

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/1416

of 17 June 2021

amending Directive 2003/87/EC of the European Parliament and of the Council as regards the exclusion of incoming flights from the United Kingdom from the Union emissions trading system

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emissions allowance trading within the Union and amending Council Directive 96/61/EC ⁽¹⁾, and in particular Article 25a(1), second subparagraph, thereof,

Whereas:

- (1) Article 25a of Directive 2003/87/EC empowers the Commission to adopt provisions to exclude flights arriving from a third country from the Union emissions trading system (EU ETS). Such provisions should provide for optimal interaction between the EU ETS and a third country's measures for reducing the climate change impact of aviation.
- (2) An agreement between the Union and the United Kingdom of Great Britain and Northern Ireland was reached in December 2020 ⁽²⁾. The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Agreement') was signed by the Union on the basis of Council Decision (EU) 2020/2252 ⁽³⁾ and was approved by the Union on the basis of Council Decision (EU) 2021/689 ⁽⁴⁾. The Agreement was provisionally applied until its entry into force on 1 May 2021 ⁽⁵⁾. The Agreement provides that each party is to have in place an effective system of carbon pricing that covers aviation and that flights from aerodromes situated in the territory of the European Economic Area (EEA) to aerodromes situated in the United Kingdom are to be regulated under the EU ETS. Pursuant to Article 28a(7) of Directive 2003/87/EC, the derogation in Article 28a(1) of Directive 2003/87/EC, pursuant to which Member States should consider the requirements of that Directive regarding emissions from certain flights to and from aerodromes located in countries outside the EEA satisfied, is to apply only in line with the terms of the Agreement.

⁽¹⁾ OJ L 275, 25.10.2003, p. 32.

⁽²⁾ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ L 444, 31.12.2020, p. 14).

⁽³⁾ Council Decision (EU) 2020/2252 of 29 December 2020 on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 444, 31.12.2020, p. 2).

⁽⁴⁾ Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 149, 30.4.2021, p. 2).

⁽⁵⁾ Notice concerning the entry into force of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 149, 30.4.2021, p. 2560).

- (3) It is therefore necessary to amend Directive 2003/87/EC in order to exclude flights from aerodromes situated in the United Kingdom to aerodromes situated in the EEA from the EU ETS. In order to maintain stability as regards the coverage of aircraft operators by the EU ETS, that exclusion of flights from aerodromes situated in the United Kingdom to aerodromes situated in the EEA should not affect the provisions that exclude certain aviation activities from the EU ETS based on specified thresholds in terms of number of flights or emissions per operator.
- (4) Directive 2003/87/EC should therefore be amended accordingly.
- (5) As the Agreement was provisionally applied from 1 January 2021, this Regulation should apply in respect of emissions taking place from that date,

HAS ADOPTED THIS REGULATION:

Article 1

In Directive 2003/87/EC, in Annex I, the second paragraph of the entry 'Aviation' of the column 'Activities' of the table is amended as follows:

- (1) in point (j), the second paragraph is replaced by the following:
'Flights referred to in points (l) and (m) or performed exclusively for the transport, on official mission, of reigning Monarchs and their immediate family, Heads of State, Heads of Government and Government Ministers, of a Member State may not be excluded under this point;'
- (2) point (k) is replaced by the following:
'(k) from 1 January 2013 to 31 December 2030, flights which, but for this point, would fall within this activity, performed by a non-commercial aircraft operator operating flights with total annual emissions lower than 1 000 tonnes per year (including emissions from flights referred to in points (l) and (m));'
- (3) the following point (m) is added:
'(m) flights from aerodromes situated in the United Kingdom to aerodromes situated in the EEA.'

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 June 2021.

For the Commission
The President
Ursula VON DER LEYEN
