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**A7-0060/2013**

13.3.2013

**\*\*\*I**

## **REPORT**

on the proposal for a decision of the European Parliament and of the Council derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community (COM(2012)0697 – C7-0385/2012 – 2012/0328(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Peter Liese

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a decision of the European Parliament and of the Council derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community**

**(COM(2012)0697 – C7-0385/2012 – 2012/0328(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0697),
  - having regard to Article 294(2) and Article 192 (1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0385/2012),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 13 February 2013<sup>1</sup>,
  - after consulting the Committee of the Regions,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Transport and Tourism (A7-0060/2013),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

**Draft legislative resolution**

**Citation 7 a (new)**

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<sup>1</sup> OJ C ...

***Having regard to Article 2(2) of the Kyoto Protocol approved on behalf of the European Community by Council Decision 2002/358/EC<sup>1</sup>,***

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***<sup>1</sup> Council Decision of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ L 130, 15.5.2002, p. 1).***

## **Amendment 2**

### **Proposal for a decision Recital -1 (new)**

*Text proposed by the Commission*

*Amendment*

***(-1) The aviation sector has a strong international character. Global problems of the kind posed by aviation emissions can be effectively addressed by means of an international approach that includes a global obligation to comply with the same measures or to attain the same objectives with different measures. The International Civil Aviation Organization (ICAO) plays a key role in this process by defining such common objectives in the framework of an international agreement.***

#### *Justification*

*International problems like the greenhouse gas emissions caused by the aviation sector need global solutions, therefore an international approach can be effective.*

### Amendment 3

#### Proposal for a decision Recital 1

*Text proposed by the Commission*

(1) **Significant** progress *has been made in the International Civil Aviation Organisation* towards the adoption at the 2013 ICAO Assembly of a framework facilitating States' application of market-based measures to emissions **from international aviation**, and on developing a global market-based measure.

*Amendment*

(1) **In November 2012, the ICAO, having started to discuss reducing aviation emissions as long ago as 1998, made significant** progress towards the adoption at the 2013 ICAO Assembly of a framework facilitating **ICAO Member** States' application of market-based measures to **international aviation** emissions, and **the development of** a global market-based measure (**hereinafter "MBM"**).

*Justification*

*It should be made clear that discussions on limiting emissions on the level of ICAO already started more than ten years ago and that little progress was made until the deadline for application of the EU Emission Trading Scheme was approaching.*

### Amendment 4

#### Proposal for a decision Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

**(1a) The Union expects the ICAO Assembly to agree on a global MBM with a realistic timetable for implementation and on a framework for facilitating comprehensive application of national and regional MBMs to international aviation, pending application of the global MBM.**

*Justification*

*It has to be clarified that the EU has very clear expectations on the ICAO Assembly and not every result can be seen as a success.*

### Amendment 5

**Proposal for a decision**  
**Recital 2**

*Text proposed by the Commission*

(2) In order to facilitate this progress and provide momentum, it is desirable to defer enforcement of requirements relating to flights to and from aerodromes outside of the Union and areas with close economic connections to the Union and a shared commitment to tackle climate change ***arising prior to the 2013 ICAO Assembly***. Action should therefore not be taken against aircraft operators in respect of requirements resulting from 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 ***arising before 1 January 2014 for reporting verified emissions and for the corresponding surrender of allowances from incoming and outgoing flights to and from such aerodromes***. Aircraft operators who wish to continue to comply with those requirements should be able to do so.

*Amendment*

(2) In order to facilitate this progress and provide momentum ***for the shared commitment of ICAO Member States to address aviation emissions at a global level***, it is desirable to defer enforcement of requirements ***arising prior to the 2013 ICAO Assembly*** relating to flights to and from aerodromes outside of the Union and areas with close economic connections to the Union and that have a shared commitment to tackle climate change. Action should therefore not be taken against aircraft operators in respect of requirements ***relating to the calendar years 2010 to 2012 for reporting verified emissions and for the corresponding surrender of allowances from incoming and outgoing flights to and from such aerodromes*** resulting from 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. Aircraft operators who wish to continue to comply with those requirements should be able to do so. ***The Union is negotiating with Switzerland about a full inclusion of Switzerland in the scheme for greenhouse gas emission allowance trading within the Union ("EU ETS") which would cover flights inside Switzerland and from Switzerland to third countries. The question if flights from Member States to Switzerland would be covered by the EU ETS or are subject to the current derogation should be discussed at the highest possible level between the Union and Switzerland. Such discussions should be conducted in a manner that respects the legal situation and friendly cooperation taking into account the very constructive role that Switzerland took at ICAO.***



### *Justification*

*The case of Switzerland has been addressed in some amendments. According to the perception of some the question to decide by the EU co-legislators is not if flights inside Switzerland or intercontinental flights from Switzerland to third countries are covered. This is subject to the negotiations between the EU and Switzerland. The question is only if according to the current legal situation and according to the judgement of the European Court of Justice flights from the EU should be covered like foreseen or if they are subject to the Stop the Clock. This needs to be addressed at the highest possible level.*

## **Amendment 6**

### **Proposal for a decision**

#### **Recital 3**

##### *Text proposed by the Commission*

(3) In order to avoid distortions of competition, this derogation should only apply in respect of aircraft operators that have either not received or have returned all free allocations which have been **allocated** in respect of such activities **in** 2012. For the same reason, these 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.

##### *Amendment*

(3) In order to avoid distortions of competition, this derogation should only apply in respect of aircraft operators that have either not received or have returned all free allocations which have been **issued** in respect of such activities **for** 2012. For the same reason, these 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.

