

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021’

(COM(2017) 54 final — 2017/0017 (COD))

(2017/C 288/10)

Rapporteur: **Thomas KROPP**

Consultation	Council, 21/02/2017 Parliament, 13/02/2017
Legal basis	Articles 192 (1) and 304 of the Treaty on the Functioning of the European Union
Bureau decision	21/02/2017
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	17/05/2017
Adopted at plenary	31/05/2017
Plenary session No	526
Outcome of vote (for/against/abstentions)	192/0/2

1. Conclusions and recommendations

1.1 Although the amendments proposed by the Commission will have the effect of maintaining a regulatory framework specific only to airlines operating intra-EEA flights beyond 2017, the suggested amendments pave the way for EU-led support and implementation of the non-distortive global scheme Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)⁽¹⁾ as of 2020.

1.2 The Committee endorses the Commissions’ proposal (Proposal) with some reservations. If adopted, the environmental ambitions of the EU ETS would be lower than the full scope of the EU ETS and such a scheme could be somehow detrimental to the EU’s domestic climate targets and international commitments; but at the same time, the EU would credibly demonstrate its support for the global measure so that the global mitigation impact can be pursued.

1.3 Enlarging the scope of the current EU ETS for aviation to cover all incoming and outgoing flights to/from the EEA would create the risk of international trade disputes about the validity of a unilateral extra-territorial application of EU goals, and delay the consensus-building process to secure uniform implementation of a multilaterally agreed scheme.

1.4 EU action is required to avoid distortions to competition within the single market in aviation when implementing the global market-based measure in the European Union, while making sure that CORSIA’s environmental integrity is as high as possible based on the experience of the ETS. The political debate on the functionality of a stand-alone EU-specific way forward has to take into account the development of CORSIA and whether it eventually meets its objectives.

⁽¹⁾ The Plenary of ICAO’s 39th Assembly recommended adoption of a final resolution introducing the Carbon Offset and Reduction Scheme for International Aviation.

1.5 There is a need for urgency in the legislative process. The adoption of the Proposals is required before the end of 2017 so that the preparatory measures for implementing CORSIA can be undertaken as of beginning 2018. EU-specific regulations should only be seen and amended to promote global market-based measures. The Committee urges the Council and European Parliament to maintain momentum for the timely implementation of CORSIA in a uniform and non-distortive manner.

1.6 The Committee supports the balanced approach as advocated by the Commission, which maintains the leverage which the Commission has built up with the EU ETS, but addresses a global issue globally, and thereby reduces the continuing risk of carbon leakage and competitive disadvantages for Europe. The Commission is requested to inform the consumer that the emissions stemming from international aviation are a global issue. If dealt with appropriately by all International Civil Aviation Organization (ICAO) Member States, CORSIA will lead to carbon-neutral growth which decouples traffic growth from the growth of emissions, irrespective of where air travel takes place.

1.7 The Committee has decided to organise a public EESC conference with the participation of all relevant stakeholders to give them the opportunity to express the views of organised civil society concerning the political, social, economic and environmental consequences of this regulatory initiative.

2. Background

2.1 The EU's Emission Trading Scheme (EU ETS) was introduced in 2005; it capped the emission of industrial sectors within the EEA. The cap consists of allowances which, in their totality, equal the amount of tonnes of CO₂ which can be emitted under that cap. The general cap is reduced every year by 1,74 %, thus benefitting industries which need less allowances and obliging pollutant industries to buy more allowances. The scheme requires governments to determine how the overriding emission reduction targets can be achieved, so that the totality of the EU's CO₂ emissions will be reduced.

