Chairman Malta Resources Authority	Minister for Resources and Rural Affairs	~~Prime~~ Minister for Tourism, Culture and Environment

L.N. of 2012~~0~~

ENVIRONMENT AND DEVELOPMENT PLANNING ~~PROTECTION~~ ACT

(CAP. ~~43~~504)

MALTA RESOURCES AUTHORITY ACT

(CAP. 423)

European Community Greenhouse Gas Emissions Trading Scheme for Aviation (Amendment) Regulations, ~~2010~~2012

IN exercise of the powers conferred by article ~~9~~ 61 of the Environment ~~Protection~~ and Development Planning Act and by article 28 of the Malta Resources Authority Act the ~~Prime~~ Minister for Tourism, Culture and Environment and the Minister for Resources and Rural Affairs, after consultation with the Malta Resources Authority and the Malta Environment and Planning Authority, have made the following regulations:

Title, scope and commencement.

1.

(1) The title of these regulations is the European Community Greenhouse Gas Emissions Trading Scheme for Aviation Regulations, 2010.

(2) These regulations provide for the implementation in Malta of ~~a~~ the European Community scheme for greenhouse gas emissions allowance trading ~~within the Community~~ for ~~aircraft operators~~ the aviation activities listed in Schedule 1. These regulations also transpose Directive 2008/101/EC amending Directive 2003/87/EC ~~so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community~~, and Directive 2009/29/EC amending Directive 2003/87/EC in so far as it relates to aircraft operators.

(3) These regulations shall come into force on ~~the xxxx of 2010~~[…], ~~with the exception of regulations 5, 8, 12, 13 and 14 which shall come into force on such date as the Minister responsible for the environment and the Minister responsible for resources may establish by notice in the Gazette.~~

Interpretation.

2.

For the purposes of these regulations and unless the context otherwise requires, the following definitions shall apply:

"account holder" means a natural or legal person that holds an account in the Union registry;

"~~the~~ Authority" means the Malta Resources Authority established by article 3 of the Malta Resources Authority Act;

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"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;

"aircraft operator" means the person who operates an aircraft at the time it performs an aviation activity listed in Schedule 1 or, where that person is not known or is not identified by the owner of the aircraft, the owner of the aircraft;

"air service" means a flight or a series of flights carrying passengers, cargo and, or, mail for remuneration and, or, hire as defined in Article 2(4) of Regulation (EC) No. 1008/2008;

OJ:L:2008:293/3

"allowance" means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of these regulations and shall be transferable in accordance with the provisions of these regulations;

~~"Annex I Party" means a country listed in Annex I to the United Nations Framework Convention on Climate Change (UNFCCC) that has ratified the Kyoto Protocol to the UNFCCC as specified in Article 1(7) of the Kyoto Protocol;~~

"auctioneer" means the Debt Management Office within the Treasury Department appointed by the Government to auction allowances on its behalf;

"authorised representatives" means the representatives nominated in respect of an account to initiate transactions and other processes on behalf of the account holder;

"base year" means, for the purposes of paragraph (b) of regulation 3 hereof, in relation to an aircraft operator which started operating in the Community after the 1st January 2006, the first calendar year of operation, and in all other cases, the calendar year starting on 1st January 2006;

"cancellation" means the ~~cancellation of allowances and other units which:~~

~~(a)are surrendered by such aircraft operator in pursuance of regulation 12 of these regulations;~~

~~(b)are cancelled at the end of the trading period in pursuance of regulation 8 of these regulations; or~~

~~(c)shall be cancelled at the voluntary request of the aircraft operator holding allowances in pursuance of regulation 8 hereof~~ definitive disposal of an allowance by its holder;

"certified emission reduction" or "CER" means a unit issued pursuant to Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;

"change" means, in respect of monitoring of tonne-kilometre data and annual emissions, a permanent change in an approved monitoring and reporting plan, in full or in part, and which requires the approval of the Authority before it shall become valid;

"Chapter II allowance" means an allowance allocated and issued in respect of aviation activities listed in Annex I to Directive 2003/87/EC, in accordance with Chapter II of Directive 2003/87/EC;

"Chapter III allowance" means an allowance allocated and issued in

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respect of activities listed in Annex I to Directive 2003/87/EC other than aviation activities, in accordance with Chapter III of Directive 2003/87/EC;

"commercial air transport operator" means an operator that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail ~~against economic consideration~~;

"~~the~~ Commission" means the European Commission;

"~~the~~ Community" means the European Community as established by the Treaty establishing the European Community;

~~"Community registry" means the registry established and maintained in accordance with Article 19 of Directive 2003/87/EC as amended by Directive 2009/29/EC for the execution of processes pertaining to the maintenance of holding accounts and the allocation, surrender and cancellation of allowances;~~

"confidential information" means any means any non-public information deemed to be sensitive by the operator and, or any privileged information falling within the scope of regulation 16 of these regulations, shared only for promoting and elaborating certain purposes. It shall include *inter alia:*

(a) trade secrets;

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(c) information other than trade secrets or information under paragraph (b) concerning a person, organisation or undertaking in respect of their business, professional, commercial or financial affairs;