### *Justification*

*As mentioned above, the formulation should leave no space for interpretation. Therefore, it should be made clear that the number of allowances to be returned is based on the share of verified tonne-kilometres of the relevant flight activities based on the reference year 2010. Otherwise operators could interpret the amount differently. Furthermore, it should be made clear that only aviation allowances for 2012 qualify as allowances to be returned for cancellation. Otherwise, there would be a distortion of the number of allowances in circulation as reference for the 15% to be auctioned (see amendment 4).*

## Amendment 7

### Proposal for a decision Recital 4

*Text proposed by the Commission*

(4) *Allowances* that are not issued to such operators or are returned should be cancelled. The number of aviation allowances that are auctioned *will respect Article 3d(1) of Directive 2003/87/EC*,

*Amendment*

(4) *Aviation allowances for 2012* that are not issued to such operators or are returned should be cancelled. The number of aviation allowances that are auctioned *by the Member States should be reduced in accordance with the calculations of the Commission, resulting in 15% of the overall amount of 2012 aviation allowances in circulation.*

#### *Justification*

*Without this change, there is no legal basis for the reduction of the amount to be auctioned. To enable the auctioning of a reduced number of allowances taking into account the cancellations of free allocations according to Art. 2, the decision has to include a derogation from Art. 3d of the Directive, especially from paragraph 1 and 3. As a result, 15% of the total amount of allowances in circulation shall be auctioned.*

## Amendment 8

### Proposal for a decision Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

*(4a) In order to build confidence at international level with regard to the EU ETS, revenues generated from the auctioning of allowances or any equivalent amount, where required by overriding budgetary principles of the Member States, such as unity and universality, should be used to reduce greenhouse gas emissions, to adapt to the impacts of climate change in the Union and third countries, to fund research and development for mitigation and adaptation and to cover the cost of administering the EU ETS. Revenues generated from auctioning should also be used on low-emission transport. The*

*proceeds of auctioning should in particular be used to fund contributions to the Global Energy Efficiency and Renewable Energy Fund and the Green Climate Fund under UNFCCC, and measures to avoid deforestation and facilitate adaptation in developing countries. As part of an agreement on an effective, route-based global MBM with significant potential to reduce climate impact of aviation, the Union should also commit to assign revenues created by such measure to the Green Climate Fund under UNFCCC to reflect the principle of common but differentiated responsibilities and respective capabilities, and to international efforts to fund research and development to reduce greenhouse gas emissions of aviation.*

#### *Justification*

*During the negotiations on the current directive, the European Parliament insisted on a clearly binding earmarking. At the time, member states were not ready to accept this and only a recommendation is included in the directive. It would facilitate the acceptance of the EU scheme if member states accepted a much clearer commitment. Common research projects on technology still reducing emissions in aviation could be created with third countries. A contribution of EU member states to adaptation and mitigation including the green climate fund under UNFCCC would be very helpful to facilitate the support of developing countries. This principle must also be introduced into the international negotiations.*

#### **Amendment 9**

##### **Proposal for a decision Recital 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***(4b) The decision to suspend the inclusion of intercontinental flights in the EU ETS until September 2013 is an exception made in order to enable ICAO negotiations to move forward and reach a conclusion. As such and in order to avoid distortion of competition and the weakening of the scheme's environmental integrity, the derogation should apply for***

*a maximum of one year. Further legislative action would only be appropriate if clear and sufficient progress on international aviation emissions were made at the ICAO Assembly, including reaching an agreement on a global MBM with a realistic implementation timetable and on a non-discriminatory framework providing comprehensive coverage of international aviation emissions by national and regional MBMs, pending application of the global MBM. Such action, if necessary, should take into account the possible impact on intra-European air traffic with a view to avoiding any distortion of competition.*

## **Amendment 10**

### **Proposal for a decision**

#### **Recital 4 c (new)**

*Text proposed by the Commission*

*Amendment*

*(4c) The Union is committed to reducing its CO<sub>2</sub> emissions, including aviation emissions. In order to generate substantial emission reductions no one particular sector of the Union's economy should be exempted. In this respect it should be noted that the aviation sector benefits from a number of subsidies as it is not subject to value-added tax, nor is fuel tax imposed on aviation activities. The aviation sector also benefits from generous State aid rules as set out in the Communication of the Commission of 9 December 2005 entitled "Community guidelines on financing of airports and start-up aid to airlines departing from regional airports".*

## Amendment 11

### Proposal for a decision Recital 4 d (new)

*Text proposed by the Commission*

*Amendment*

***(4d) The ICAO and the Union should considerably increase their efforts to reduce aviation greenhouse gas emissions in accordance with the Union's 2020 and 2050 targets. The derogation provided for by this Decision should therefore not call into question the inclusion of aviation in the EU ETS and the general aim of promoting an effective global system to curb rising levels of aviation emissions, and should clearly define the obligations to be fulfilled by the countries and aircraft operators concerned during the period of time covered by the derogation.***

*Justification*

*The aviation sector with its fast growing greenhouse gas emissions has to contribute to the reduction of emissions, like other modes of transport already do; additionally other industry sectors have been already participating in the EU ETS for years; there is no reason why the aviation sector should be kept out of the EU ETS.*

## Amendment 12

### Proposal for a decision Recital 4 e (new)

*Text proposed by the Commission*

*Amendment*

***(4e) The inclusion of aviation in the EU ETS should be taken into account in all Union aviation agreements with third countries.***

