

Decision No 377/2013/EU of the European Parliament and of the Council of 24 April 2013 derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community (Text with EEA relevance)

DECISION No 377/2013/EU OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

of 24 April 2013

derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure<sup>(2)</sup>,

Whereas:

- (1) The aviation sector has a strong international character. A global approach to addressing the rapidly growing emissions from international aviation would therefore be the preferred and most effective way of reducing aviation emissions.
- (2) The United Nations Framework Convention on Climate Change (UNFCCC) requires all parties to formulate and implement national and, where appropriate, regional programmes containing measures to mitigate climate change.
- (3) The Union is committed to reducing its CO<sub>2</sub> emissions, including emissions from aviation. All sectors of the economy should contribute to achieving those emission reductions.
- (4) The negotiation of all Union aviation agreements with third countries should be aimed at safeguarding the Union's flexibility to take action in respect of environmental issues, including with regard to measures to mitigate the impact of aviation on climate change.
- (5) Progress has been made in the International Civil Aviation Organisation (ICAO) towards the adoption, at the 38th session of the ICAO Assembly which will be held from 24 September to 4 October 2013, of a global framework for emissions reduction policy which facilitates the application of market-based measures to emissions from

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international aviation, and on the development of a global market-based measure (MBM). Such a framework could make a significant contribution to the reduction of national, regional and global CO<sub>2</sub> emissions.

- (6) In order to facilitate this progress and provide momentum, it is desirable to defer the enforcement of requirements arising prior to the 38th session of the ICAO Assembly and relating to flights to and from aerodromes in countries outside the Union that are not members of the European Free Trade Association (EFTA), dependencies and territories of States in the European Economic Area (EEA) or countries having signed a Treaty of Accession with the Union. Action should therefore not be taken against aircraft operators in respect of the requirements resulting from Directive 2003/87/EC of the European Parliament and of the Council<sup>(9)</sup> for the reporting of verified emissions for the calendar years 2010, 2011 and 2012 and for the corresponding surrender of allowances for 2012 from flights to and from such aerodromes. Aircraft operators who wish to continue to comply with those requirements should be able to do so.
- (7) In order to avoid distortions of competition, the derogation provided for by this Decision should only apply in respect of aircraft operators that have either not received or have returned all free allowances which have been issued in respect of such activities occurring in 2012. For the same reason, those allowances should not be taken into account for the purposes of calculating entitlements to use international credits within the framework of Directive 2003/87/EC.
- (8) 2012 aviation allowances that are not issued to such aircraft operators or are returned should be taken out of circulation by cancellation. The number of aviation allowances that are auctioned should be adjusted as a result of the implementation of this Decision, in order to ensure compliance with Article 3d(1) of Directive 2003/87/EC.
- (9) The derogation provided for by this Decision should not affect the environmental integrity and the overarching objective of the Union's climate change legislation, nor should it result in distortions of competition. Accordingly, and so as to preserve the overarching objective of Directive 2003/87/EC, which forms part of the legal framework for the Union to achieve its independent commitment to reduce its emissions to 20 % below 1990 levels by 2020, that Directive should continue to apply to flights from, or arriving in, aerodromes in the territory of a Member State, to or from aerodromes in certain closely connected or associated areas or countries outside the Union.
- (10) The derogation provided for by this Decision relates only to 2012 aviation emissions. The ICAO High Level Group on International Aviation and Climate Change (HGCC) was established to provide guidance on the development of a framework for MBMs, to evaluate the feasibility of options for a global MBM and to identify a set of technological and operational measures. This derogation is provided by the Union to facilitate an agreement at the 38th session of the ICAO Assembly on a realistic timetable for the development of a global MBM beyond the 38th session of the ICAO Assembly and on a framework for facilitating the comprehensive application of national and regional MBMs to international aviation, pending the application of the global MBM. On this basis, with a view to facilitating the optimal interaction between any such outcome and

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the scheme for greenhouse gas emission allowance trading within the Union, further steps could be considered. In this respect, the Commission should, when assessing the need for further action, also take into account the possible impact on intra-European air traffic with a view to avoiding any distortions of competition.

