Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 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

REGULATION (EU) 2017/2392 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2017

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

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[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) took place in Paris from 30 November to 12 December 2015. At that Conference, an international agreement ('the Paris Agreement') was adopted to strengthen the global response to climate change. The Paris Agreement, inter alia, sets out a long-term goal in line with the objective to keep the global temperature increase well below 2 °C above pre-industrial levels and to pursue efforts to keep it to 1,5 °C above pre-industrial levels. The Paris Agreement was approved on behalf of the Union by Council Decision (EU) 2016/1841[(3)]. The Paris Agreement entered into force on 4 November 2016. In order to achieve the objectives of the Paris Agreement, all sectors will need to contribute and the Parties will prepare, communicate and maintain successive Nationally Determined Contributions ('NDCs'). Action should therefore also be taken through the International Civil Aviation Organisation ('ICAO') to reduce emissions from international aviation.

(2) Environmental protection is one of the most important challenges facing the Union. The environmental objectives of the Union as referred to in Article 191 of the Treaty on the Functioning of the European Union, are preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilisation of natural resources; and promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2017/2392 of the European Parliament and of the Council. (See end of Document for details)*

(3) A binding target of at least a 40 % domestic reduction in economy-wide greenhouse gas emissions by 2030 compared to 1990 was set by the European Council in its conclusions of 23-24 October 2014. The Council on 6 March 2015 formally approved this contribution by the Union and its Member States as their intended NDC under the Paris Agreement. In its conclusions of October 2014, the European Council stated that the target is to be delivered collectively by the Union in the most cost-effective manner possible, with the reductions in the European Union Emissions Trading System ('EU ETS') and non-ETS sectors amounting to 43 % and 30 % respectively by 2030 compared to 2005. All sectors of the economy should contribute to achieving those emission reductions. The Commission should facilitate exchanges among Member States on best practice and lessons learned in the sector of low-emission mobility.

(4) A well-functioning, reformed EU ETS with an enhanced instrument to stabilise the market will be the main European instrument to achieve the 40 % reduction target referred to in the European Council conclusions of October 2014, with a linear factor and free allocation beyond 2020. Those provisions should be consistent with the Union's climate objectives and its commitments under the Paris Agreement. The auction share should be expressed as a percentage figure in Directive 2003/87/EC of the European Parliament and of the Council[(4)], to enhance planning certainty as regards investment decisions, to increase transparency, to minimise carbon leakage, and to render the overall system simpler and more easily understandable. As part of its regular reporting under Regulation (EU) No 525/2013 of the European Parliament and of the Council[(5)], the Commission should also assess the outcome of the 2018 Facilitative Dialogue. The provisions of Directive 2003/87/EC should be kept under review in light of international developments and efforts undertaken to achieve the objectives of the Paris Agreement, including the first global stocktake in 2023, and subsequent global stocktakes every five years thereafter, intended to inform successive NDCs.

(5) The Union and its Member States have been endeavouring to make progress towards reaching an international agreement to reduce greenhouse gas impacts from aviation since 1997 and they have legislation in place since 2008 to limit the climate change impacts from aviation activities through the EU ETS that has been in operation since 2005. The Court of Justice of the European Union ruled in its judgment of 21 December 2011[(6)] that the inclusion of aviation activities in the EU ETS pursuant to Directive 2008/101/EC of the European Parliament and of the Council[(7)] does not violate international law. In order to facilitate progress at the ICAO, the Union has twice adopted time-bound derogations to the EU ETS so as to limit compliance obligations to emissions from flights between aerodromes situated in the European Economic Area ('EEA'), with equal treatment on routes of aircraft operators wherever they are based. The most recent derogation from the EU ETS, laid down in Regulation (EU) No 421/2014 of the European Parliament and of the Council[(8)], limited compliance obligations to intra-EEA flights between 2013 and 2016, and envisaged potential changes to the scope of the system as regards activity to and from aerodromes situated outside the EEA from 1 January 2017 onwards following the review set out in that Regulation.

(6) The ICAO's work on a market-based measure for international aviation emissions is one element of the so-called 'basket of measures' for achieving the aspirational goal of carbon neutral growth from 2020 ('CNG 2020'), and should be complemented by advances in air traffic management and propulsion technologies. Continued development of research strategies and programmes will be essential to technological innovation and operational improvements needed in order to go beyond the CNG 2020 goal and to achieve sector-wide absolute emission reductions.

(7) Several measures have been adopted at Union level which aim at preventing the fragmentation of European airspace in order to enhance the flow of air traffic and control of airspace usage, thereby reducing emissions. Member States have recommitted themselves to implementing the Single European Sky concept, taking account of the expected growth in the volume of air traffic in the coming years. In order to achieve progress with air traffic management, the implementation of Single European Sky ATM Research (SESAR) Joint Undertaking needs to be accelerated. Other measures such as the use of GNSS for satellite-based navigation, Joint Technology Initiatives such as Clean Sky I and Clean Sky II and Union research programs, such as Horizon 2020 and its successors, will also contribute to improving efficiency and to reducing aviation emissions.

(8) In light of the resolution adopted at the ICAO's 39th Assembly in October 2016 on the implementation of a global market-based measure from 2021 to offset international aviation emissions above 2020 levels, the adoption of Standards and Recommended Practices ('SARPs') by the ICAO to complement that resolution and to implement the global system is planned for 2018. However, its concrete operationalisation will require action by the ICAO Parties at domestic level. Also, governance arrangements need to be developed by the ICAO, including a registry system. In that context, in order to promote momentum in the ICAO and to facilitate the operationalisation of the ICAO scheme, the current derogation from the EU ETS obligations for flights to and from third countries should be extended until 31 December 2023, subject to review, to allow the experience necessary for the implementation of the ICAO scheme to be gathered. As a result of the extension of the derogation, the amount of allowances to be auctioned and issued for free, including from the special reserve, should remain proportional to the reduction of the surrender obligation. From 1 January 2021 onwards, the number of allowances allocated to aircraft operators should be reduced annually in line with the linear reduction factor applicable to all other sectors in the EU ETS, subject to the review in view of the implementation of the ICAO scheme. The review will be prepared in full accordance with the better regulation guidelines, with adequate consultations with all stakeholders including Member States. Allowances not allocated from the special reserve should continue to be cancelled.