*Justification*

*The Commission is currently negotiating aviation agreements with a number of neighbouring countries and important trading partners. It is important that these agreements take account of the full range of European policy objectives. The Commission should therefore build on the example of the EU-Canada agreement on air transport and encourage third countries to adopt measures to reduce the climate change impact of aviation.*

## Amendment 13

### Proposal for a decision Recital 4 f (new)

*Text proposed by the Commission*

*Amendment*

***(4f) The Commission should submit a full report to the European Parliament on the progress made at the ICAO Assembly in September 2013 and swiftly propose measures in line with the results of the Assembly.***

## Amendment 14

### Proposal for a decision Article 1

*Text proposed by the Commission*

*Amendment*

By way of derogation from Article 16 of Directive 2003/87/EC, Member States shall take no action against aircraft operators in respect of requirements ***set out*** in Article 12(2a) and Article 14(3) of Directive 2003/87/EC ***arising before 1 January 2014*** in respect of activity to or from aerodromes in countries outside the ***European*** Union that are not members of EFTA, dependencies and territories of EEA Member States or countries having signed a Treaty of Accession with the Union, where such aircraft operators have not been issued free allocations for such activity in respect of 2012 or, if they have been issued such allowances, have returned ***a corresponding*** number of allowances to Member States for cancellation.

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

### *Justification*

*This clarifies that the derogation from Article 16 of Directive 2003/87/EC only refers to*

*requirements for the calendar years 2010 - 2012. In order to avoid the necessity of transposition of the decision by the Member States, the scope of the derogation should be made very clear to prevent any ambiguities.*

## **Amendment 15**

### **Proposal for a decision Article 2**

*Text proposed by the Commission*

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

*Amendment*

The Member States shall cancel all 2012 **aviation** allowances in respect of flights to or from aerodromes referred to in Article 1 that have either not been issued or, if issued, have been returned to them. **By way of derogation from Article 3d of Directive 2003/87/EC, Member States shall auction a reduced number of aviation allowances in respect of 2012. That reduction shall be proportional to the lower number of total aviation allowances in circulation.**

*Justification*

*Without this change, there is no legal basis for the reduction of the amount to be auctioned. To enable the auctioning of a reduced number of allowances taking into account the cancellations of free allocations according to Art. 2, the decision has to include a derogation from Art. 3d of the Directive, especially from paragraph 1 and 3. As a result, 15% of the total amount of allowances in circulation shall be auctioned.*

## **Amendment 16**

### **Proposal for a decision Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 3 a**

**Article 3d(4) of Directive 2003/87/EC shall be replaced by the following:**

**"Member States shall use revenues generated from the auctioning of allowances for efforts to tackle climate change, in particular at international level, to reduce greenhouse gas emissions**

*and to adapt to the impacts of climate change in developing countries as well as to fund research and development for mitigation and adaptation including in particular in the field of aeronautics and air transport. Revenues generated from auctioning shall also be used on low-emission-transport. The proceeds of auctioning shall also be used to fund contributions to the Global Energy Efficiency and Renewable Energy Fund and the Green Climate Fund under UNFCCC as well as measures to avoid deforestation.*

*Member States shall regularly inform the Commission of actions taken pursuant to the first subparagraph."*

#### *Justification*

*During the negotiations on the current directive, the European Parliament insisted on a clearly binding earmarking. At the time, member states were not ready to accept this and only a recommendation is included in the directive. It would facilitate the acceptance of the EU scheme if member states accepted a much clearer commitment. Common research projects on technology still reducing emissions in aviation could be created with third countries. A contribution of EU member states to adaptation and mitigation including the green climate fund under UNFCCC would be very helpful to facilitate the support of developing countries. This principle must also be introduced into the international negotiations.*

#### **Amendment 17**

##### **Proposal for a decision Article 3 b (new)**

*Text proposed by the Commission*

*Amendment*

##### **Article 3b**

*The Commission shall regularly inform the European Parliament and the Member States concerning the progress of the ICAO negotiations and submit a report on the results achieved at the ICAO Assembly. If the ICAO Assembly in September 2013 does not achieve substantial progress on a global MBM, the EU ETS will again include all*



*international flights from and to the Union relating to the calendar year 2013 and onwards. If, however, the ICAO Assembly succeeds in setting a framework for a global MBM, the Commission may propose further actions.*

#### *Justification*

*The consequences of the achievement of substantial progress within ICAO have to be made very clear. The Commission should provide the European Parliament with the fullest possible information about the ICAO negotiations so that Parliament has the possibility of assessing this before the European Commission can extend the derogation or take any other action.*

### **EXPLANATORY STATEMENT**

#### ***The existing legislation:***

In 2008 the European Parliament and the Council of Ministers agreed after long and careful consideration on the inclusion of aviation in the EU-ETS.

**The Council** supported the legislation **unanimously**; the **Parliament with more than 90 percent** of the votes. The rationale for including aviation was the need to address the fast growing greenhouse gas emission from this sector. From 1990 on, the base year of the Kyoto protocol, **the airline greenhouse gas emissions have increased by around 100 percent**. This contrasts dramatically with the imperative to reduce these greenhouse gas emissions and the 2 degree target, which has been endorsed by the international community for example in Cancun.