2.2 In 2008, the EU agreed to include aviation as a sector in its ETS as of 2012. For the first time, a sector was tasked with adhering to emission reduction targets, as opposed to Member States. The aviation emissions were provisionally capped below their average level between 2004 and 2006. The cap on aviation permits was separate from the cap on the overall EU ETS emissions. According to the ETS for aviation, as from 2012, aircraft operators were obliged to submit emission allowances for every tonne of CO₂ emitted for flights to or from an airport within the EEA. In order to cope with traffic growth and thus the need for aviation growth, airlines were granted the right to purchase additional supplies of allowances in auctions where other sectors made permits available. The cap for aviation allowances was reduced from 97 % of historical emissions (between 2004-2006) in 2012 to 95 % of that base in the phase from 2013-2020. During this time-frame, 82 % of the allowances are allocated free of charge to aircraft operators and 15 % are auctioned.

2.3 The inclusion of aviation into an emissions trading scheme has been the object of highly controversial discussions. The difficulties are inherent in the very nature of aviation as an international service industry, the CO₂ emitters of which are mobile, thus rendering the task of allocating CO₂ emission in a given airspace to a national government difficult. Several basic issues are, however, internationally undisputed:

2.3.1 Aviation accounts for at least 2 % of global emissions, and international aviation represents 1,3 %.

2.3.2 No sector should be exempted from mitigating the effects of the emissions on climate change, thus the maritime and aviation sectors should be included in global schemes to mitigate the impact of CO₂ on climate change.

2.3.3 Over time, consensus emerged that the disadvantages of taxes on CO₂ emissions outweighed the advantages of market-based measures. Taxes are paid in their totality from day 1, whereas schemes such as the ETS envisage free allowances upfront as an incentive to be as efficient as possible and — by trading unused allowances — turn a cost into a revenue source. Furthermore, taxes are by definition not objective-driven, but are paid into the treasury of national governments, whereas market-based mechanisms can be coupled with offset measures to directly compensate for the emissions.

2.4 The main dispute about the inclusion of aviation into the EU ETS centred around the issue of applying the scheme internationally. The EU Commission argued that climate change as a global phenomenon cannot be tackled effectively through regional measures alone. It therefore sought implementation of the EU ETS for aviation for all airlines flying to/from airports in the European Union irrespective of whether these are registered in a Member State. However, the unilateral imposition of such a mechanism on third countries flies in the face of the sovereignty of each nation world wide. In the absence of a bi- or multilateral international agreement on the inclusion of a market-based measure on services between sovereign nations, it remained doubtful according to which legal basis the European Union could impose any such scheme on third countries. The legality of the EU to cover flights to/from third countries was decided by the European Court of Justice in 2016 ⁽²⁾. Apart from the legal challenge ⁽³⁾, the EU faced the threat of retaliatory trade sanctions from larger trading nations.

2.5 Several large trading nations, such as China, Brazil, the USA, India and Russia coordinated efforts to oppose the unilateral implementation of the scheme. On 12 November 2012, under international pressure, the Commission issued a proposal to 'stop the clock' for one year on the aviation ETS. The 'stop-the clock' proposal was formally adopted by Council and the European Parliament in April 2013, just before airlines were required to surrender allowances for 2012; it reduced retroactively the scope of the aviation ETS to intra EEA flights.

2.6 In March 2014, the Regulation (EU) No 421/2014 of the European Parliament and of the Council ⁽⁴⁾ was adopted which extended the 'stop-the-clock' intra EEA scope until the end of 2016 with a full snap back to the original scope of the ETS (all flights to and from airports in the EEA) unless the 2016 ICAO Assembly provided for sufficiently robust progress towards a global scheme.

2.7 Although questioned by several NGOs as to whether the Agreement was sufficient to serve a useful purpose, it is widely held that the Paris Agreement of the United Nations Framework on Climate Change signed on 12 December 2015 ⁽⁵⁾ in Paris was a major breakthrough towards international consensus on the need for further internationally coordinated action to mitigate the impact on climate change. The Agreement served as a catalyst for collective action at all levels. An increasing number of governments signed the Agreement in the months that followed its publication ⁽⁶⁾.

2.8 The Paris Agreement builds upon the Convention and — for the first time — brings all nations into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so. As such, it charts a new course in the global climate effort ⁽⁷⁾.