"deviation" means, in respect of monitoring of tonne-kilometre data and annual emissions, the use of a monitoring approach that is different, in full or in part, from the approved monitoring and reporting plan, which use is of a temporary nature;

OJ:L:2003:275/32

"Directive 2003/87/EC" means 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, as amended;

OJ:L:2009:8/3

"Directive 2008/101/EC" means Directive 2008/1010/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;

OJ:L:2009:140/63

"Directive 2009/29/EC" means Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community;

"emissions" means the release of greenhouse gases into the atmosphere from an aircraft performing an aviation activity listed in Schedule 1 to these regulations, as specified in respect of that activity;

"emissions reduction unit" or "ERU" means a unit issued pursuant to Article 6 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;

"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;

"greenhouse gases" means the gases listed in Schedule 2 to these regulations;

"Joint Implementation project activity" or "JI project activity" means a project activity undertaken in accordance with Article 12 of the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol

"Kyoto Protocol" means the Kyoto Protocol to the UNFCCC;

"Least Developed Countries" means those countries included in the list of Least Developed Countries as defined by the Committee for Development Policy and endorsed by the Economic and Social Council of the United Nations;

"Member State" means a state which is a member of the European Union and . ~~W~~where applicable, ~~this~~ shall also include Iceland, Liechtenstein and Norway;

"Minister" means the Minister responsible for climate change policy, unless stated otherwise;

S.L. 419.07.

"National Accreditation Board (Malta)" means the National Accreditation Board (Malta) established by the National

Accreditation Board (Malta) (Establishment) Regulations, 2007;

"national registry administrator" means the entity, designated in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC, being responsible for the management, on behalf of the Government, of aircraft operator holding accounts under the jurisdiction of the Government in the Union registry;

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"operating licence" means a licence granted under Article 7 of the Civil Aviation Act to an air transport undertaking for the provision of air service as stated in the operating licence;

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"other accounting units" means units other than allowances, and including CERs and ERUs, which may be used by aircraft operators for the purpose of meeting obligations under these regulations in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC;

"person" means any natural or legal person;

~~"project activity" means a project activity approved by one or more Annex I Parties to the UNFCCC in accordance with Article 6 or Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;~~

"the public" means one or more persons and associations, organisations or groups of persons;

OJ:L:2008:218/30.

"Regulation (EC) No 765/2008" means Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market

surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93;

OJ:L:2008:293/3.

"Regulation (EC) No 1008/2008" means 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);

OJ:L:2009:219/1.

"Regulation (EC) No 748/2009" means Commission Regulation (EC) No 748/2009 of 5 August 2009 on the list of aircraft operators which performed an aviation activity listed in Annex I to Directive 2003/87/EC on or after 1 January 2006 specifying the administering Member State for each aircraft operator;

"surrender" means the ~~surrender by an aircraft operator of allowances and other units each year, to account for emissions as reported in pursuance of regulation 10 of these regulations in respect of the previous calendar year~~accounting of an allowance by an aircraft operator against verified emissions;

~~"trading period" means the period beginning from 1st January 2012 up to 31st December, 2012, the eight year period beginning 1st January, 2013 and the subsequent eight-year period thereafter;~~

~~"transfer of allowances" means any transfer of allowances allocated by the Authority to aircraft operators performing aviation activities falling within the scope of these regulations;~~

~~"the Treaty" means the Treaty establishing the European Community;~~

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"Union" and "European Union" shall have the same meaning of "the European Union" as in the European Union Act;

"Union registry" means the registry established and maintained in accordance with Article 19 of Directive 2003/87/EC as amended by Directive 2009/29/EC for the execution of processes pertaining to the maintenance of holding accounts and the allocation, surrender and cancellation of allowances;

"UNFCCC" means the United Nations Framework Convention on Climate Change;

"verifier" means a ~~competent, independent, accredited verification body or person with responsibility for performing and reporting on the verification process in respect of aviation activities listed in Schedule 1 to these regulations and in accordance with Directive 2003/87/EC, these regulations and any other requirements made by the Authority~~legal person or another legal entity carrying out verification activities pursuant to these regulations and accredited by a national accreditation body pursuant to Regulation (EC) No 765/2008 and relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC, or natural person otherwise authorised, without prejudice to Article 5(2) of Regulation (EC) 765/2008, at the time a verification report is issued;.

~~3. These regulations shall apply to aircraft operators performing aviation activities resulting in emissions of greenhouse gases specified in respect of those activities as listed in Schedule 1 to these regulations, and:~~

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~~(a)who have a valid operating licence granted by Malta in accordance with the provisions of Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community; or~~

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~~(b)for whom Malta being the Member State with the greatest estimated attributed aviation emissions from aviation activities as listed in Schedule 1 to these regulations performed in the base year by those aircraft operators, has been designated as the administering Member State either in the Commission list published in pursuance of Article 18a(3) of Directive 2003/87/EC as amended by Directive 2008/101/EC, or any other measure taken by the Commission or by the Authority pursuant to Directive 2003/87/EC as amended by Directive 2008/101/EC.~~

~~(a)~~

Applicability.