Not to address the airlines' emissions would also be irresponsible in respect to coherence and fairness to other industries and to other modes of transport which are subject to regulation in the EU and the member states. The ETS for airlines is **very moderate** compared to other industries in the European Union. The aviation industry should reduce their emissions only by 5 percent until 2020 compared to minus 21 percent for other industries, and it has access to reductions from other sectors. The airlines allowances are only 15 percent auctioned compared to 100 percent auctioning in the power sector and lower free allocation to many industries. The burden for passengers and airlines is very moderate. According to the European Commission the ticket price for an intercontinental flight would increase by less than 2 Euros if the airlines do not include in the price the certificates they got for free. Many European and non-European airlines have already moderately increased their prices because of the introduction of the EU-ETS. For example Ryanair has increased the ticket price by **25 cents per flight**<sup>1</sup>. Many taxes and fees introduced by EU member states and by third countries like the USA and India include a much higher burden.

"The price of the ETS for a flight from London Heathrow to Shanghai is less than a cup of coffee at Heathrow (J.G. Gerbrandy, vice chair of the ENVI committee).

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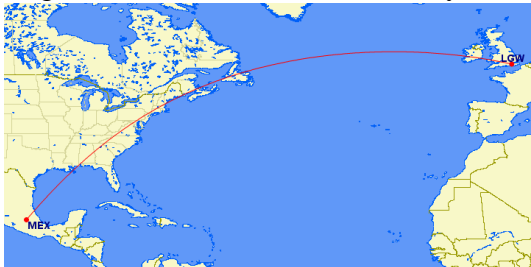
<sup>1</sup> Ryanair has mainly flights inside the European Union.

The current **legislation covers all flights starting and/or landing in Europe** and third country airlines participate in the ETS when they start and/or land in Europe. The coverage of incoming and outgoing flights has been included mainly because of the environmental reasons as **two thirds of the emissions** are created by intercontinental flights and only one third by flights inside the European Union. This provision has been carefully examined by lawyers not only from the European Commission but also by independent lawyers and the assessment has indicated that it is completely compatible with international law.

***The challenge by third countries and a critical assessment:***

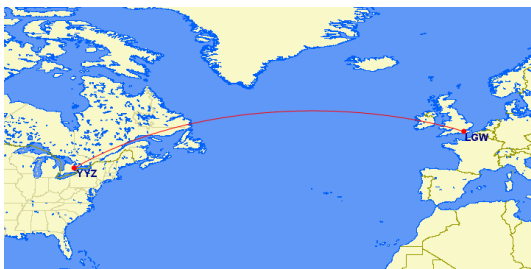
Already before the adoption of the legislation, third countries like the US and China have raised their opposition against the inclusion of flights of their respective airlines. Because of the legal assessment and the political and environmental arguments for equal treatment, the Parliament and the Council have nevertheless decided to include third country airlines on a non-discriminatory basis. The US Airline Association and three US airlines challenged the legislation under British law and the case was referred to the **European Court of Justice**. The Court decided clearly that **the legislation is in line with international law** (Judgment of ECJ in Case C-366/10, 21 December 2011). A claim by third countries was that the European Union would charge their airlines for using their own airspace, for example, to charge airlines when they fly over US territory. This is not the case, as the EU ETS relates arrival and departure from airports, and emissions *en route* are the measurement metric. This is not a specific characteristic of the EU ETS. Also national charges and taxes, for example by the UK and Germany, apply a similar principle. The British Air Passenger Duty (APD) is higher for a flight to Mexico City than for a flight to Toronto Canada.

**Flight from London to Mexico City**



A flight in business class from London to Mexico City after the 1st April of 2012 (approximately 5000 miles) will be charged APD of £162 (195 € / \$ 257).

**Flight from London to Toronto**

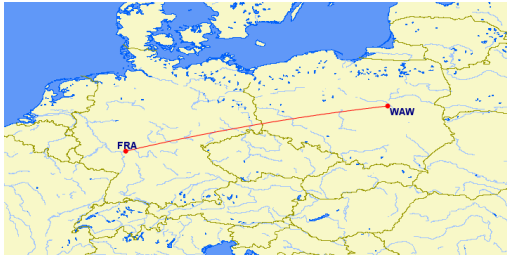


A flight to Toronto, Canada (approximately 3500 miles) is only charged APD of £130 (156 € / \$ 206).

The price difference is because of the difference of distance. A big part of the distance is US airspace. This means that the difference between APD of £ 130 and APD of £ 162 is because of the longer distance which mainly is across US-airspace.

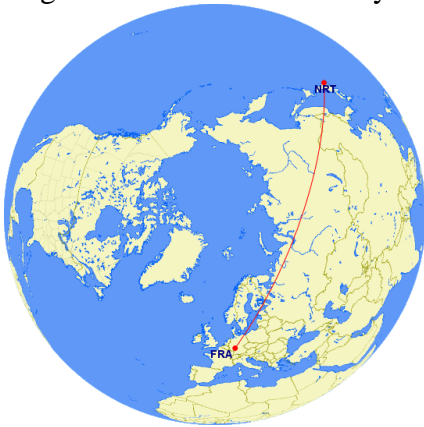
The same applies for the German Aviation Tax.

### Flight from Frankfurt to Warsaw



A flight from Frankfurt to Warsaw is charged with 7.50 Euros (\$ 10) under the German Air Passenger Tax.

### Flight from Frankfurt to Tokyo



A flight from Frankfurt to Tokyo is charged with 42.18 Euros (\$ 56) under the German Air Passenger Tax.

This means that the difference between very low German Air Passenger tax and very high tax is the much longer distance which is mainly over Russian airspace.