- (11) The Commission should provide a full report to the European Parliament and to the Council on the progress made at the 38th session of the ICAO Assembly and swiftly propose measures in line with the results, as appropriate.
- (12) It is essential to ensure legal certainty for aircraft operators and national authorities in view of the surrender deadline of 30 April 2013 as referred to in Directive 2003/87/EC. Accordingly, this Decision should apply from the date of its adoption,

HAVE ADOPTED THIS DECISION:

#### *Article 1*

By way of derogation from Article 16 of Directive 2003/87/EC, Member States shall take no action against aircraft operators in respect of the requirements set out in Article 12(2a) and Article 14(3) of that Directive for the calendar years 2010, 2011 and 2012 in respect of activity to and from aerodromes in countries outside the Union that are not members of EFTA, dependencies and territories of States in the EEA or countries having signed a Treaty of Accession with the Union, where such aircraft operators have not been issued free allowances for such activity in respect of 2012 or, if they have been issued such allowances, have returned, by the thirtieth day following the entry into force of this Decision, to Member States for cancellation a number of 2012 aviation allowances corresponding to the share of verified tonne-kilometres of such activity in the reference year 2010.

#### *Article 2*

1 Member States shall cancel all 2012 aviation allowances that have either not been issued or, if issued, have been returned to them, in respect of flights to and from the aerodromes referred to in Article 1.

2 In respect of the cancellation referred to in paragraph 1, Member States shall auction a reduced number of 2012 aviation allowances. That reduction shall be proportional to the lower number of total aviation allowances in circulation. To the extent that the reduced number of those allowances has not been auctioned prior to 1 May 2013, Member States shall adjust accordingly the number of aviation allowances to be auctioned in 2013.

#### *Article 3*

Aviation allowances cancelled pursuant to Article 2 shall not be taken into account for the purposes of calculating entitlements to use international credits within the framework of Directive 2003/87/EC.

#### *Article 4*

The Commission shall issue the guidance necessary for the implementation of this Decision.

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*Article 5*

The Commission shall regularly inform the European Parliament and the Council on the progress of ICAO negotiations and shall provide a full report to them on the results achieved at the 38th session of the ICAO Assembly.

*Article 6*

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

It shall apply from 24 April 2013.

*Article 7*

This Decision is addressed to the Member States.

Done at Brussels, 24 April 2013.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

S. COVENEY

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### Statement from the Commission

The Commission recalls that, according to Article 3d of Directive 2003/87/EC, revenues generated from the auctioning of aviation allowances should be used to tackle climate change in the EU and third countries, inter alia, to reduce greenhouse gas emissions, to adapt to the impacts of climate change in the EU and third countries, especially developing countries, to fund research and development for mitigation and adaptation, including in particular in the fields of aeronautics and air transport, to reduce emissions through low-emission transport and to cover the cost of administering the Community scheme. The proceeds of auctioning should also be used to fund contributions to the Global Energy Efficiency and Renewable Energy Fund, and measures to avoid deforestation.

The Commission notes that Member States shall inform the Commission of actions taken pursuant to Article 3d of the Directive 2003/87/EC on the use of revenues generated from the auctioning of aviation allowances. Specific provisions on the content of this reporting are set out in Regulation (EU) No .../2013<sup>(4)</sup> on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC. Further details will be set out in a Commission implementing act under Article 18 of that Regulation. Member States will make the reports public, and the Commission will publish aggregate Union information on these in an easily accessible form.

The Commission emphasises that a global market-based mechanism putting an international price on carbon emissions from international aviation transport could, in addition to achieving its primary goal of emission reductions, help provide the necessary resources to support international climate change mitigation and adaptation measures.

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- (1) Opinion of 13 February 2013 (not yet published in the Official Journal).
- (2) Position of the European Parliament of 16 April 2013 (not yet published in the Official Journal) and decision of the Council of 22 April 2013.
- (3) [OJ L 275, 25.10.2003, p. 32.](#)
- (4) To be soon published in the Official Journal.

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**Changes and effects yet to be applied to :**

- Decision revoked by [2023 c. 28 Sch. 1 Pt. 2](#)