3.

These regulations shall apply to aircraft operators performing aviation activities resulting in emissions of greenhouse gases specified in respect of those activities, as listed in Schedule 1 to these regulations, and:

(a) who have a valid operating licence granted by Malta in accordance with the provisions of Regulation (EC) No 1008/2008; or

(b) for whom Malta being the Member State with the greatest estimated attributed aviation emissions from aviation activities as listed in Schedule 1 to these regulations performed in the base year by those aircraft operators, has been designated as the administering Member State either in the Regulation (EC) No 748/2009, or by means of any measure taken by the Commission or by the Authority pursuant to Directive 2003/87/EC ~~as amended by Directive 2008/101/EC.~~

Allocation of free allowances to aircraft operators.

(Article 3e of Directive 2003/87/EC)

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4.

(1) For the period from 1st January, 2012 to 31st December, 2012, for the eight-year period beginning 1st January, 2013 ~~up to a date determined by the Authority in accordance with Malta's international obligations~~, and for each subsequent period thereafter, an aircraft operator may apply for an allocation of allowances that are to be allocated free of charge.

(2) An application made by an aircraft operator pursuant to sub-regulation (1) of this regulation may be made by submitting to the Authority verified tonne-kilometre data for the aviation activities listed in Schedule 1 to these regulations performed by that aircraft operator for the monitoring year. For the purposes of this regulation:

(a) the monitoring year for the period from 1st January, 2012 to 31st December, 2012 shall be 2010;

(b) the monitoring year for the period beginning 1st January, 2013 shall be 2010; and

(c) the monitoring year for subsequent periods shall be the calendar year ending 24 months before the start of the period to which the application relates.

(3) An application made in terms of sub-regulation (1) of this regulation shall be submitted to the Authority:

(a) in relation to the period from 1st January 2012 to 31st December, 2012, by the 31st March, 2011;

(b) in relation to the period beginning 1st January, 2013, by

31st March, 2011;

(c) in relation to subsequent periods, by at least 21 months before the start of the period to which the application relates:

Provided that an application submitted in respect of the period commencing 1st January 2020 and subsequent periods shall be accompanied by the fee prescribed in respect of applications for free allocations in Schedule 5.

(4) The Authority shall submit to the Commission any application received pursuant to sub-regulation (1) of this regulation, if it is satisfied that the application is in accordance with the provisions of ~~these~~ this regulation~~s~~ and that the aircraft operator who submitted the application has complied with regulations 6 and 7 of these regulations.

(5) The Authority shall submit to the Commission any application pursuant to sub-regulation (4) of this regulation:

(a) in relation to the period from 1st January 2012 to the 31st December, 2012, by 30th June, 2011;

(b) in relation to the period beginning 1st January, 2013, by 30th June, 2011;

(c) in relation to subsequent periods, by at least 18 months before the start of the period to which the application relates.

(6) Pursuant to a decision adopted by the Commission pursuant to Directive 2003/87/EC setting out the benchmark for a period to be used to allocate allowances free of charge to aircraft operators for the

period to which such a decision relates, the Authority shall, within three months of such a decision, calculate and publish:

(a) the total allocation of allowances for the period to each aircraft operator whose application it has submitted to the Commission in accordance with sub-regulation (4) of this regulation, calculated by multiplying the tonne-kilometre data included in the application by the benchmark set out in the Commission decision; and

(b) the allocation of allowances to each aircraft operator for each year, which shall be determined by dividing its total allocation of allowances for the period calculated under paragraph (a) by the number of years in the period for which that aircraft operator is performing an aviation activity listed in Schedule 1 to these regulations.

Allocation of allowances from special reserve to aircraft operators.

(Article 3f of Directive 2003/87/EC)

5.

(1) For the period beginning 1st January, 2013 or a subsequent period, an aircraft operator may apply for a free allocation from the special reserve set aside pursuant to Article 3(f) of Directive 2003/87/EC as amended by Directive 2008/101/EC. An application for a free allocation from the special reserve may be made by an aircraft operator:

(a) who starts performing an aviation activity falling within Schedule 1 to these regulations after the monitoring year for which tonne-kilometre data had to be submitted in respect of the period beginning 1st January, 2013 or a subsequent period; or

(b) whose tonne-kilometre data increases by an average of more than 18% annually between the monitoring year for which tonne-

kilometre data was submitted under regulation 4 of these regulations in respect of the period beginning 1st January, 2013 or a subsequent period and the second calendar year of that period, and whose activity under paragraph (a) or additional activity under paragraph (b), is not, in whole or in part, a continuation of an aviation activity previously performed by another aircraft operator.

(2) An aircraft operator who is eligible under sub-regulation (1) of this regulation may apply for a free allocation of allowances from the special reserve by submitting an application to the Authority, to be accompanied by the fee prescribed in respect of applications for free allocations from the special reserve in Schedule 5, and such an application shall be made by the 30th June of the third year of the period to which the application relates.

