Regulation (EU) No 421/2014 of the European Parliament and of the Council of 16 April 2014 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions (Text with EEA relevance)

REGULATION (EU) No 421/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 April 2014

amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions

(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[(1)],

After consulting the Committee of the Regions,

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

Whereas:

(1) The aviation sector has a strong international character. A global approach to addressing emissions from international aviation offers the best prospects for ensuring sustainability in the long term.

(2) The Union is endeavouring to secure a future international agreement to control greenhouse gas emissions from aviation and, in the meantime, is limiting climate change impacts from aviation activities to and from aerodromes in the Union, by autonomous action. In order to ensure that those objectives are mutually supportive and not in conflict, it is appropriate to take account of developments at, and positions taken in, international fora and in particular to take account of the resolution containing the ‘Consolidated statement of continuing ICAO policies and practices related to environmental protection’ adopted on 4 October 2013 at the 38th Session of the Assembly of the International Civil Aviation Organization (ICAO).

(3) Consequently, in order to sustain the momentum reached at the 38th Session of the ICAO Assembly in 2013 and facilitate progress at the upcoming 39th Session in 2016,

it is desirable to temporarily consider the requirements set out in Directive 2003/87/EC of the European Parliament and of the Council[3] to be satisfied for the period until 31 December 2016 in respect of flights to and from aerodromes in countries outside the European Economic Area (EEA). In doing so, the Union emphasises that legal requirements can be applied in respect of flights to and from aerodromes located in States of the EEA, in the same manner as legal requirements can be applied in respect of the emissions from flights between such aerodromes. In order to ensure legal certainty, for the purposes of this derogation, flights between aerodromes located in States of the EEA and aerodromes located in countries that acceded to the Union in 2013 should be considered to be flights between States of the EEA.

(4) It is recalled that, under Directive 2003/87/EC, it is for Member States to determine the use to be made of revenues generated from the auctioning of allowances. Those revenues, 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 particular in the fields of aeronautics and air transport, to reduce emissions through low-emissions transport and to cover the costs of administering the Union scheme. The proceeds of auctioning, or their equivalent in financial value, should also be used to fund contributions to the Global Energy Efficiency and Renewable Energy Fund, and measures to avoid deforestation. Transparency on the use of revenue generated from the auctioning of allowances under Directive 2003/87/EC is key to underpinning Union commitments. Under Regulation (EU) No 525/2013 of the European Parliament and of the Council[4], Member States are to submit to the Commission a report on the use of revenues from the auctioning of such allowances.

(5) The derogations provided for in this Regulation take into account the results of bilateral and multilateral contacts with third countries, which the Commission will continue to pursue on behalf of the Union, in order to promote the use of market-based mechanisms to reduce emissions from aviation.

(6) It is recalled that Directive 2003/87/EC envisages the possibility of adopting measures amending the aviation activities listed in Annex I to that Directive where a third country introduces measures to reduce the climate change impacts from aviation activities.

(7) 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.

(8) In order to avoid distortion of competition, it is important that all flights on the same route be treated in the same way.

(9) To further avoid a disproportionate administrative burden for the smallest aircraft operators, a temporary exemption should be added to Annex I to Directive 2003/87/EC. Non-commercial aircraft operators emitting less than 1 000 tonnes CO_2 per annum should, therefore, be exempt from the scope of that Directive, from 1 January 2013 to 31 December 2020.

(10) It is appropriate to enable the use, by aircraft operators that are small emitters, of an alternative approach for the verification of their emissions in order to reduce their administrative burden further. Member States should be able to implement simplification measures that address in particular the needs of non-commercial operators that are small emitters.

(11) Special consideration should be given to mitigating or even eliminating any accessibility and competitiveness problems arising for the outermost regions of the Union. With this in mind, flights between an aerodrome located in an outermost region within the meaning of Article 349 of the Treaty on the Functioning of the European Union (TFEU) and an aerodrome located in another region of the EEA should also be included in the derogation established under this Regulation.