Both the German measure and the British passenger duty are accepted by third countries and are **not subject of such intensive criticism or to any kind of retaliation**. Like in the case of the EU ETS, the position of the States is that they are entitled to charge flights that start or land in their respective countries. This is also the justification for the US and the Indian taxes. This shows that there is **a major political element in the debate**. Some of the resistance may be motivated through the assumption that EU legislation is not as important as member states legislation. Also the aspect that the EU ETS is particularly justified for climate mitigation may be a reason for the harsh criticism from some third countries. For example the new majority in the US House of Representatives wants to demonstrate that their own climate bill which also covered international aviation (Waxman - Markey) is dead.

#### *The ICAO Process:*

Already back in **1997 the International Civil Aviation Organization (ICAO) has been given the job to regulate emissions of aviation**.

Unfortunately, until now there has not been any solution. The EU has always argued that our

preferred option is of course an international agreement, and the duty to continue negotiations is included in the existing EU ETS legislation. At an **ICAO Council meeting on November 9th 2012** significant progress was made towards the goal of the global regulation of emissions from aviation. A High Level Group has been set up to prepare a solution at the next ICAO General Assembly. The ICAO General Assembly meets only every three years, the next meeting takes place in September 2013. Third countries opposing the European scheme always said that they want a global solution under ICAO.

Unfortunately, until now those opposing the EU ETS have not been able to agree on how exactly ICAO should solve the problem. But one has to recognize the **very strong commitment of ICAO leadership**.

***The Stop the Clock Proposal:***

In light of the ICAO Council decision from November 9th 2012, the European Commission announced a proposal to suspend the application of the EU ETS for intercontinental flights.

On November 20th the Commission submitted a proposal to Parliament and Council to stop the clock. This proposal is **intended to reinforce the positive momentum in ICAO and to enhance the chances for a successful outcome at the 2013 ICAO General Assembly**. Firstly, in terms of developing a global market based measure and secondly, adopting a framework facilitating states' application of market based measures to international aviation in the time before the global market based measure enters into force.

The proposal foresees **not to implement the EU ETS for intercontinental flights in respect of emissions during 2012. Flights inside the European area will be covered by the obligation of the directive as decided by the Parliament and Council in 2008. All measures are non-discriminatory which means that the same rules apply for EU and non-EU carriers**. That means an EU carrier that flies from an EU airport to a third country airport is exempted and a third country carriers flying inside the European area will be covered by the obligations of the directive.

***Rapporteur's recommendation:***

Your rapporteur in principle **welcomes the Commission proposal** and recommends a **quick adoption**. Under the current directive until April 30th 2013 airlines must submit their allowances. So for legal clarity the legislative procedure should be concluded before this date, recognising that the arguments need to be assessed carefully and colleagues in ENVI and TRAN should have the possibility to propose amendments.

Some amendments seem to be necessary for legal reasons. They only clarify the intention of the proposal as laid down in the explanation, the recitals and the accompanying communication by the Commission.

As the Commission envisages no transposition in national legislation by Member States, the decision has to be worded precisely and there should be no leeway for interpretation. By stating explicitly which requirements will be covered by the derogation and how many and which kind of allowances operators have to return to make use of the derogation, legal security is created.

It is also necessary to have a legal basis for the reduction of auctioning amounts, which is so far not given, as the proposal only includes a derogation from Art. 16. If the calculation of the

amount to be auctioned is not changed, the same number would need to be auctioned by Member States, which is clearly not intended. Instead, the auctioning amount should be 15% of the overall amount of aviation allowances in circulation in the year 2012 (see amendments 1, 3, 4, 6, 7).

It has to be clarified that an application of the scheme only inside the EU **cannot be an option for more than one year**. There is equal treatment for all airlines flying the same routes. The allowances to be surrendered by April 30th 2013 cover the year 2012, a year when the carbon price was very low (between 6 and 8 Euros), and when airlines can use up to 15% CDM credits (around 0.4 Euros). That is why any potential distortion of competition between EU and third country carriers in terms of incentive for flying different routes is limited, for example 13.6 Cent for a flight from Hamburg to Frankfurt. Any prolongation of this situation could however cause significant distortion of competition and would not be environmentally ambitious enough. That is why it needs to be clarified that the Stop the Clock cannot be prolonged after the 31st December 2013. It has also to be clarified **what the EU expects from the ICAO Assembly**. Not any result can be seen as a satisfactory result. Already in the existing legislation it is indicated that we are ready to amend our legislation when a global agreement is reached. It has to be clarified that a global agreement that satisfactory covers airlines' emissions will not be in place by the end of 2013. That is why **in the meantime a framework** for regional and national schemes needs to be adopted. However, the EU should not accept a situation where the current legislation is just abolished in the light of an only potential agreement under ICAO (see amendments 2, 5).

The Commission proposal gives the opportunity **to make unambiguously clear that it is not the EU which stands in the way of an international agreement**. If even after the adoption of this proposal third countries are not really compromising at ICAO level this is an unambiguous signal that those that always ask for an international solution at ICAO are not really committed. On the other hand, if ICAO comes to an agreement this would be the preferred option for everybody including the European Union.

19.2.2013

## **OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM**

for the Committee on the Environment, Public Health and Food Safety

on the proposal for a decision of the European Parliament and of the Council on derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community (COM(2012)0697 – C7-0385/2012 – 2012/0328(COD))

Rapporteur: Mathieu Grosch

### **SHORT JUSTIFICATION**

While aviation currently accounts for around three percent of total greenhouse gas emissions, these are growing rapidly. The International Civil Aviation Organisation (ICAO) estimated that CO<sub>2</sub> emissions from aviation almost doubled between 1990 and 2006. This compared with a 34% increase from all fossil fuel use. It projects a 63-88% increase to 2020, a period during which the EU is committed to reducing its emissions by 20% on 1990 levels.