(3) An application under sub-regulation (2) of this regulation shall:

(a) include verified tonne-kilometre data for the aviation activities listed in Schedule 1 to these regulations performed by the aircraft operator in the second calendar year of the period to which the application relates;

(b) provide evidence that the criteria for eligibility under sub-regulation (1) of this regulation are fulfilled; and

(c) in the case of an aircraft operator falling within paragraph (b) of sub-regulation (1) of this regulation, state:

(i) the percentage increase in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under regulation 4 of these regulations in

respect of the period beginning 1st January, 2013 or a subsequent period and the second calendar year of that period;

(ii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under regulation 4 of these regulations in respect of the period beginning 1st January, 2013 or a subsequent period and the second calendar year of that period; and

(iii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under regulation 4 of these regulations in respect of the period beginning 1st January, 2013 or a subsequent period and the second calendar year of that period which exceeds the percentage specified in paragraph (b) of sub-regulation (1) of this regulation.

(4) The Authority shall submit to the Commission any application received pursuant to sub-regulation (2) of this regulation, if it is satisfied that the application is in accordance with this regulation and that the aircraft operator who submitted the application has complied with regulations 6 and 7 of these regulations. The Authority shall submit any such application by not later than the 31st December of the third year of the period to which the application relates.

(5) Pursuant to a decision adopted by the Commission setting out the benchmark for a period to be used to allocate allowances free of charge from the special reserve to aircraft operators for the period to which such a decision relates, the Authority shall, within three

months of such a decision, calculate and publish:

(a) the allocation of allowances from the special reserve to each aircraft operator whose application it has submitted to the Commission in accordance with sub-regulation (4) of this regulation; and

(b) the allocation of allowances from the special reserve to each aircraft operator for each year, which shall be determined by dividing the allocation as determined under paragraph (a) by the number of calendar years remaining in the period to which the allocation relates.

(6) The allocation of allowances from the special reserve to each aircraft operator under paragraph (a) of sub-regulation (5) of this regulation shall be calculated by multiplying the benchmark set out in the Commission decision referred to under sub-regulation (5) of this regulation in the case of:

(a) an aircraft operator falling within paragraph (a) of sub-regulation (1) of this regulation whose application was submitted to the Commission pursuant to sub-regulation (4) of this regulation, by the ~~tonne~~ tonne-kilometre data included in the application submitted to the Commission;

(b) an aircraft operator falling within paragraph (b) of sub-regulation (1) of this regulation whose application was submitted to the Commission pursuant to sub-regulation (4) of this regulation, by the absolute growth in tonne-kilometres exceeding the percentage specified in paragraph (b) of sub-regulation (1) of this regulation included in the application submitted to the Commission.

(7) An allocation to an aircraft operator eligible for an allocation of allowances under paragraph (b) of sub-regulation (1) of this regulation shall not exceed one million allowances.

Monitoring and reporting of tonne-kilometre data for aviation activities.

6.

(1) ~~Each~~ For the period from 1st January, 2012 to 31st December, 2012, for the eight-year period beginning 1st January, 2013, and for each subsequent period thereafter, an aircraft operator who intends to submit an application for free allowances pursuant to regulation 4 or 5 shall submit, to the Authority, a monitoring and reporting plan setting out measures to monitor and report tonne-kilometre data from aviation activities listed in Schedule 1 to these regulations ~~for the purpose of an application made under regulations 4 and 5 of these regulations~~. The plan shall be submitted by not later than four months before the start of the ~~first reporting period for the operator~~monitoring year to which the monitoring and reporting plan relates, or by such date as may be determined by the Authority:

Provided that a monitoring and reporting plan submitted under this regulation shall be accompanied by the fee prescribed in respect of submission of monitoring and reporting plans for tonne-kilometre data in Schedule 5.~~.~~

(2) The monitoring and reporting plan shall be in accordance with:

(a) the principles set out in Schedule 3 to these regulations; and

(b) relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and

(c) any other requirements made by the Authority in respect of monitoring and reporting of tonne-kilometre data for aviation activities.

(3) The monitoring and reporting plan submitted by an aircraft operator pursuant to sub-regulation (1) of this regulation shall be approved by the Authority, if it is satisfied that the plan is in accordance with the requirements ~~set out under sub regulation (2)~~ of this regulation. The Authority may request from the aircraft operator any additional information it deems appropriate for the approval of the plan.

(4) An aircraft operator shall notify the Authority of any deviations from ~~or changes in~~ the monitoring and reporting plan that may occur at any time after the approval of the plan:

Provided that the Authority shall be notified of any deviation from the plan:

(a) as early as possible before the deviation occurs, if the deviation is known by the operator or is made known to the operator prior to its occurrence; or,

(b) immediately after the deviation occurs if the occurrence of the deviation is not known to the operator or is not made known to the operator before or at the time of its occurrence.

An aircraft operator shall maintain a documented record, which shall include information in accordance with requirements that may be established by the Authority, of any deviations that occur during a calendar year and shall submit such record to the Authority together with the verified tonne-kilometre data submitted in respect of that

calendar year pursuant to regulation 4 or regulation 5.

(5) An aircraft operator may at any time after the approval of the monitoring and reporting plan submit to the Authority proposed changes that have to be made to the plan, in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC. No proposed change to an approved plan shall be valid without the approval of the Authority.

