

Commission Decision of 8 June 2009 on the detailed interpretation of the aviation activities listed in Annex I to Directive 2003/87/EC of the European Parliament and of the Council (notified under document number C(2009) 4293) (Text with EEA relevance) (2009/450/EC)

COMMISSION DECISION

of 8 June 2009

on the detailed interpretation of the aviation activities listed in Annex I to Directive 2003/87/EC of the European Parliament and of the Council

(notified under document number C(2009) 4293)

(Text with EEA relevance)

(2009/450/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 and amending Council Directive 96/61/EC<sup>(1)</sup>, and in particular Article 3b thereof,

Whereas:

- (1) Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community<sup>(2)</sup> included aviation activities within the scheme for greenhouse gas emission allowance trading within the Community.
- (2) The definition of aviation activities and in particular the exemptions listed in Annex I to Directive 2003/87/EC are mainly based on the exemptions of Commission Regulation (EC) No 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services<sup>(3)</sup>, which exemptions are consistent with those of the Eurocontrol Route Charges System.
- (3) Appendix 2 to the Procedures for Air Navigation Services — Air Traffic Management adopted by the International Civil Aviation Organisation (ICAO)<sup>(4)</sup> describes the ICAO model flight plan form and gives instructions for the completion of that form. The flight plan can be used to identify the flights falling under the scope of the Community scheme.
- (4) The interpretation of aviation activities provided for in this Decision should be applied in conformity with Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>(5)</sup>.

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- (5) The interpretation of public service obligations should be applied in conformity with Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast)<sup>(6)</sup>.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Climate Change Committee referred to in Article 23 of Directive 2003/87/EC,

HAS ADOPTED THIS DECISION:

*Article 1*

The detailed interpretation of aviation activities listed in Annex I to Directive 2003/87/EC is set out in the Annex to this Decision.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 8 June 2009.

*For the Commission*

Stavros DIMAS

*Member of the Commission*

## ANNEX

**Guidelines on the detailed interpretation of the aviation activities listed in Annex I to Directive 2003/87/EC**

1. DEFINITION OF AVIATION ACTIVITIES
  1. The term ‘flight’ means one flight sector that is a flight or one of a series of flights which commences at a parking place of the aircraft and terminates at a parking place of the aircraft.
  2. The term ‘aerodrome’ means a defined area on land or water, including buildings, installations and equipment, intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft.
  3. If an aircraft operator performs an aviation activity listed in Annex I to Directive 2003/87/EC, it falls under the Community scheme independently of whether it is on the list of aircraft operators published by the Commission pursuant to Article 18a(3) of Directive 2003/87/EC.
2. INTERPRETATION OF THE EXEMPTIONS
  4. Under the category of activity ‘Aviation’, Annex I to the Directive 2003/87/EC lists which type of flights are exempted from the Community scheme.
    - 2.1. **Exemption under subparagraph (a)**
      5. This exemption shall be interpreted according to the exclusive purpose of the flight.
      6. Immediate family comprises exclusively the spouse, any partner considered as equivalent to the spouse, the children and the parents.
      7. Government ministers are the members of the government as listed in the national official journal of the country concerned. Members of regional or local governments of a country do not qualify for exemption under this subparagraph.
      8. An official mission means a mission in which the person concerned is acting in an official capacity.
      9. Flights for the positioning or ferrying of the aircraft are not covered by this exemption.
      10. Flights that Eurocontrol’s Central Route Charges Office has identified for route charges exemption applicability (hereinafter CRCO exemption code) as ‘S’ are presumed to be flights performed exclusively for the transport, on official mission, of a reigning monarch and his immediate family, heads of state, heads of government and government ministers substantiated by an appropriate status indicator in the flight plan.
    - 2.2. **Exemptions under subparagraph (b)**
      - 2.2.1. *Military flights*
        11. Military flights mean flights directly related to the conduct of military activities.
        12. Military flights performed by civil registered aircraft are not covered by this exemption. Similarly, civil flights performed by military aircraft are not exempted under subparagraph (b).

13. Flights with the CRCO exemption code 'M' or 'X' are presumed to be exempted military flights.

2.2.2. *Customs and police flights*

14. Customs and police flights performed by both civil registered and military aircraft are exempted.

15. Flights with the CRCO exemption code 'P' are presumed to be exempted customs and police flights.

2.3. **Exemptions under subparagraph (c)**

16. In relation to the below categories of flight, flights for the positioning or ferrying of the aircraft and the flights carrying exclusively equipment and personnel directly involved in providing the related services are covered by the exemption. Furthermore, these exemptions do not distinguish between flights performed through the use of public and private resources.

