in order to be able to surrender allowances. While an aircraft operator may request the opening of an AOHA after 30 April 2013, it will not be able to meet the 30 April 2013 deadline for the surrender of allowances in respect of 2012 emissions.

Where an account is opened after 30 April 2013, it is still possible for the administering Member State to issue the number of allowances allocated to that aircraft operator for 2012. However, in order to ensure that the conditions for the application of the derogation remain aircraft operators can only receive free

<sup>(1)</sup> OJ L 122, 3.5.2013, p. 1.

aviation allowances corresponding to their intra-flights. These allowances will be third period (Phase III) aviation allowances by virtue of Article 13 of the Directive and will be created for this purpose. The Commission will check all allocations in the usual manner.

### 3.3. Return of free 2012 aviation allowances

The return of 2012 aviation allowances is not required if an aircraft operator decides to comply with the legislation in full.

Compliance with the 'stop-the-clock' conditions requires that:

- an aircraft operators returns a corresponding number of 2012 aviation allowances for the extra-flights within the deadline, or
- the aircraft operator has not received a free allocation of 2012 aviation allowances for the extra-flights.

All returned allowances should be 2012 aviation allowances. No 2013 aviation allowances, general allowances, CERs or ERUs should be returned.

The deadline for return was 27 May 2013, 30 days after entry into force of the 'Stop-the-clock' Decision or the following business day where the deadline is a public holiday.

#### 3.3.1. Determination of participation

An aircraft operator will be considered to be 'participating' if it returns the corresponding number of 2012 aviation allowances within the deadline or did not receive 2012 aviation allowances in respect of its extra-flights. If 2012 aviation allowances have been received and are not returned, the aircraft operators concerned will be considered not to be participating in the derogation.

The response of aircraft operators to the first coordinated letter should be considered as an indication only. The replies should not be used to determine definitively if the aircraft operator is participating in the derogation.

#### 3.3.2. Cancellation of returned 2012 aviation allowances

National administrators should cancel all returned 2012 aviation allowances.

National administrators will also need to cancel any 2012 aviation allowances corresponding to extra-flights to which the derogation applies which were created but not distributed to aircraft operators.

#### 3.3.3. Publication

Based on the benchmarks calculated by the Commission, Member States have calculated the free allocation of aviation allowances up to 2020 and have informed aircraft operators accordingly. These allocation decisions have been published as requested in the EU ETS Directive.

Member States will need to publish the returns of free aviation allowances *only* for those 'participating' aircraft operators derogation and who have received a free allocation of allowances for extra-flights.

Correspondingly, Member States who only issued the allocation relating to intra-flights will need to publish the recalculated allocation for 2012. If this leads to a change of the location of the publication, Member States should inform the Commission about the new location of the published allocation decisions and returns.

## 4. MONITORING, REPORTING AND VERIFICATION OF 2012 EMISSIONS AND SURRENDER OF ALLOWANCES

All aircraft operators who have operated intra-flights in 2012 had to submit their verified 2012 emission reports by 31 March 2013 (or any earlier date foreseen in national legislation).

If the aircraft operator submitted a verified emissions report for all flights and then becomes a 'participating' operator in respect of its extra-flights, the competent authority (via the national administrator) updates the verified emissions figure for 2012 in the registry.

The aircraft operator must also surrender a number of allowances equal to the relevant 2012 emissions by 30 April 2013. If the aircraft operator is 'participating', it should surrender allowances only in respect of the intra-flights (by 30 April 2013) and return 2012 aviation allowances issued to it corresponding to the extra-flights (by 27 May 2013). If the aircraft operator is not 'participating', it should surrender units for all intra- and extra-flights (by 30 April 2013) and not return 2012 aviation allowances.

#### 4.1. 'Participating' aircraft operators who only operated extra-flights in 2012

To be considered 'participating', aircraft operators who have only operated extra-flights in 2012 must return within the deadline any free allowances received in respect of extra-flights.

Aircraft operators who have only operated extra-flights in 2012, and have already opened an AOHA in the Union registry, should ensure that 'zero' emissions are entered in the registry by 31 March 2013. Aircraft operators, who have only operated extra-flights in 2012, and have not already opened an AOHA in the Union registry, do not need to open an AOHA for the 2012 compliance cycle.

Member States shall check that the aircraft operator only operated extra-flights in 2012. No emission report is required.

#### 4.2. 'Participating' aircraft operators who operated extra- and intra-flights in 2012

To be considered 'participating', aircraft operators who operated extra- and intra-flights in 2012 must return within the deadline any free allowances received in respect of extra-flights.

They require an AOHA in the Union registry, if one has not already been opened. They should ensure that verified emissions for intra-flights are entered in the registry by 31 March 2013.

They also had to submit verified emissions report for intra-flights by 31 March 2013 (or the earlier date foreseen in national legislation) and surrender a number of allowances equal to 2012 emissions (intra-flights) by 30 April 2013. Aircraft operators could use general allowances, aviation allowances and international credits. For 2012 emissions, aircraft operators could use CERs and ERUs up to 15 % of the total number of allowances that they are required to surrender.

