

Clarifications on changes to the EU ETS Aviation regime due to the changes recently put forward by the EU Regulation 2017/2392, of the European Parliament and of the Council, of 13 December 2017

Following the publication of Regulation (EU) No 2017/2392 of the European Parliament and of the Council of 13 December (from now on referred to as the EU ETS Aviation Regulation), some amendments are implemented for the aviation sector covered by the European Emissions Trading System (EU ETS) when compared with Directive 2003/87/EC of 13 October, as amended by Directive 2008/101/EC of 19 November.

So with regard to the EU ETS Aviation Regulation, it should be noted that:

1. It is valid from 1 January 2017 to 31 December 2023;
2. It maintains the amendment already approved by Regulation No 421/2014 of 16 April, which expired on 31 December 2016, in respect to flights to be considered for the purpose of compliance with the obligations of Aircraft Operators covered by the European Emission Trading System (EU ETS).

In this context, emissions from flights between aerodromes situated in EEA states and aerodromes situated in states located outside the European Economic Area (EEA) are not considered to be covered by the EU ETS regime.

Example of flights excluded from the EU ETS regime for the period 2017-2023:

Flight Lisbon (Portugal) → Recife (Brazil).

It should also be noted that emissions from flights between an aerodrome situated in an outermost region (RUP) and an aerodrome located in another EEA region are not considered to be covered, provided that the aerodrome does not belong to the RUP of departure or arrival. Hence, as regards RUPs, only flights departing and arriving in territories belonging to the same RUP are covered.

Examples of flights excluded from the EU ETS regime for the period 2017-2023:

Flight Funchal (Autonomous Region of Madeira - Portugal) → Lisbon (Continental Portugal);

Flight Funchal (Autonomous Region of Madeira - Portugal) → Ponta Delgada (Autonomous Region of the Azores - Portugal);

Example of flight that continues to be covered by the EU ETS regime for the period 2017-2023:

Flight Funchal (Autonomous Region of Madeira - Portugal) → Porto Santo (Autonomous Region of Madeira - Portugal)

3. With regard to non-commercial Aircraft Operators, the EU ETS Aviation Regulation further provides that operators with annual emissions of less than 1 000 tCO₂ are excluded from the scope of the EU ETS system in the calendar year in which it occurs. For the purposes of applying this exclusion rule, that is, for the annual check whether the emission threshold of 1 000 tCO₂ is exceeded or not, the Aircraft Operator must always consider all full-scope flights in the year in question. (ie, this analysis is done taking into account aviation activities as set out in the Annex to Directive 2008/101/EC).

For example, for this scope analysis by the EU ETS regime, the Aircraft Operator must consider the flight Lisbon (Portugal) → Recife (Brazil), although it does not have to be reported in the Annual Emissions Report (AER), nor the Aircraft Operator has to return the emission allowances corresponding to the emissions of that flight.

If in a given calendar year the threshold of 1 000 tCO₂ is exceeded, the concerned Aircraft Operator is again considered to be covered by the EU ETS system in that year.

It should be underlined that this derogation for non-commercial Aircraft Operators is applicable from 1 January 2013 until 31 December 2030.

4. In Article 1 (6) of the EU ETS Aviation Regulation, it is further provided that if the total annual emissions (full scope) of an Aircraft Operator are less than 25 000 tonnes of CO₂, or if the total annual emissions from flights not mentioned in paragraph 1 (a) and (b), of that Regulation (reduced scope) of an Aircraft Operator are less than 3 000 tonnes of CO₂, such emissions shall be considered as verified emissions if they have been determined using the instrument applicable to small emitters approved in accordance with Commission Regulation (EU) No 606/2010 and provided by Eurocontrol with data from its EU ETS support.
5. With regard to the *de minimis* rule applicable to commercial Aircraft Operators, it remains in line with Directive 2008/101/EC. Thus, commercial Aircraft Operators who carry out less than 243 flights per period over 3 consecutive 4-month periods or carry out flights with a total annual emissions of less than 10 000 tCO₂ / year are considered to be excluded from the scope of EU ETS regime for the calendar year in which this is verified.

6. Furthermore, a measure is adopted which aims to protect the integrity of the EU ETS regime, if necessary and for as long as it is necessary. Thus, Aircraft Operators should be prohibited from using permits issued by Member States in respect of which there are extinguished obligations of their Aircraft Operators. The Commission should also be empowered to take the necessary measures to protect the environmental integrity of the EU ETS regime. These measures should therefore be in force until they are no longer necessary because of a change of circumstances.

7. It is also applicable to flights between aerodromes located in states of the European Economic Area (EEA) and countries with which the European Union has concluded an agreement linking their emissions trading systems.
For further information, the Regulation 2017/2392 of 13 December may be consulted, as well as other explanatory documents available on the European Commission's website at: https://ec.europa.eu/clima/policies/transport/aviation_en

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