(6) ~~by the Authority.~~ Where it deems appropriate, the Authority may request the submission of a revised plan.

(7) Without prejudice to sub-regulation (4), an aircraft operator shall monitor tonne-kilometre data in accordance with the monitoring and reporting plan approved by the Authority in accordance with this regulation.

Verification of tonne-kilometre data for aviation activities and acceptance by the Authority of verified tonne-kilometre data.

7.

(1) The tonne-kilometre data submitted by an aircraft operator pursuant to regulations 4 or 5 of these regulations shall be verified by a verifier in accordance with:

(a) the principles set out in Schedule 4 to these regulations; and

(b) relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and,

(c) any other requirements made by the Authority in respect of verification of tonne-kilometre data for aviation activities.

(2) A verification report shall be submitted by the aircraft operator to the Authority with a tonne-kilometre data report submitted for the purposes of an application under regulations 4 or 5 of these regulations.

(3) The Authority may perform any checks it deems necessary to ensure that a tonne-kilometre data report submitted by an aircraft operator is in accordance with regulations 6 and 7 of these regulations.

(4) The Authority shall, on the basis of the information included in the submitted tonne-kilometre report, the verification report submitted in accordance with regulation 7 of these regulations and its own checks, and by not later than 30 days after the date of submission of the report, determine whether it can accept the submitted report. The Authority shall not accept a report of tonne-kilometre data for which a verification report has not been submitted. The Authority shall inform the aircraft operator, in writing or by other documented means, of its decision. Where it deems necessary, the Authority may require the submission of a revised tonne-kilometre report. The revised tonne-kilometre report shall be verified in accordance with sub-regulation (1).

(5) A verifier performing verification of tonne-kilometre data of an aircraft operator shall notify the Authority and the National Accreditation Board (Malta) of the planned time and place of the verification and the identity of the aircraft operator whose tonne-kilometre data are subject to its verification by not later than 30 days prior to the date when the verification is to be performed.

Auctioning of allowances **7a.**

(Article 3d of Dir 2003/87/EC)

(1) The quantity of Chapter II allowances that are not allocated free of charge, as determined for Malta in accordance with Directive 2003/87/EC, shall be auctioned by the auctioneer in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(2) The auctioneer shall act in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

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Issuing of allowances allocated to aircraft operators and validity of allowances.

8.

(1) The Authority shall, by the 28th February, 2012 and by the 28th February of each subsequent year, issue to each aircraft operator the number of allowances allocated to that aircraft operator for that year as determined under paragraph (b) of sub-regulation (6) of regulation 4 hereof or paragraph (b) of sub-regulation (5) of regulation 5 of these regulations. Issuance of allowances shall be carried out in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(2) Each aircraft operator shall be issued allowances in accordance with sub-regulation (1) of this regulation in the aircraft operator's holding account held in the ~~Community~~ Union registry.

(3) Allowances issued in accordance with sub-regulation (1) of this regulation in respect of the period from 1st January, 2012 to 31st December, 2012, the period beginning 1st January, 2013 and subsequent periods shall be valid for emissions during the period for which they are issued.

(4) Four months after the beginning of the period commencing on the 1st January, 2013 and subsequent periods the Authority shall cancel

allowances that are no longer valid for that period and have not been surrendered and cancelled in accordance with regulation 12 of these regulations.

(5) For each period referred to in sub-regulation (4) hereof, the Authority shall issue allowances to aircraft operators for the current period to replace any allowances held by them which are cancelled in accordance with sub-regulation (4) of this regulation.

(6) The Authority shall cancel allowances at any time at the request of the aircraft operator holding them.

Transfer of allowances.

(Article 12)

9.

(1) Allowances issued by the Authority to aircraft operators may be transferred in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.~~able between:~~

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~~(a) persons within Member States;~~

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~~(b) persons, whether within Member States or in third countries, who are aircraft operators for the purposes of and falling within the scope of these regulations, and holding an account in the Community registry;~~

~~(c)~~

~~persons within Member States and persons in third countries listed in Annex B to the Kyoto Protocol, which countries have ratified the Kyoto Protocol and with whom agreements are concluded for the mutual recognition of allowances between the Community scheme and other greenhouse gas emissions trading schemes, without restrictions other than those contained in, or~~

~~L.N. 140 of 2005.~~

~~adopted pursuant to these regulations or the European Community Greenhouse Gas Emissions Trading Scheme Regulations, 2005.~~

~~(2) The transfer of allowances shall be carried out in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.~~

(2~~3~~) Allowances issued by a competent authority of another Member State shall be recognized by the Authority for the purpose of meeting an aircraft operator's obligations under sub-regulation (1) of regulation 12 of these regulations.

Monitoring and reporting of emissions.

10.