(9) Revenues generated from the auctioning of allowances, or their equivalent in financial value, should be used to tackle climate change in the Union and third countries, inter alia, to reduce greenhouse gas emissions, to adapt to the impacts of climate change in the Union and third countries, especially developing countries, to fund research and development for mitigation and adaptation, including in the fields of

aeronautics, air transport and sustainable alternative aviation fuels, to reduce emissions through low-emission transport and to cover the cost of administering the EU ETS. Special consideration should be given by Member States that use those revenues for co-financing research and innovation to programmes or initiatives under the Ninth Research Framework Programme ('FP9'). Ensuring transparency on the use of revenues generated from the auctioning of allowances under Directive 2003/87/EC through the submission of reports by Member States in accordance with Article 17 of Regulation (EU) No 525/2013 is essential to meeting Union commitments.

(10) The environmental integrity of the EU ETS should be safeguarded against the risk of obligations lapsing for aircraft operators and other operators regulated by a Member State. Therefore, allowances issued by such a Member State should only be useable if the obligations to surrender allowances for emissions are not at risk of lapsing in a way that results in undermining the environmental integrity of the EU ETS. The Commission should be granted the power to take the measures necessary to protect the environmental integrity of the EU ETS accordingly. Such measures should be in place until they are no longer necessary due to a change in circumstances.

(11) Given that key features of the global market-based measure have yet to be developed and that its implementation depends on domestic legislation laid down by participating States and regions, the Commission should report regularly to the European Parliament and to the Council on progress in the ICAO negotiations, in particular on relevant instruments adopted through the ICAO, including SARPs, the actions taken by third countries to implement the global market-based measure to apply to emissions for the period 2021-2035, efforts to establish ambitious and binding measures to achieve the aviation industry's long-term goal of halving aviation CO_2 emissions relative to 2005 levels by 2050 and other relevant international developments and applicable instruments, such as rules under the UNFCCC and the Paris Agreement on carbon markets and accounting. Once there is clarity about the nature and content of the ICAO's instruments and in advance of the start of the ICAO's global market-based measure, the Commission should present a report in which it should consider how to implement those instruments in Union law through a revision of Directive 2003/87/EC. The Commission should further consider the rules applicable to intra-EEA flights, as appropriate. In so doing, the Commission in its report should reflect the need to ensure consistency with Union law, in particular to avoid any distortion of competition and to minimise any undue administrative burden for Member States and aircraft operators.The Commission should accompany its report with a proposal, where appropriate, to the European Parliament and to the Council consistent with ensuring the contribution of aviation to the Union's 2030 economy-wide greenhouse gas reduction commitment.

(12) To prepare for the implementation of the ICAO's global market-based measure, it is necessary to have relevant data available regarding the emissions from aviation activities as early as possible. Those emissions should be monitored, reported and verified in accordance with the same principles as those applicable to the monitoring, reporting and verification of emissions from aviation activities under Directive 2003/87/EC. Accordingly, the Commission should adopt provisions on monitoring, reporting and verification for the purpose of implementing the ICAO's global market-based

measure that avoid any distortion of competition. Those provisions should be consistent with the principles contained in the regulation referred to in Article 14(1) of Directive 2003/87/EC and should ensure that the emissions reports submitted are verified in accordance with the verification principles and criteria referred to in Article 15 of that Directive. Those provisions should be adopted in accordance with the procedure applicable to monitoring, reporting and verification under Directive 2003/87/EC.

(13) Aviation also has an impact on the climate through the release of nitrogen oxides, water vapour and sulphate and soot particles at high altitudes, which could have a significant climate effect, according to scientific research. The Intergovernmental Panel on Climate Change has estimated that the total climate impact of aviation is currently two to four times higher than the effect of its past carbon dioxide emissions alone. Pending scientific progress, all impacts of aviation should be addressed to the extent possible. In Directive 2008/101/EC a Commission proposal on nitrogen oxides was envisaged in 2008. Despite the technical and political difficulties involved, the Commission should speed up its work in that regard. Research on the formation of condensation trails, also known as contrails, on their evolution into cirrus clouds, on the smaller direct effects of sulphate aerosols and soot, and on effective mitigation measures, including operational and technical measures, should also be promoted.

(14) By way of simplification and in order to lighten administrative tasks, aircraft operators with emissions lower than 3 000 tonnes of CO_2 per annum from intra-EEA flights should benefit from the use of the small emitters tool approved under Commission Regulation (EU) No 606/2010[(9)] for the verification of their emissions. No-commercial aircraft operators emitting less than 1 000 tonnes of CO_2 per annum should continue to be considered to meet the requirements of Directive 2003/87/EC for another 10 years, during which measures should be developed so that in the future all operators contribute to emission reductions.

(15) Since the objectives of this Regulation, namely to extend the current limitations of scope for aviation activities until 31 December 2023 and to prepare to implement a global market-based measure from 2021, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale or effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(16) It is essential to ensure legal certainty for aircraft operators and national authorities in view of the surrender deadline of 30 April 2018 specified in Directive 2003/87/EC. Accordingly, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*.

(17) Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Directive 2003/87/EC is amended as follows: