

Council position

The common position incorporates a number of amendments proposed by Parliament at first reading, either verbatim, in part or in spirit. These improve or clarify the text of the proposed Directive. Those amendments not included have been rejected on the grounds that they were either considered unnecessary or, from a scientific point of view, impractical. Provisions from the original Commission proposal have been supplemented with new elements or entirely redrafted, with some completely new measures inserted.

In summary the main changes to the initial proposal are as follows:

Start date and scope of the scheme: the Council, in agreement with the European Parliament, has rejected the two-stage approach proposed by the Commission and opted for a single starting date for all flights to be included in the scheme. This was considered necessary in order to ensure the scheme's enhanced environmental impact whilst minimising the distortion of competition. Unlike both Parliament and the Commission, the Council is proposing that the start date should be 2012, rather than the originally proposed 2011.

Allocation: the Council agrees with Parliament that the allocation of allowances is central to the functioning of the scheme. The Council, therefore, has introduced a number of changes to the Commission proposal that would bring its contents closer to a number of EP amendments – even if they were not incorporated literally in the text of the common position.

Thus, the Council has maintained a 100% cap of historical emissions (as is the case in the Commission proposal). At the same time though the common position points towards a possible future reduction as part of a review of the Directive's functioning in relation to aviation activities. This review must take place by 2015. The benchmark has been slightly adjusted by the Council. This has been done by modifying the payload (which it increased to 110 kg per passenger and their checked baggage) and to the distance (with 95 km added to the greater circle distance) used to calculate the aviation activity (ton/km) of each aircraft operator.

Level of auctioning: the Council has rejected the Commission's proposal to use a percentage corresponding to the average percentage proposed by the Member States that would include auctioning in their national allocation plans (NAPs). Instead it has opted for a 10% fixed allocation. The Council has also introduced the explicit possibility for that percentage to be increased as part of the general review of the ETS Directive. Thus, although this is not an exact incorporation of Parliamentary wishes, it nevertheless follows the general spirit of Parliamentary amendments.

Use of proceeds generated from auctioning: on the matter of proceeds generated from auctioning, the Council's position differs to that of both the Commission and Parliament. The common position specifies that it is for the Member States to decide how these revenues should be used. One measure does provide, however, that these proceeds should be used to tackle climate change both in the EU and in third countries and to cover the administrative cost of running the scheme.

One major new element introduced by the Council concerns the creation of a special reserve for new entrants or fast-growing aircraft operators. Thus, 3% of allowances would be set aside to be distributed to eligible aircraft operators on the basis of a benchmark system similar to the system used for the initial allocation. In a bid to counterbalance any possible market distortions the distribution of allowances under the special reserve will be a one-off, alongside a provision that the resulting annual allocation per ton-kilometre to aircraft operators under the main allocation. This measure should entail less administrative costs.

Exemptions: the Council has refined a number of exemptions from the scheme, taking account of Parliamentary amendments. It has decided that flights by EU Heads of State will not be excluded from the scheme. On the other hand it has decided to exempt flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical flights. Further, flights performing exclusively for the purpose of checking, testing or certifying aircraft or equipment, whether airborne or ground based will be excluded from the scope of the Directive

De minimis clause: the common position has introduced an additional exemption from the scheme referred to as the de minimum clause. This entails the exclusion of flights performed by a commercial air transport operator operating, for three consecutive four-month periods, fewer than 243 flights per period. The Council has coupled this exemption with a corresponding definition of 'commercial air transport operator' and a recital aiming to ensure that operators with very low traffic levels, including many operators from developing countries, would not be faced with disproportionate administrative costs.

Outermost regions: taking on board Parliamentary suggestions, the Council has decided to accord the outermost regions special derogations. The common position, therefore, excludes public service flights to the outermost regions or flights where the capacity offered does not exceed 30 000 seats per year, from the scope of the proposed Directive.

Other issues: the common position inserts a new Article imposing an additional obligation on the Member States to ensure that aircraft operators submit monitoring and reporting plans to the competent authorities

Enforcement: the common position introduces a number of new paragraphs regarding enforcement of the ETS Directive. This provides for the possibility of an administering Member State to request an operating ban at Community level on aircraft operators failing to comply with the requirements of the Directive. Whilst the imposition of an operating ban is viewed as an enforcement measure of last resort, its inclusion was deemed necessary in order to guarantee the full compliance of aircraft operators with the scheme. This is a matter of utmost importance to the Council.

Conversion of allowances: the Council has decided to modify the initial proposal in respect to the conversion of allowances and their subsequent use towards international commitments. The Council has opted for the 'semi-open' scheme.