(1) Each aircraft operator shall submit to the Authority a monitoring and reporting plan setting out measures to monitor and report emissions of greenhouse gases specified in respect of aviation activities in Schedule 1 to these regulations. A monitoring and reporting plan shall be submitted by an aircraft operator to the Authority at the latest 120 days before the aircraft operator commences aviation activities listed in Schedule 1:

Provided that, where an aircraft operator performs an aviation activity listed in Schedule 1 for the first time that could not be foreseen before 120 days of the activity taking place, a monitoring and reporting plan shall be submitted to the Authority by not later than six weeks after the performance of that activity:

Provided further that, where an aircraft operator for whom Malta is designated as the administering Member State pursuant to regulation 3 after it performs an aviation activity listed in Schedule 1 for the first time, a monitoring and reporting plan

shall be submitted to the Authority without undue delay after Malta is designated as the administering Member State for that aircraft operator or within a timeframe as may be agreed upon between the aircraft operator and the Authority.

~~, in the case of:~~

~~(a) an aircraft operator for whom Malta is identified as the administering Member State before the commencement of the reporting period from 1st January, 2010 to 31st December, 2010, by such date as may be determined by the Authority;~~

~~(b) an aircraft operator that starts performing an aviation activity listed in Schedule 1 to these regulations after the commencement of the reporting period from 1st January, 2010 to 31st December, 2010 and for whom Malta is identified as the administering Member State after the commencement of that reporting period, immediately upon the first performance of such an activity, or by such date as may be determined by the Authority;~~

~~(c) an aircraft operator for whom Malta is identified as the administering Member State after the commencement of a reporting period, by such date as may be determined by the Authority.~~

A monitoring and reporting plan submitted under this regulation for the first time after the coming into force of these regulations shall be accompanied by the fee prescribed in respect of submission of monitoring and reporting plans for annual emissions in Schedule 5.

(2) The monitoring plan shall be in accordance with:

(a) the principles set out in Schedule 3 to these regulations; and

(b) relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and

(c) any other requirements made by the Authority in respect of monitoring and reporting of emissions of greenhouse gases from aviation activities.

(3) The monitoring and reporting plan submitted by an aircraft operator pursuant to sub-regulation (1) of this regulation shall be approved by the Authority, if it is satisfied that the plan is in accordance with the requirements set out under sub-regulation (2) of this regulation. The Authority may request from the aircraft operator any additional information it deems appropriate for the approval of the plan.

(4) An aircraft operator shall notify the Authority of any deviations from ~~or changes in~~ the monitoring and reporting plan that may occur at any time after the approval of the plan by the Authority:

Provided that the Authority shall be notified of any deviation from the plan:

(a) as early as possible before the deviation occurs, if the deviation is known to the operator or is made known to the operator prior to its occurrence; or,

(b) immediately after the deviation occurs if the occurrence of the deviation is not known to the operator or is not made known to the operator before or at the time of its occurrence.

An aircraft operator shall maintain a documented record, which shall

include information in accordance with requirements that may be established by the Authority, of any deviations that occur during a calendar year and shall submit such log to the Authority together with the annual emissions report submitted pursuant to this regulation.

(5) An aircraft operator may at any time after the approval of the monitoring and reporting plan submit to the Authority proposed changes that have to be made to the plan, in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC. No proposed change to an approved plan shall be valid without the approval of the Authority. A proposal for changes to a plan under this sub-regulation shall be accompanied by the fee prescribed in respect of a proposal for changes to a monitoring and reporting plan in Schedule 5

(6) ~~.~~ Where it deems appropriate, the Authority may request the submission of a revised plan.

(7~~5~~) An aircraft operator shall review the monitoring and reporting plan before the start of the period beginning from 1st January, 2013 and each subsequent period and submit a revised monitoring and reporting plan as appropriate.

(8~~6~~) Each aircraft operator shall:

(a) from the monitoring year 2010 in the case of an aircraft operator for whom Malta is identified as the administering Member State before the start of the reporting year 2010; or

(b) from the first reporting year applicable to it in the case of an aircraft operator for whom Malta is identified as the administering Member State after the beginning of the reporting year 2010,

monitor emissions from aircraft which it operates that perform aviation activities listed in Schedule 1 to these regulations, during each calendar year and report emissions for each calendar year in accordance with the approved monitoring and reporting plan. A report on emissions for each calendar year shall be submitted to the Authority by not later than 31st March of the subsequent year.

(9~~7~~) An aircraft operator shall monitor annual emissions in accordance with the monitoring and reporting plan approved by the Authority in accordance with this regulation. The Authority may take any action it deems necessary under these regulations to ensure that an aircraft operator~~s~~ is ~~are~~ monitoring and reporting annual emissions in accordance with the approved monitoring and reporting plan~~s~~.