(12) In order to ensure legal certainty for aircraft operators and national authorities it is appropriate to allow until 2015 for the surrender and reporting deadlines for 2013 emissions.

(13) For the application of this derogation, it is important to recall that the methods for the allocation and issuance of allowances to aircraft operators remain those established under Directive 2003/87/EC, that is to say based on the verified tonne-kilometre data in respect of the relevant periods referred to therein.

(14) After the 2016 ICAO Assembly and in the light of its outcome, the Commission should provide a full report to the European Parliament and to the Council. In that report, the Commission should, inter alia, consider all options for the coverage of emissions from aviation activities and, if appropriate, swiftly propose measures in order to ensure that international developments can be taken into account and that any issues about the application of the derogation can be addressed. The Commission should also give particular consideration to the environmental effectiveness of the European Union Emissions Trading System (EU ETS) and, in this context, to the particular contribution of the aviation sector, including to modalities for the better alignment of the rules applicable to aviation activities and stationary installations respectively.

(15) Since the objectives of this Regulation, namely to introduce a temporary derogation for the monitoring, reporting and surrendering of allowances from flights to and from countries outside the EEA from 1 January 2013 to 31 December 2016, to lighten the administrative burden and simplify the administration of the scheme, cannot be sufficiently achieved by the Member States, but can rather, by reason of scale and effects of the action, 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 2014 as referred to in Directive 2003/87/EC. Accordingly, this Regulation should apply from the date of its adoption.

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

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) No 421/2014 of the European Parliament and of the Council. (See end of Document for details)*

HAVE ADOPTED THIS REGULATION:

[XI Article 1

Directive 2003/87/EC is hereby amended as follows:

(1) The following Article is inserted:

Article 28a

Derogations applicable in advance of the implementation by 2020 of an international agreement applying a single global market-based measure

1 By way of derogation from Articles 12(2a), 14(3) and Article 16, Member States shall consider the requirements set out in those provisions to be satisfied and shall take no action against aircraft operators in respect of:

a all emissions from flights to and from aerodromes located in countries outside the European Economic Area (EEA) in each calendar year from 1 January 2013 to 31 December 2016;

b all emissions from flights between an aerodrome located in an outermost region within the meaning of Article 349 of the Treaty on the Functioning of the European Union (TFEU) and an aerodrome located in another region of the EEA in each calendar year from 1 January 2013 to 31 December 2016;

c the surrender of allowances, corresponding to verified 2013 emissions from flights between aerodromes located in States in the EEA, taking place by 30 April 2015 instead of 30 April 2014, and verified 2013 emissions for those flights being reported by 31 March 2015 instead of 31 March 2014.

For the purposes of Articles 11a, 12 and 14, the verified emissions from flights other than those referred to in the first subparagraph shall be considered to be the verified emissions of the aircraft operator.

2 By way of derogation from Article 3e(5) and Article 3f, an aircraft operator benefitting from the derogations provided for in points (a) and (b) of paragraph 1 of this Article shall be issued a number of free allowances reduced in proportion to the reduction of the surrender obligation provided for in those points.

By way of derogation from Article 3f(8), allowances that are not allocated, as a result of the application of the first subparagraph of this paragraph, shall be cancelled.

As regards activity in the period from 1 January 2013 to 31 December 2016, Member States shall publish the number of free aviation allowances allocated to each aircraft operator by 1 September 2014.**]**

3 By way of derogation from Article 3d, Member States shall auction a number of aviation allowances reduced in proportion to the reduction in the total number of allowances issued.

4 By way of derogation from Article 3d(3), the number of allowances to be auctioned by each Member State in respect of the period from 1 January 2013 to 31 December 2016 shall be reduced to correspond to its share of attributed aviation emissions from flights which are not subject to the derogations provided for in points (a) and (b) of paragraph 1 of this Article.