

DECISIONS

COUNCIL DECISION

of 28 February 2011

on the position to be taken by the European Union in the EEA Joint Committee concerning an amendment to Annex XX (Environment) to the EEA Agreement

(2011/153/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 192(1) and 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ⁽¹⁾, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Annex XX to the Agreement on the European Economic Area (hereinafter 'the EEA Agreement') contains specific provisions and arrangements concerning environment.
- (2) It is appropriate to incorporate Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so

as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community ⁽²⁾, into the EEA Agreement.

- (3) Annex XX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Sole Article

The position to be taken by the Union in the EEA Joint Committee on an envisaged amendment to Annex XX to the EEA Agreement is laid down in the Annex to this Decision.

Done at Brussels, 28 February 2011.

For the Council

The President

FELLEGI T.

⁽¹⁾ OJ L 305, 30.11.1994, p. 6.

⁽²⁾ OJ L 8, 13.1.2009, p. 3.

ANNEX

Draft

DECISION No .../2011 OF THE EEA JOINT COMMITTEE
of
amending Annex XX (Environment) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area (hereinafter 'the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Annex XX to the EEA Agreement was amended by Decision of the EEA Joint Committee No 146/2007 of 26 October 2007 ⁽¹⁾ in order to incorporate, inter alia, Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community ⁽²⁾, into that Agreement.
- (2) Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community ⁽³⁾ is to be incorporated into the EEA Agreement.
- (3) The decision-making process leading to the implementation of the Directive will take place in close cooperation between the European Commission, the EFTA Surveillance Authority and the EFTA States.
- (4) The Contracting Parties have issued a Joint Declaration, emphasising, inter alia, that they will make every effort in order to ensure the swift adoption and entry into force of any EEA Joint Committee decisions necessary to extend to the EFTA States the relevant implementing decisions to be adopted by the European Commission and particularly those pursuant to Articles 3e(3) and 3f (5) of Directive 2003/87/EC as amended by Directive 2008/101/EC,

HAS ADOPTED THIS DECISION:

Article 1

Point 21al of Annex XX to the EEA Agreement is hereby amended as follows:

- (1) the following indent is added:

— **32008 L 0101:** Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 (OJ L 8, 13.1.2009, p. 3).;

⁽¹⁾ OJ L 100, 10.4.2008, p. 92.

⁽²⁾ OJ L 275, 25.10.2003, p. 32.

⁽³⁾ OJ L 8, 13.1.2009, p. 3.

- (2) the following adaptations are inserted after adaptation (b):

'(ba) At the time of incorporation of the Directive, Liechtenstein does not have any aviation activities as defined in the Directive operated on its territory. Liechtenstein will comply with the Directive when relevant aviation activities take place on its territory.

- (bb) The following subparagraph shall be added in Article 3c(4):

"The EEA Joint Committee shall, in accordance with the procedures laid down in the Agreement and based on figures provided by the EFTA Surveillance Authority in cooperation with Eurocontrol, decide on the EEA-wide historical aviation emissions by adding the relevant numbers concerning flights within and between the territories of the EFTA States and flights between the EFTA States and third countries to the Commission decision when incorporating the latter into the EEA Agreement.";

- (bc) in Article 3d(4), the second subparagraph shall be deleted;

- (bd) the following subparagraph shall be added in Articles 3e(2) and 3f(4):

"By the same date, the EFTA States shall submit applications received to the EFTA Surveillance Authority, which shall promptly pass them on to the Commission.";

- (be) the following subparagraphs shall be added in Article 3e(3):

"The EEA Joint Committee shall, in accordance with the procedures laid down in the Agreement and based on figures provided by the EFTA Surveillance Authority in cooperation with Eurocontrol, decide on the EEA-wide number for the total number of allowances, the number of allowances to be auctioned, the number of allowances in the special reserve and the number of free allowances, by adding the relevant numbers concerning flights within and between the territories of the EFTA States and flights between the EFTA States and third countries to the Commission decision when incorporating the latter into the EEA Agreement.

The Commission shall decide on the EEA-wide benchmark. During the decision-making process the Commission shall cooperate closely with the EFTA Surveillance Authority. The calculation and publication by the EFTA States under Article 3e(4) shall take place subsequent to the decision of the EEA Joint Committee incorporating the decision adopted by the Commission into the EEA Agreement.”;

- (bf) the following subparagraph shall be added in Article 3f(5):

“The Commission shall decide on the EEA-wide benchmark. During the decision-making process the Commission shall cooperate closely with the EFTA Surveillance Authority. The calculation and publication by the EFTA States under Article 3f(7) shall take place subsequent to the decision of the EEA Joint Committee incorporating the decision adopted by the Commission into the EEA Agreement.”;

- (3) the following adaptations are inserted after adaptation (i):

- ‘(ia) the following paragraph shall be inserted after Article 16(12):

“(13) The EFTA States shall submit any requests pursuant to Article 16(5) and (10) to the EFTA Surveillance Authority, which shall promptly pass them on to the Commission.”;

- (ib) the following subparagraph shall be added in Article 18a(1):

“Reallocation of aircraft operators to the EFTA States should take place during year 2011, after fulfilment by the operator of its 2010 obligations. A different timeline for reallocation of aircraft operators initially assigned to a Member State on the basis of the criteria mentioned under (b), can be agreed by the initial administering Member State, further to an explicit request introduced by the operator within six months from the adoption by the Commission of

the EEA-wide list of operators provided for in Article 18a(3)(b). In this case, reallocation shall take place no later than in 2020 with regard to the trading period beginning in 2021.”;

- (ic) in Article 18a(3)(b), the words “for the whole EEA” shall be inserted after the words “aircraft operators”;
- (id) the following subparagraph shall be added in Article 18b:

“For the purposes of carrying out their tasks under the Directive, the EFTA States and the EFTA Surveillance Authority may request the assistance of Eurocontrol or another relevant organisation and may conclude to that effect any appropriate agreements with those organisations.”;

Article 2

The text of Directive 2008/101/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on the day following the last notification to the EEA Joint Committee under Article 103(1) of the EEA Agreement (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at ...,

For the EEA Joint Committee
The President

The Secretaries
to the EEA Joint Committee

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Joint Declaration by the Contracting Parties to Decision No .../2011 incorporating Directive 2008/101/EC into the EEA Agreement

'Directive 2008/101/EC states that revenues generated from the auctioning of allowances for aviation should be used to tackle climate change. The application of this provision by the EFTA States is without prejudice to the scope of the EEA Agreement.

As regards the decisions on benchmarks pursuant to Articles 3e(3) and 3f(5) of Directive 2003/87/EC as amended by Directive 2008/101/EC, the Contracting Parties will make every effort in order to ensure swift adoption and entry into force of any EEA Joint Committee decisions incorporating each decision of the European Commission. In order to guarantee the homogeneity of the EEA and of its common ETS, a joint and parallel process of the Contracting Parties shall lead up to the decisions of the European Commission, which shall be incorporated into the EEA Agreement, if necessary by use of written procedure.

With the aim to provide for a transparent ETS in the EEA for all aviation operators concerned, the European Commission will include special clauses in its decisions implementing Directive 2008/101/EC, which will make reference to the extension of the decisions to the EEA EFTA States by decisions of the EEA Joint Committee.'