~~(8) An aircraft operator who:~~

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~~(a) fails to submit a monitoring and reporting plan in accordance with sub-regulation (1) of this regulation in respect of the years 2010 and 2011, shall be liable to the imposition of an administrative fine of not less than one thousand euro (1,000) but not exceeding five thousand euro (5,000);~~

~~(b) fails to monitor annual emissions or fails to submit an annual emissions report in accordance with sub-regulation (6) of this regulation in respect of the years 2010 and 2011, shall be liable to the imposition of an administrative fine of not less than one thousand euro (1,000) but not exceeding five thousand euro (5,000);~~

~~(c) fails to submit a monitoring and reporting plan in accordance with sub-regulation (1) of this regulation in respect of the period~~

~~from 1st January, 2012 to 31st December, 2012, the period beginning 1st January, 2013 or a subsequent period, shall be liable to the imposition of an administrative fine of not less than two thousand and five hundred euro (2,500) but not exceeding ten thousand euro (10,000);~~

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~~(d)fails to monitor annual emissions or fails to submit an annual emissions report in accordance with sub regulation (6) of this regulation in respect of the period from 1st January, 2012 to 31st December, 2012, the period beginning 1st January, 2013 or a subsequent period, shall be liable to the imposition of an administrative fine of not less than five thousand euro (5,000) but not exceeding twenty thousand euro (20,000); and~~

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~~(e)fails to review the monitoring and reporting plan or submit a revised monitoring and reporting plan if appropriate in accordance with sub regulation (5) of this regulation shall be liable to the imposition of an administrative fine of not less than two thousand and five hundred euro (2,500) but not exceeding ten thousand euro (10,000).~~

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Verification of annual emission reports.-

11.

(1) The report submitted by an aircraft operator pursuant to sub-regulation (6) of regulation 10 hereof shall be verified by a verifier in accordance with:

(a) the principles set out in Schedule 4 to these regulations; and

(b) relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and

(c) any other requirements made by the Authority in respect of verification of reports of emissions of greenhouse gases from aviation activities.

(2) A verification report shall be submitted by the aircraft operator to the Authority with each emission report submitted.

(3) An aircraft operator whose report on emissions for a calendar year has not been verified as satisfactory by 31st March of the subsequent year cannot make further transfers of allowances until a report from that aircraft operator has been verified as satisfactory.

(4) A verifier performing verification of an annual emission report of an aircraft operator shall notify the Authority and the National Accreditation Board (Malta) of the planned time and place of the verification and the identity of the aircraft operator whose annual emissions report is subject to its verification by not later than 30 days prior to the date when the verification is to be performed.

(4) ~~Where, in respect of any year, an aircraft operator does not submit a verified emissions report in accordance with this regulation and with sub-regulation (6) of regulation 10 hereof or where it is deemed that the aircraft operator has not submitted an emissions report which is in accordance with the requirements set out in this regulation and regulation 10 hereof, the Authority may, unless there is a written agreement between the Authority and the aircraft operator providing otherwise, determine the emissions for aviation activities performed by the aircraft operator for such year for which the verified report was not submitted using best available data and ensuring that a conservative estimate is made that does not under-estimate emissions. When annual emissions are determined under this sub-~~

~~regulation, the Authority shall consider the requirements set in Schedule 4 to these regulations:~~

~~Provided that the Authority notifies the aircraft operator on the emissions as determined and the methodology used to determine such emissions.~~

Competent authority acceptance of verified annual emissions report and determination of emissions in case of non-reporting or non-verification

11a.

(1) The Authority may perform any checks it deems necessary to ensure that a report submitted by an aircraft operator is in accordance with regulations 10 and 11.

(2) The Authority shall, on the basis of the information included in the submitted report, the verification report submitted in accordance with regulation 11 and its own checks, and by not later than 30 days after the date of submission of the report, determine whether it can accept the submitted report. The Authority shall not accept a report of annual emissions for which a verification report has not been submitted. The Authority shall inform the aircraft operator, in writing or other documented means, of its decision. Where it deems necessary, the Authority may require the submission of a revised annual emissions report. The revised annual emissions report shall be verified in accordance with sub-regulation (1) of regulation 11.

(3) Where, in respect of any year, an aircraft operator does not submit a verified emissions report in accordance with regulations 10 and 11 or where it is deemed that the aircraft operator has not submitted an emissions report which is in accordance with the requirements set out in regulations 10 and 11, the Authority may, unless there is a written agreement between the Authority and the aircraft operator providing otherwise, determine the emissions for aviation activities performed

by the aircraft operator for such year for which the verified report was not submitted. The Authority shall use best available data and ensure that a conservative estimate is made that does not under-estimate emissions. When annual emissions are determined under this sub-regulation, the Authority shall consider the requirements set in Schedules 3 and 4 to these regulations:

Provided that the Authority shall notify the aircraft operator of the emissions as determined and the methodology used to determine such emissions.

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Fines relating to monitoring and reporting of annual emissions

11b.

(1) An aircraft operator who fails to submit a monitoring and reporting plan in accordance with sub-regulation (1) of regulation 10 in respect of the years 2010 and 2011, shall be liable to the imposition of an administrative fine of ~~not less than one thousand euro (1,000) but not exceeding~~ five thousand euro (€5,000).

(2) An aircraft operator who fails to monitor annual emissions or fails to submit an annual emissions report in accordance with sub-regulation (8) of regulation 10 in respect of the years 2010 and 2011, shall be liable to the imposition of an administrative fine of ~~not less than one thousand euro (1,000) but not exceeding~~ five thousand euro (€5,000).