Global warming can only be tackled effectively by means of an international approach. Neither carbon emissions nor climate change respect national boundaries. There is a need for sticking to the same climate objectives on the global level. Hereby ICAO plays an important role. It started discussing market-based measures in 1991 and emissions trading in 1998 but made little progress. Therefore, the European Union decided in 2008 that aviation should be included in its Emissions Trading Scheme (ETS). This legislation received unanimous support in Council and a large majority in Parliament. The Transport Committee's opinion called on the aviation sector to make a similar effort to that of other transport modes and of other comparable sectors. It favoured a 2012 start date for including aviation in the ETS and noted, 'the inclusion in the European emissions trading scheme of aircraft from third countries which depart from or arrive at Community airports is legally admissible'. The Court of Justice confirmed this latter point in 2011.

However, third countries have been very reluctant to accept the European ETS. Nevertheless, the estimated impact of including aviation in the ETS is small compared to third country passenger fees such as the \$16.30 the US charges all arriving and departing passengers (with additional 'Electronic System for Travel Authorization' fees for non-citizens).

In November 2012, ICAO showed significant progress on market-based measures to address emissions from international aviation. The European Commission therefore decided to give a

signal to negotiating partners by proposing to 'stop the clock'. The Rapporteur welcomes this proposal, as it is in line with Europe's desire for an international agreement and is limited to one year.

This limitation is of utmost importance to maintain the pressure on negotiating partners. We must be clear that, in the absence of a satisfactory agreement to address aviation's emissions, all international flights will be included from 2013 onwards. Without this, there would be every risk that the ICAO process continues for years if not decades.

The limitation to one year is also important to minimise concerns about possible market distortions that have been raised. Excluding flights that enter or leave the European Economic Area (EEA) while continuing to apply the ETS to flights within Europe could lead to a distortion of competition.

If international negotiations produce market-based mechanisms or mechanisms ensuring that aviation emissions are subject to the same downward pressure as other sectors, then this would be a reason to consider adjusting the ETS. It is not a matter of enforcing Europe's environmental standards on a global level, but instead developing common measures as a solution for a common problem.

If ICAO reaches an agreement in September 2013 that could involve extending different treatment of internal and external flights beyond 2013, there should be a detailed study of the competition implications between European and third country airlines. The European Commission has to take appropriate action in order to avoid any distortion of competition. Neither the environment nor the European economy would benefit if airlines had an artificial incentive to make greater use of non-European hubs. Additionally the European Parliament should have the possibility of evaluating the outcome of the ICAO negotiations before the European Commission proposes further actions.

In conclusion, while a one-year derogation for flights coming from or going outside the EEA is not a perfect solution, it offers better prospects for a satisfactory international agreement this year than maintaining the current legislation. Parliament should therefore work for the rapid adoption of this proposal to remove legal uncertainty about airlines' obligations and to send a clear signal to our international negotiating partners. They should understand that Europe wants an international agreement, is open to negotiating the best forms of market-based measures but is not willing to wait indefinitely before addressing aviation emissions in a comparable manner to those of other sectors.

## **AMENDMENTS**

The Committee on Transport and Tourism calls on the Committee on the Environment, Public Health and Food Safety, as the committee responsible, to incorporate the following amendments in its report:

## Amendment 1

### Proposal for a decision

#### Recital -1 (new)

*Text proposed by the Commission*

*Amendment*

***(-1) The aviation sector has a strong international character. Global problems of the kind posed by aviation emissions can be effectively addressed by means of an international approach that includes a global obligation to comply with the same measures or the same objectives with different measures. The International Civil Aviation Organisation (ICAO) plays a key role in this process by defining the common objectives in the framework of an international agreement.***

*Justification*

*International problems like the greenhouse gas emissions caused by the aviation sector need global solutions, therefore an international approach can be effective.*

## Amendment 2

### Proposal for a decision

#### Recital 1

*Text proposed by the Commission*

*Amendment*

***(1) Significant progress has been made in the International Civil Aviation Organisation*** towards the adoption at the 2013 ICAO Assembly of a framework facilitating States' application of market-based measures to emissions from international aviation, and on developing a global market-based measure.

***(1) In November 2012, the ICAO, having started to discuss limiting emissions from aviation as long ago as 1998, made significant*** progress towards the adoption at the 2013 ICAO Assembly of a framework facilitating States' application of market-based measures to emissions from international aviation, and on developing a global market-based measure.

*Justification*

*It should be made clear that discussions on limiting emissions on the level of ICAO already started more than ten years ago and that little progress was made until the deadline for application of the EU Emission Trading Scheme was approaching.*



### Amendment 3

#### Proposal for a decision

##### Recital 2 – footnote 1

*Text proposed by the Commission*

1. Including *EFTA* States, countries which have signed a Treaty of Accession with the Union and the dependencies and territories of EEA Member States

*Amendment*

1. Including *EEA* States, countries which have signed a Treaty of Accession with the Union and the dependencies and territories of EEA Member States

*Justification*

*Not all EFTA States have agreed to incorporate Directive 2003/87/EC in their national legislation, only EFTA States which are also members of EEA have done so (i.e. Iceland, Liechtenstein and Norway, but not Switzerland). The text should therefore refer to EEA States, not EFTA States.*

### Amendment 4

#### Proposal for a decision

##### Recital 3

*Text proposed by the Commission*

(3) In order to avoid distortions of competition, this derogation should only apply in respect of aircraft operators that have either not received or have returned all free allocations which have been allocated in respect of such activities in 2012. For the same reason, these 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.