2.8.1 The Paris Agreement's central aim is to strengthen the global response to the threat of climate change by keeping the global temperature rise well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1,5 degrees Celsius. Additionally, the agreement aims to strengthen the ability of countries to deal with the impacts of climate change. To reach these ambitious goals, appropriate financial mechanisms, a new technology framework and an enhanced capacity building framework will be put in place, thus supporting action by developing countries and the most vulnerable countries, in line with their own national objectives. The Agreement also provides for enhanced transparency of action and support through a more robust transparency framework ⁽⁸⁾.

⁽²⁾ Document 62015CJ0272 — Judgment of the Court (Fourth Chamber) of 21 December 2016, Case C-272/15.

⁽³⁾ Subsequent to the decision in 2008 to include aviation in the EU ETS scheme as from 2012, US carrier litigated in the UK arguing that the ETS was illegal under international law.

⁽⁴⁾ OJ L 129, 30.4.2014, p. 1.

⁽⁵⁾ http://unfccc.int/documentation/documents/advanced_search/items/6911.php?preref=600008865.

⁽⁶⁾ 43 Parties of 197 Parties to the Convention have ratified. On 5 October 2016 the threshold for entry into force of the Paris Agreement was achieved. The Paris Agreement entered into force on 4 November 2016. The first session of the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA 1) took place in Marrakech, Morocco from 15-18 November 2016.

⁽⁷⁾ Text taken from UNFCCC website.

⁽⁸⁾ Further information on key aspects of the Agreement can be found here.

2.8.2 The Paris Agreement requires all Parties to put forward their best efforts through ‘nationally determined contributions’ (NDCs) and to strengthen these efforts in the years ahead. This includes requirements that all Parties report regularly on their emissions and on their implementation efforts ⁽⁹⁾. In 2018, Parties will take stock of the collective efforts in relation to progress towards the goal set in the Paris Agreement and to inform on the preparation of NDCs. There will also be a global stocktake every 5 years to assess the collective progress towards achieving the purpose of the Agreement and to inform further individual actions by Parties.

2.9 It is widely believed that the Paris Agreement delivered the momentum for an outcome at the ICAO Assembly in 2016 specifically for civil aviation ⁽¹⁰⁾. After three years of negotiations since the ICAO 38th Assembly in 2013, the ICAO Member States agreed on 6 October to implement a Global Market Based measure to compensate for post-2020 emissions growth of international aviation. The Plenary adopted a Resolution introducing the Carbon Offset and Reduction Scheme for International Aviation (CORSIA) ⁽¹¹⁾. This scheme requires airlines to offset some of their emissions, but not necessarily reduce their own emissions.

2.10 According to the Assembly resolution, the average level of CO₂ emissions from international aviation covered by the scheme between 2019 and 2020 represents the basis for carbon neutral growth from 2020 against which emissions in future years are compared. In any year from 2021, when international aviation CO₂ emissions covered by the scheme exceed the average baseline emissions of 2019 and 2020, this difference represents the sector’s offsetting requirements for that year.

2.11 ICAO has decided upon a phasing-in of the implementation to accommodate special circumstances and respective capabilities (SCRC) of the contacting States. The scheme will be voluntary from the beginning followed by participation of all States except certain exempted States.

The ICAO has decided to follow a route based approach, to minimize the competitive impact of CORSIA on operators. Routes affected by exemptions will be exempted for each airline operating on these routes.

2.12 The Pilot Phase (2021-2023) and First Phase (2024-2026) apply to States that have volunteered to participate. As of 12 October 2016, 66 States intend to volunteer to participate in the global MBM from the beginning. The Second Phase (2027-2035) applies to all States except the exempted States, unless these volunteer to participate. The EESC welcomes the agreement; however, due to the voluntary nature of it, other sectors might have to make up the difference to comply with EU climate targets.

