

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 and amending Council Directive 96/61/EC (Text with EEA relevance)

## [<sup>F1</sup>CHAPTER II

### **AVIATION**

#### *Article 3a*

#### **Scope**

The provisions of this Chapter shall apply to the allocation and issue of allowances in respect of aviation activities listed in Annex I.

#### *Article 3b*

#### **Aviation activities**

By 2 August 2009, the Commission shall, in accordance with the regulatory procedure referred to in Article 23(2), develop guidelines on the detailed interpretation of the aviation activities listed in Annex I.

#### *Article 3c*

#### **Total quantity of allowances for aviation**

1 For the period from 1 January 2012 to 31 December 2012, the total quantity of allowances to be allocated to aircraft operators shall be equivalent to 97 % of the historical aviation emissions.

2 For the period referred to in [<sup>F2</sup>Article 13(1)] beginning on 1 January 2013, and, in the absence of any amendments following the review referred to in Article 30(4), for each subsequent period, the total quantity of allowances to be allocated to aircraft operators shall be equivalent to 95 % of the historical aviation emissions multiplied by the number of years in the period.

This percentage may be reviewed as part of the general review of this Directive.

3 The Commission shall review the total quantity of allowances to be allocated to aircraft operators in accordance with Article 30(4).

4 By 2 August 2009, the Commission shall decide on the historical aviation emissions, based on best available data, including estimates based on actual traffic information. That decision shall be considered within the Committee referred to in Article 23(1).

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### Textual Amendments

- F2** Substituted by Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (Text with EEA relevance).

### Article 3d

#### Method of allocation of allowances for aviation through auctioning

- 1 In the period referred to in Article 3c(1), 15 % of allowances shall be auctioned.
- 2 From 1 January 2013, 15 % of allowances shall be auctioned. This percentage may be increased as part of the general review of this Directive.

3 A Regulation shall be adopted containing detailed provisions for the auctioning by Member States of allowances not required to be issued free of charge in accordance with paragraphs 1 and 2 of this Article or Article 3f(8). The number of allowances to be auctioned in each period by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year reported pursuant to Article 14(3) and verified pursuant to Article 15. For the period referred to in Article 3c(1), the reference year shall be 2010 and for each subsequent period referred to in Article 3c the reference year shall be the calendar year ending 24 months before the start of the period to which the auction relates.

That Regulation, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3).

4 It shall be for Member States to determine the use to be made of revenues generated from the auctioning of allowances. Those revenues 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.

Member States shall inform the Commission of actions taken pursuant to this paragraph.

5 Information provided to the Commission pursuant to this Directive does not free Member States from the notification obligation laid down in Article 88(3) of the Treaty.

### Article 3e

#### Allocation and issue of allowances to aircraft operators

1 For each period referred to in Article 3c, each aircraft operator may apply for an allocation of allowances that are to be allocated free of charge. An application may be made by submitting to the competent authority in the administering Member State verified tonne-kilometre data for the aviation activities listed in Annex I performed by that aircraft operator for the monitoring year. For the purposes of this Article, the monitoring year shall be the calendar year ending 24 months before the start of the period to which it relates in accordance with

Annexes IV and V or, in relation to the period referred to in Article 3c(1), 2010. Any application shall be made at least 21 months before the start of the period to which it relates or, in relation to the period referred to in Article 3c(1), by 31 March 2011.

2 At least 18 months before the start of the period to which the application relates or, in relation to the period referred to in Article 3c(1), by 30 June 2011, Member States shall submit applications received under paragraph 1 to the Commission.

3 At least 15 months before the start of each period referred to in Article 3c(2) or, in relation to the period referred to in Article 3c(1), by 30 September 2011, the Commission shall calculate and adopt a decision setting out:

- a the total quantity of allowances to be allocated for that period in accordance with Article 3c;
- b the number of allowances to be auctioned in that period in accordance with Article 3d;
- c the number of allowances in the special reserve for aircraft operators in that period in accordance with Article 3f(1);
- d the number of allowances to be allocated free of charge in that period by subtracting the number of allowances referred to in points (b) and (c) from the total quantity of allowances decided upon under point (a); and
- e the benchmark to be used to allocate allowances free of charge to aircraft operators whose applications were submitted to the Commission in accordance with paragraph 2.

The benchmark referred to in point (e), expressed as allowances per tonne-kilometre, shall be calculated by dividing the number of allowances referred to in point (d) by the sum of the tonne-kilometre data included in applications submitted to the Commission in accordance with paragraph 2.