#### 4.3. Simplified procedures and *de minimis* threshold

Since the 'Stop-the-clock' Decision only defers from enforcement for certain flights, the application of the simplified procedures for small emitters according to Annex XIV(4) to Commission Decision 2009/339/EC <sup>(1)</sup> is just possible if the relevant conditions are fulfilled based on the intra- and extra-flights (e.g. 2012 emissions from intra flights and extra-flights have to be below 10 000 tons). The *de minimis* threshold pursuant to Annex I(j) to the Directive 2003/87/EC is also based on intra- and extra-flights.

#### 4.4. Entry of verified emissions in the Union registry

The Union registry provides for the entry of 'domestic emissions' and 'non-domestic emissions'. This differentiation has nothing to do with 'stop-the-clock'. Rather, this is related to reporting under the Kyoto Protocol. Therefore 'domestic emissions' and 'other emissions' are to be included separately in the emissions report (see template emissions report).

'Domestic emissions' cover emissions from flights departing and arriving at the same Member State; this is not linked only to the administering Member State (see guidance in the registry application).

<sup>(1)</sup> OJ L 103, 23.4.2009, p. 10.

The surrender obligation is to be based on the sum of the two fields.

#### 4.5. Use of international credits

The Union registry automatically calculates the maximum number of international credits that can be used by an aircraft operator based on the entry of verified emissions. For 2012 compliance, the limit was 15 % of the number of allowances an operator is required to surrender.

Credits cannot be surrendered until the verified emissions for the corresponding calendar year are entered in the registry.

For 'participating' aircraft operator, the 15 % limit is calculated in relation to the emissions for intra-flights only. Therefore, Member States need to check that at least 85 % of the units surrendered are allowances. If an aircraft operator surrenders international credits which exceed their entitlement, these international credits are not to be taken into account for compliance purposes.

### 5. COMPLIANCE ASSESSMENT

The compliance assessment should only include aircraft operators that were covered by the EU ETS in 2012. Commercial aircraft operators who fulfil exemption j) of Annex I to the Directive are not covered as long as they operate below one of the two thresholds <sup>(1)</sup>.

Table 1

**Compliance assessment for aircraft operator who have operated intra- and extra-flights in 2012**

Free allocation for 2012	Returned 2012 aviation allowances for extra-flights	Surrendered units	Compliance status
Full	Yes	Yes, for intra-flights	No enforcement required
Full	Yes	No	Enforcement required for intra-flights
Full	No	Only for intra-flights	Enforcement required for extra-flights
Full	No	No	Enforcement required for all flights
No	No need	Yes	No enforcement required
No	No need	No	Enforcement required for intra-flights
For intra	No need	Yes	No enforcement required
For intra	No need	No	Enforcement required for intra-flights

Member States should look at both accounts (Union allowances deletion account to which the surrenders go and the return account) to assess if the enforcement is required in respect of 2012 emissions. The number of aviation allowances surrendered and returned must equal at least the number to be returned in accordance with Decision No 377/2013/EU. The number of units surrendered plus the number of allowances returned must be equal to the total number of units that the aircraft operator was required to hand in in respect of 2012 emissions.

<sup>(1)</sup> Annex I j) exempts flights which would fall within the aviation activity, performed by a commercial air transport operators operating either fewer than 243 flights per period for three consecutive four-months periods, or flights with total annual emissions lower than 10 000 tonnes per year.

Table 2

**Compliance assessment for 'participating' aircraft operator**

Intra-flight emissions in 2012	Allocation for extra-flights to be returned	Returned 2012 aviation allowances	Surrendered units	Compliance status
200	100	100 EUAA	200 EUA	No enforcement required
200	100	200 EUA	100 EUAA	No enforcement required
200	100	50 EUAA, 50 EUA	150 EUA, 50 EUAA	No enforcement required

**6. ISSUANCE OF 2013 AVIATION ALLOWANCES**

The issuance of 2013 aviation allowances will not take place before the end of September in order to allow the taking into account of expected progress at the 38th ICAO Assembly. Aviation allowances are distributed by Member States after the necessary procedures have been completed and the European Commission makes them available in the Union registry.

The timing of issuance for 2013 does not impact aircraft operators. Aviation allowances issued for 2013 cannot be surrendered by 30 April 2013 to be compliant in respect of 2012 emissions.

**7. NUMBER OF AVIATION ALLOWANCES TO BE AUCTIONED AND AUCTIONING SHARES**

The 'Stop-the-clock' Decision foresees auctioning of 15 % of 2012 aviation allowances in circulation. Returned 2012 aviation allowances are cancelled and thus are not considered as allowances in circulation. If allowances were not auctioned before 1 May 2013, they will be auctioned as 2013-2020 aviation allowances instead.

The 2013 auction calendars for aviation allowances will be determined at a later date.