2.13 CORSIA’s cornerstones, which need to be agreed and published by ICAO, are the methodology for monitoring, reporting and verification of individual operators’ emissions (MRV), the Emissions Unit Criteria (EUC), and the registries. However, ICAO will provide the resources for all States to put in place the necessary infrastructure ⁽¹²⁾. The details of these aspects have not yet been agreed upon; they will be critical for the environmental effectiveness of CORSIA, which should be in line with ambitious standards.

2.14 The airlines will be able to fulfil their offsetting requirements by purchasing offset credits from carbon markets. The emissions unit (one unit equals 1 tonne CO₂) will therefore be reduced outside of the international aviation sector. EUCs are yet to be worked out. It will be crucial to ensure that a tonne of CO₂ emitted by an aircraft operator will really equal a tonne of CO₂ saved in another sector.

⁽⁹⁾ Further information on NDCs can be found here.

⁽¹⁰⁾ There is no equivalent international UN sub-organisation dealing with emissions from military aircraft. The EU ETS likewise does not deal with emissions from military aircraft. Although clearly with the exception of flights on official mission, the study group expressed interest in evaluating the impact of military training flights on CO₂ levels. No public information has been collected on emissions from military aircraft regionally, nationally or globally.

⁽¹¹⁾ CORSIA is one element in a bundle of measures, addressing technology of aircrafts and engines, operations and sustainable alternative fuels as new energy sources.

⁽¹²⁾ A list of all requirements in detail is appended hereto under Appendix 1.

2.15 In view of the discussions within ICAO for well over a decade, the Agreement reached in 2016 has been credited as being historic. It caters for the differences which have in the past repeatedly led to failure to achieve a consensus. The differences of opinions of the ICAO Member States are due to the different economic maturity of the nation concerned, as well as in their economic clout and general policy on environmental issues. The large number of States prepared to be involved from the beginning in CORSIA will generate a momentum for other States to likewise join the scheme. However, as yet, CORSIA is in need of agreement by 1 January 2019 on the MRV, on the EUC by 2018, on the implementation of a regulatory framework by 2020, as well as on the implementation of the registries by January 2021.

3. Assessment of the Proposal

3.1 If no changes are made to Regulation (EU) No 421/2014, the text as it stands will have the effect of reverting the EU ETS for aviation to its original scope, and thus cover all international flights to/from airports in the EEA. This would mean that aircraft operators would have to surrender allowances for their full emissions to and from third countries by 30 April 2018⁽¹³⁾. As outlined above⁽¹⁴⁾, Regulation (EU) No 421/2014 was suspended until an assessment of the outcome of the 2016 ICAO Assembly will have been made. The Commission in its Assessment⁽¹⁵⁾ deems that the ICAO Resolution on the principles of a Global Market Based Mechanism (GMBM) is in line with the EU's aspirational goals and policies. Therefore the text of Regulation (EU) No 421/2014 needs to be amended to again avoid an implementation of an EU instrument despite EU consensus on a GMBM. The Commission's proposal is based upon the following considerations:

3.1.1 *The format*

In view of the limited time for the legislative process to be completed, the Commission proposes that the measure should take the form of a Regulation which would apply directly in all Member States and be binding in its entirety, so that the amendments can be applied and implemented by all Member States in a uniform fashion before the compliance deadlines come into effect in March and April 2018.

3.1.2 *The Impact Assessment*⁽¹⁶⁾

The Commission favours a continuation of the status quo, i.e. a continuation of the current application of the EU ETS for intra-EEA flights between 2017-2020 (and thus no snap back to the original scope for international flights as from 2017). The Commission confirms that the EU ETS in its current intra-EEA scope has contributed to approximately 17 million tonnes of CO₂ reductions per year and therefore aviation does contribute to climate change goals, as do other sectors. Furthermore, the Commission confirms that maintaining the intra-EEA scope would be welcomed by third countries, and enable a focus on implementation of the necessary steps to implement the GMBM in a timely and harmonised fashion.