4 Within three months from the date on which the Commission adopts a decision under paragraph 3, each administering Member State shall calculate and publish:

- a the total allocation of allowances for the period to each aircraft operator whose application it submitted to the Commission in accordance with paragraph 2, calculated by multiplying the tonne-kilometre data included in the application by the benchmark referred to in paragraph 3(e); and
- b the allocation of allowances to each aircraft operator for each year, which shall be determined by dividing its total allocation of allowances for the period calculated under point (a) by the number of years in the period for which that aircraft operator is performing an aviation activity listed in Annex I.

5 By 28 February 2012 and by 28 February of each subsequent year, the competent authority of the administering Member State shall issue to each aircraft operator the number of allowances allocated to that aircraft operator for that year under this Article or Article 3f.

### *Article 3f*

#### **Special reserve for certain aircraft operators**

1 In each period referred to in Article 3c(2), 3 % of the total quantity of allowances to be allocated shall be set aside in a special reserve for aircraft operators:

- a who start performing an aviation activity falling within Annex I after the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2); or

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- b whose tonne-kilometre data increases by an average of more than 18 % annually between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period;

and whose activity under point (a), or additional activity under point (b), is not in whole or in part a continuation of an aviation activity previously performed by another aircraft operator.

2 An aircraft operator who is eligible under paragraph 1 may apply for a free allocation of allowances from the special reserve by making an application to the competent authority of its administering Member State. Any application shall be made by 30 June in the third year of the period referred to in Article 3c(2) to which it relates.

An allocation to an aircraft operator under paragraph 1(b) shall not exceed 1 000 000 allowances.

3 An application under paragraph 2 shall:

- a include verified tonne-kilometre data in accordance with Annexes IV and V for the aviation activities listed in Annex I performed by the aircraft operator in the second calendar year of the period referred to in Article 3c(2) to which the application relates;
- b provide evidence that the criteria for eligibility under paragraph 1 are fulfilled; and
- c in the case of aircraft operators falling within paragraph 1(b), state:
  - (i) the percentage increase in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period;
  - (ii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period; and
  - (iii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period which exceeds the percentage specified in paragraph 1(b).

4 No later than six months from the deadline for making an application under paragraph 2, Member States shall submit applications received under that paragraph to the Commission.

5 No later than 12 months from the deadline for making an application under paragraph 2, the Commission shall decide on the benchmark to be used to allocate allowances free of charge to aircraft operators whose applications were submitted to the Commission in accordance with paragraph 4.

Subject to paragraph 6, the benchmark shall be calculated by dividing the number of the allowances in the special reserve by the sum of:

- a the tonne-kilometre data for aircraft operators falling within paragraph 1(a) included in applications submitted to the Commission in accordance with paragraphs 3(a) and 4; and
- b the absolute growth in tonne-kilometres exceeding the percentage specified in paragraph 1(b) for aircraft operators falling within paragraph 1(b) included in applications submitted to the Commission in accordance with paragraphs 3(c)(iii) and 4.

6 The benchmark referred to in paragraph 5 shall not result in an annual allocation per tonne-kilometre greater than the annual allocation per tonne-kilometre to aircraft operators under Article 3e(4).

7 Within three months from the date on which the Commission adopts a decision under paragraph 5, each administering Member State shall calculate and publish:

- a the allocation of allowances from the special reserve to each aircraft operator whose application it submitted to the Commission in accordance with paragraph 4. This allocation shall be calculated by multiplying the benchmark referred to in paragraph 5 by:
  - (i) in the case of an aircraft operator falling within paragraph 1(a), the tonne-kilometre data included in the application submitted to the Commission under paragraphs 3(a) and 4;
  - (ii) in the case of an aircraft operator falling within paragraph 1(b), the absolute growth in tonne-kilometres exceeding the percentage specified in paragraph 1(b) included in the application submitted to the Commission under paragraphs 3(c)(iii) and 4; and
- b the allocation of allowances to each aircraft operator for each year, which shall be determined by dividing its allocation of allowances under point (a) by the number of full calendar years remaining in the period referred to in Article 3c(2) to which the allocation relates.

8 Any unallocated allowances in the special reserve shall be auctioned by Member States.

9 The Commission may establish detailed rules on the operation of the special reserve under this Article, including the assessment of compliance with eligibility criteria under paragraph 1. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3).

### *Article 3g*

#### **Monitoring and reporting plans**

The administering Member State shall ensure that each aircraft operator submits to the competent authority in that Member State a monitoring plan setting out measures to monitor and report emissions and tonne-kilometre data for the purpose of an application under Article 3e and that such plans are approved by the competent authority in accordance with [F<sup>2</sup>the regulation referred to in Article 14].]

#### **Textual Amendments**

- F2** Substituted by [Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community \(Text with EEA relevance\)](#).

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### Textual Amendments

- F1** Inserted by [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 (Text with EEA relevance).