2.3.1. *Search and rescue flights*

17. Flights related to search and rescue mean flights offering search and rescue services. Search and rescue service means the performance of distress monitoring, communication, coordination and search and rescue functions, initial medical assistance or medical evacuation, through the use of public and private resources, including cooperating aircraft, vessels and other craft and installations.

18. Flights with the CRCO exemption code 'R' and flights identified with STS/SAR in field 18 of the flight plan are presumed to be exempted search and rescue flights.

2.3.2. *Firefighting flights*

19. Firefighting flights mean flights performed exclusively to provide aerial firefighting services, which means the use of aircraft and other aerial resources to combat wildfires.

20. Flights identified with STS/FFR in field 18 of the flight plan are presumed to be exempted firefighting flights.

2.3.3. *Humanitarian flights*

21. Humanitarian flights mean flights operated exclusively for humanitarian purposes which carry relief personnel and relief supplies such as food, clothing, shelter, medical and other items during or after an emergency and/or disaster and/or are used to evacuate persons from a place where their life or health is threatened by such emergency and/or disaster to a safe haven in the same State or another State willing to receive such persons.

22. Flights with the CRCO exemption code 'H' and flights identified with STS/HUM in field 18 of the flight plan are presumed to be exempted humanitarian flights.

2.3.4. *Emergency medical service flights*

23. Emergency medical service flights mean flights the exclusive purpose of which is to facilitate emergency medical assistance, where immediate and rapid transportation is essential, by carrying medical personnel, medical supplies, including equipment, blood, organs, drugs, or ill or injured persons and other persons directly involved.

24. Flights identified with STS/MEDEVAC or STS/HOSP in field 18 of the flight plan are presumed to be exempted emergency medical service flights.
- 2.4. **Exemption under subparagraph (f)**
25. Flights with the CRCO exemption code ‘T’ and flights identified with RMK/‘Training flight’ in field 18 of the flight plan are presumed to be exempted under subparagraph (f).
- 2.5. **Exemptions under subparagraph (g)**
26. In relation to the below categories of flight, flights for the positioning or ferrying of the aircraft are not covered.
- 2.5.1. *Flights performed exclusively for the purpose of scientific research*
27. This category exempts flights the only purpose of which is to carry out scientific research. The scientific research must be partially or totally performed in-flight for the exemption to apply. The transport of scientists or research equipment is not in itself sufficient for a flight to be exempt.
- 2.5.2. *Flights performed exclusively for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based*
28. Flights with the CRCO exemption code ‘N’ and flights identified with STS/FLTCK in field 18 of the flight plan are presumed to be exempted under subparagraph (g).
- 2.6. **Exemption under subparagraph (i) (public service obligation flights)**
29. The exemption of public service obligation (PSO) flights within outermost regions shall be interpreted as applying to the regions listed in Article 299(2) of the EC Treaty and comprises exclusively PSO flights within one outermost region and flights between two outermost regions.
- 2.7. **Exemption under subparagraph (j) (*de minimis* rule)**
30. All commercial air transport operators must hold an air operator’s certificate (AOC) under Part I of Annex 6 to the Chicago Convention. Operators without such a certificate are not ‘commercial air transport operators’
31. For the application of the *de minimis* rule, the characteristic of being commercial is linked to the operator and not to the flights in question. That means in particular that the flights provided by a commercial operator shall be taken into account for deciding whether that operator falls above or below the exemption thresholds even if those flights are not provided for remuneration.
32. Only flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies shall be taken into account for deciding whether the aircraft operator falls above or below the exemption thresholds of the *de minimis* rule. Flights exempted under subparagraphs (a)-(j) shall not be taken into account for the same purposes.
33. Flights performed by a commercial aircraft operator operating fewer than 243 flights per period for three consecutive four-month periods are exempted. The four-month periods are: January to April; May to August; September to December. The local time of departure of the flight determines in which four-month period that flight shall be

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taken into account for deciding whether the aircraft operator falls above or below the exemption thresholds of the *de minimis* rule.

34. A commercial operator operating 243 flights per period or more is included in the Community scheme for the whole calendar year in which the threshold of 243 flights is reached or exceeded.
35. A commercial operator operating flights with total annual emissions equal or higher than 10 000 tonnes per year is included in the Community scheme for the calendar year in which the threshold of 10 000 tonnes is reached or exceeded.

- (1) OJ L 275, 25.10.2003, p. 32.
- (2) OJ L 8, 13.1.2009, p. 3.
- (3) OJ L 341, 7.12.2006, p. 3.
- (4) PANS-ATM, Doc 4444.
- (5) OJ L 229, 31.8.2007, p. 1.
- (6) OJ L 293, 31.10.2008, p. 3.