*Amendment*

(3) In order to avoid distortions of competition, this derogation should only apply in respect of aircraft operators that have either not received or have returned all free allocations which have been allocated in respect of such activities in 2012. For the same reason, these 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, ***with the exception of international credits acquired prior to the entry into force of this decision.***

*Justification*

*It is important to ensure legal certainty and not to penalise responsible companies which were making preparations for the implementation of the aviation directive throughout 2012. This provision would also make it possible to ensure equal treatment of operators, whether or not they benefit from the derogation concerned.*

## Amendment 5

### Proposal for a decision Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(4a) The ICAO and the Union should considerably increase their efforts to reduce aviation's GHG emissions in accordance with the Union's 2020 and 2050 targets. The derogation provided for by this Decision should therefore not call into question the inclusion of air transport in the European Emissions Trading Scheme and the general aim of promoting an effective global system to curb rising levels of aviation emissions, and should clearly define the obligations to be fulfilled by the countries and air carriers concerned during the period of time covered by the derogation.***

*Justification*

*The aviation sector with its fast growing greenhouse gas emissions has to contribute to the reduction of emissions, like other modes of transport already do; additionally other industry sectors have been already participating in the EU ETS for years; there is no reason why the aviation sector should be kept out of the EU ETS.*

## Amendment 6

### Proposal for a decision Recital 4 b (new)

*Text proposed by the Commission*

*Amendment*

***(4b) The temporary derogation may not apply for longer than one year. If no global system of market-based measures applicable to aviation emissions is agreed at the ICAO negotiations within that period, including a feasible deadline for implementation, all flights from and to airports outside the Union should again fall under the European ETS as provided for in Directive 2003/87/EC of the European Parliament and of the Council.***

## **Amendment 7**

### **Proposal for a decision Recital 4 c (new)**

*Text proposed by the Commission*

*Amendment*

***(4c) The Commission should provide a full report to the European Parliament on the progress made at the ICAO Assembly in September 2013 and swiftly propose measures in line with the results.***

## **Amendment 8**

### **Proposal for a decision Recital 4 d (new)**

*Text proposed by the Commission*

*Amendment*

***(4d) If, following the expiry of the derogation provided for by this Decision, the Commission considers taking further action in this connection, it should take into account the possible impact on intra-European air traffic and should take appropriate action to avoid any distortion of competition.***

### *Justification*

*During the time the derogation applies to flights outside Europe, flights between airports in EEA-states will continue to be subject to the EU ETS Directive. This situation could lead to a distortion of competition between European airlines that mostly operate within Europe and therefore would have a high proportion of their flights included in the EU-ETS and third country airlines that operate mostly in third countries. The European Commission has to analyse and take appropriate action to avoid this possible distortion of competition this before proposing further measures.*

## **Amendment 9**

### **Proposal for a decision Recital 4 e (new)**

*Text proposed by the Commission*

*Amendment*

***(4e) The inclusion of aviation in the European Emission Trading Scheme should be taken into account in all Union aviation agreements with third countries.***

*Justification*

*The Commission is currently negotiating aviation agreements with a number of neighbouring countries and important trading partners. It is important that these agreements take account of the full range of European policy objectives. The Commission should therefore build on the example of the EU-Canada agreement on air transport and encourage third countries to adopt measures to reduce the climate change impact of aviation.*

## **Amendment 10**

### **Proposal for a decision**

#### **Recital 4 f (new)**

*Text proposed by the Commission*

*Amendment*

***(4f) In order to build confidence at the international level towards the EU scheme, the Member States should preferably use the revenues from applying the European Emissions Trading Scheme to the aviation sector for mitigating the impact of such emissions and earmark revenues from the ETS to international climate finance, in favour of, inter alia, developing countries' climate protection efforts according to Article 3d paragraph 4 of Directive 2003/87/EC.***

*Justification*

*In order to facilitate a global aviation MBM, the EU should encourage any revenues from the aviation sector to be directed to international climate finance under the UNFCCC agreement. The EU ETS should continue to cover aviation until an effective global system that significantly curbs the climate impact of the sector is implemented. Pressure should therefore be maintained to achieve common goals.*

## **Amendment 11**

**Proposal for a decision**  
**Article 1 – paragraph 1**

*Text proposed by the Commission*

By way of derogation from Article 16 of Directive 2003/87/EC, Member States shall take no action against aircraft operators in respect of requirements set out in Article 12(2a) and Article 14(3) of Directive 2003/87/EC arising before 1 January 2014 in respect of activity to or from aerodromes in countries outside the European Union that are not members of *EFTA*, dependencies and territories of EEA Member States or countries having signed a Treaty of Accession with the Union, where such aircraft operators have not been issued free allocations for such activity in respect of 2012 or, if they have been issued such allowances, have returned a corresponding number of allowances to Member States for cancellation.

*Amendment*

By way of derogation from Article 16 of Directive 2003/87/EC, Member States shall take no action against aircraft operators in respect of requirements set out in Article 12(2a) and Article 14(3) of Directive 2003/87/EC arising before 1 January 2014 in respect of activity to or from aerodromes in countries outside the European Union that are not members of *EEA*, dependencies and territories of EEA Member States or countries having signed a Treaty of Accession with the Union, where such aircraft operators have not been issued free allocations for such activity in respect of 2012 or, if they have been issued such allowances, have returned a corresponding number of allowances to Member States for cancellation.