3.1.3 *Deadlines*

The Commission proposes to extend effectively the 'stop the clock' approach beyond 2016, applying it in the same manner as of 2017 as in 2016, and give ICAO an opportunity to establish the necessary tools to effectively apply the GMBM. The Commission would then carry out further assessments and review the EU ETS for the post-2020 period. No expiry dates are set for this new revision of the Regulation.

3.1.4 Article 28(a) is modified so that derogations for international flights to/from airports in the EEA are extended from after 2016, whereas flights within the EEA remain covered.

3.1.5 A new Article 28(b) is introduced to prepare for the introduction of a GMBM. This article links the implementation of the GMBM to reporting requirements of the Commission to the European Parliament on the status of implementation and the degree to which the EU ETS requires modifications for it to be fully applicable in the EEA as well⁽¹⁷⁾.

3.1.6 Article 28c empowers the Commission to adopt MRV mechanisms for the purposes of implementing the GMBM.

⁽¹³⁾ As referred to in Directive 2003/87/EC of the European Parliament and of the Council (OJ L 275, 25.10.2003, p. 32).

⁽¹⁴⁾ See para. 2.6.

⁽¹⁵⁾ Explanatory Memorandum to Proposal for Regulation 0017/2017 (COD).

⁽¹⁶⁾ See Explanatory Memorandum page 6.

⁽¹⁷⁾ This article reflects the fact, that flights within the EEA are international flights and that CORSIA should be the only market based measure for international aviation according to the ICAO resolution from 2016.

3.1.7 As a technicality, Annex 1 is amended to extend the exemption for non-commercial aircraft emitting less than 1 000 tonnes CO₂ per year from 2020-2030. These represent only 0,2 % of all emissions and their inclusion would constitute a disproportionate administrative burden.

3.2 The discussion in diverse fora, and as reported by the Commission ⁽¹⁸⁾, reveals potential controversy on three issues:

3.2.1 The need for more stringent provisions in the EU ETS Directive for the 2017-2020 period. Apart from issues of practicability, this gives rise to the question of whether such a controversial discussion at a time when the focus should be on the implementation of a GMBM is helpful, or even not detrimental for the competitiveness of the industry, and for the position of the EU in international negotiations on the technicalities of the GMBM; furthermore, it is doubtful whether modifications to the EU ETS at this stage would provide sufficient added value in terms of CO₂ reduction to warrant global economic, political and trade risks. At the very least, such deliberations, appear premature until such a time as greater clarity has been established about the perspectives presented by CORSIA.

3.2.2 The need to put a time-limit on the new revision of the EU ETS. This is understandable in as much as repeated stop-the-clock amendments cannot become a final regulatory way forward. At the same time, the final form of CORSIA is not yet known and Europe's integration of CORSIA into EU policy will need to be reassessed closer to 2020. The inherent risk is, however, that planning stability suffers if the stakeholders know that a regulation is time-limited, but do not know if a new regulation will replace the old one, or whether a snap-back provision kicks in which would re-activate international trade disputes which many stakeholders do not wish to see repeated. The absence of a time-limit has the distinct advantage that the Commission can finalise its impact assessments and reviews before presenting an amendment to the EU ETS Directive.

3.2.3 The need for rapid consensus between the European Parliament and the Council. Both EU institutions should not be drawn into protracted discussions about the past effects of the EU ETS, but focus their political discussions on the best way to promote the harmonised and timely implementation of a GMBM. The deliberations on the EU Commission's proposal should be finalised before the end of 2017, so as to avoid a snap-back.

4. Given its unique composition and expertise, the EESC is ideally positioned to inject into the political discussion the views of organised civil society concerning the political, social, economic and environmental consequences of this regulatory initiative. Thus the EESC has decided to follow this opinion with a conference organised with the participation of all relevant stakeholders.

Brussels, 31 May 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽¹⁸⁾ Executive Summary of Impact Assessment accompanying document amending Directive 2003/87/EC.