*Justification*

*Not all EFTA States have agreed to incorporate Directive 2003/87/EC in their national legislation, only EFTA States which are also members of EEA have done so (i.e. Iceland, Liechtenstein and Norway, but not Switzerland). The text should therefore refer to EEA States, not EFTA States.*

**Amendment 12**

**Proposal for a decision**  
**Article 3 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

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. ***International credits acquired prior to the entry into force of this decision in accordance with Directive 2008/101/EC may be used in 2013 up to a limit of 15% of the***

*allowances cancelled or returned.*

*Justification*

*It is important to ensure legal certainty and not to penalise responsible companies which were making preparations for the implementation of the aviation directive throughout 2012. This provision would also make it possible to ensure equal treatment of operators, whether or not they benefit from the derogation concerned.*

**Amendment 13**

**Proposal for a decision**

**Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 3a**

***The Commission shall regularly inform the European Parliament and the Member States concerning the progress of the ICAO negotiations and submit a report on the results achieved at the ICAO Assembly. If the ICAO Assembly in September 2013 does not achieve substantial progress on a global market-based mechanism, the European ETS will again include all international flights from and to the Union from 2013 onwards. If, however, it succeeds in setting a framework for global market-based measures, the Commission may propose further actions.***

*Justification*

*The consequences of the achievement of substantial progress within ICAO have to be made very clear. The Commission should provide the European Parliament with the fullest possible information about the ICAO negotiations so that Parliament has the possibility of assessing this before the European Commission can extend the derogation or take any other action.*

## PROCEDURE

<b>Title</b>	Temporary derogation from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community
<b>References</b>	COM(2012)0697 – C7-0385/2012 – 2012/0328(COD)
<b>Committee responsible</b> Date announced in plenary	ENVI 10.12.2012
<b>Opinion by</b> Date announced in plenary	TRAN 10.12.2012
<b>Rapporteur</b> Date appointed	Mathieu Grosch 19.12.2012
<b>Discussed in committee</b>	22.1.2013
<b>Date adopted</b>	19.2.2013
<b>Result of final vote</b>	+: 35 -: 1 0: 6
<b>Members present for the final vote</b>	Georges Bach, Izaskun Bilbao Barandica, Philip Bradbourn, Antonio Cancian, Michael Cramer, Philippe De Backer, Luis de Grandes Pascual, Christine De Veyrac, Saïd El Khadraoui, Ismail Ertug, Carlo Fidanza, Knut Fleckenstein, Jacqueline Foster, Mathieu Grosch, Dieter-Lebrecht Koch, Georgios Koumoutsakos, Jörg Leichtfried, Bogusław Liberadzki, Eva Lichtenberger, Marian-Jean Marinescu, Gesine Meissner, Mike Nattrass, Hubert Pirker, Dominique Riquet, Petri Sarvamaa, Vilja Savisaar-Toomast, Olga Sehnalová, Debora Serracchiani, Brian Simpson, Keith Taylor, Giommara Uggias, Patricia van der Kammen, Artur Zasada, Roberts Zīle
<b>Substitute(s) present for the final vote</b>	Spyros Danellis, Michel Dantin, Michael Gahler, Eider Gardiazábal Rubial, Zita Gurmai, Alfreds Rubiks, Oldřich Vlasák, Janusz Władysław Zemke

## PROCEDURE

<b>Title</b>	Temporary derogation from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community			
<b>References</b>	COM(2012)0697 – C7-0385/2012 – 2012/0328(COD)			
<b>Date submitted to Parliament</b>	20.11.2012			
<b>Committee responsible</b> Date announced in plenary	ENVI 10.12.2012			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	INTA 10.12.2012	ECON 10.12.2012	ITRE 10.12.2012	IMCO 10.12.2012
	TRAN 10.12.2012			
<b>Not delivering opinions</b> Date of decision	INTA 18.12.2012	ECON 14.1.2013	ITRE 17.12.2012	IMCO 18.12.2012
<b>Rapporteur(s)</b> Date appointed	Peter Liese 3.12.2012			
<b>Discussed in committee</b>	17.12.2012	24.1.2013	18.2.2013	
<b>Result of final vote</b>	+: 51 –: 0 0: 8			
<b>Members present for the final vote</b>	Elena Oana Antonescu, Kriton Arsenis, Sophie Auconie, Pilar Ayuso, Paolo Bartolozzi, Sandrine Bélier, Martin Callanan, Tadeusz Cymański, Chris Davies, Esther de Lange, Anne Delvaux, Bas Eickhout, Edite Estrela, Jill Evans, Karl-Heinz Florenz, Gerben-Jan Gerbrandy, Matthias Groote, Françoise Grossetête, Satu Hassi, Jolanta Emilia Hibner, Karin Kadenbach, Christa Kläß, Eija-Riitta Korhola, Holger Kraemer, Jo Leinen, Corinne Lepage, Peter Liese, Kartika Tamara Liotard, Zofija Mazej Kukovič, Linda McAvan, Miroslav Ouzký, Vladko Todorov Panayotov, Gilles Pargneaux, Andrés Perelló Rodríguez, Mario Pirillo, Pavel Poc, Frédérique Ries, Anna Rosbach, Oreste Rossi, Kārlis Šadurskis, Carl Schlyter, Horst Schnellhardt, Richard Seeber, Bogusław Sonik, Thomas Ulmer, Åsa Westlund, Glenis Willmott, Sabine Wils			
<b>Substitute(s) present for the final vote</b>	Jacqueline Foster, Julie Girling, Filip Kaczmarek, Miroslav Mikolášik, James Nicholson, Britta Reimers, Birgit Schnieber-Jastram, Renate Sommer, Bart Staes, Andrea Zaroni			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Phil Prendergast			