(3) An aircraft operator who fails to submit a monitoring and reporting plan in accordance with sub-regulation (1) of regulation 10 in respect of the period from 1st January, 2012 to 31st December, 2012, the period beginning 1st January, 2013 or a subsequent period, shall be liable to the imposition:

(a) for an aircraft operator whose emissions for the first

calendar year of the period for which the plan relates or for the first year of performing an activity covered by these regulations during the period for which the plan relates are less than ten thousand (10,000) tonnes carbon dioxide equivalents, of an administrative fine of one thousand euro (€1,000) and fifty euro (€50) for each day of non-compliance, from the date of a notice given by the Authority to the operator;

(b) for an aircraft operator whose emissions for the first calendar year of the period for which the plan relates or for the first year of performing an activity covered by these regulations during the period for which the plan relates are equal to or greater than ten thousand (10,000) tonnes carbon dioxide equivalents and equal to or less than fifty thousand (50,000) tonnes carbon dioxide equivalents, of an administrative fine of five thousand euro (€5,000) and one hundred euro (€100) for each day of non-compliance, from the date of a notice given by the Authority to the operator;

(c) for an aircraft operator whose emissions for the first calendar year of the period for which the plan relates or for the first year of performing an activity covered by these regulations during the period for which the plan relates are more than fifty thousand (50,000) tonnes of carbon dioxide equivalents and equal to or less than fifty hundred thousand (500,000) tonnes carbon dioxide equivalents, of an administrative fine of ten thousand euro (€10,000) and three hundred euro (€300) for each day of non-compliance, from the date of a notice given by the Authority to the operator;

(d) for an aircraft operator whose emissions for the first calendar year of the period for which the plan relates or for the

first year of performing an activity covered by these regulations during the period for which the plan relates are more than five hundred thousand (500,000) tonnes of carbon dioxide equivalents, of an administrative fine of fifty thousand euro (€50,000) and six hundred euro (€600) for each day of non-compliance, from the date of a notice given by the Authority to the operator.

(4) An aircraft operator who fails to monitor annual emissions during a year in accordance with sub-regulation (8) of regulation 10 or fails to submit a~~n~~ verified annual emissions report in respect of a year in accordance with regulation 11 in respect of the period from 1st January, 2012 to 31st December, 2012, the period beginning 1st January, 2013 or a subsequent period, shall be liable to the imposition:

(a) for an aircraft operator whose emissions for that year are less than ten thousand (10,000) tonnes carbon dioxide equivalents, of an administrative fine of one thousand euro (€1,000) and fifty euro (€50) for each day of non-compliance, from the date of a notice given by the Authority to the operator;

(b) for an aircraft operator whose emissions for that year are equal to or greater than ten thousand (10,000) tonnes carbon dioxide equivalents and equal to or less than fifty thousand (50,000) tonnes carbon dioxide equivalents, of an administrative fine of five thousand euro (€5,000) and one hundred euro (€100) for each day of non-compliance, from the date of a notice given by the Authority to the operator;

(c) for an aircraft operator whose emissions for that year are more than fifty thousand (50,000) tonnes of carbon dioxide

equivalents and equal to or less than fifty hundred thousand (500,000) tonnes carbon dioxide equivalents, of an administrative fine of ten thousand euro (€10,000) and three hundred euro (€300) for each day of non-compliance, from the date of a notice given by the Authority to the operator;

(d) for an aircraft operator whose emissions for that year are more than five hundred thousand (500,000) tonnes of carbon dioxide equivalents, of an administrative fine of fifty thousand euro (€50,000) and six hundred euro (€600) for each day of non-compliance, from the date of a notice given by the Authority to the operator.

(5) For the purposes of determining the administrative fine under this regulation, where the emissions of the aircraft operator are not known or are not reported or where the Authority is satisfied that there is no reasonable possibility that a verified quantity of emissions will be reported by the aircraft operator, the Authority may determine the emissions from the activities performed by the aircraft operator. The Authority shall use best available data and ensure that a conservative estimate is made that does not underestimate emissions. The aircraft operator shall be liable to the imposition of an administrative fine equal to the amounts established in sub-regulations (3) and (4) in respect of the quantity of emissions estimated in terms of this sub-regulation.

Surrender and cancellation of allowances.

12.

(1) Each aircraft operator shall, as from the year 2013 and by not later than the 30th April of that year and of each subsequent year thereafter, surrender a number of allowances equal to the total emissions during the preceding calendar year from aviation activities listed in Schedule 1 to these regulations as reported in accordance

with regulation 10 of these regulations and verified in accordance with regulation 11 of these regulations. An aircraft operator may surrender Chapter II and Chapter III allowances.

(2) Allowances surrendered in accordance with sub-regulation (1) of this regulation shall be subsequently cancelled.

(3) The Authority shall cancel allowances at any time at the request of an aircraft operator holding those allowances.

(4) Surrender and cancellation of allowances shall be carried out in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(5~~3~~) The Authority shall publish the name of any aircraft operator who is in breach of the requirement to surrender sufficient allowances under sub-regulation (1) of this regulation.

(4~~6~~) Any ~~operator or~~ aircraft operator who does not surrender sufficient allowances by 30th April of each year as required by sub-regulation (1) of this regulation to cover its emissions during the preceding year shall be liable to the imposition of an administrative fine of one hundred euro (€100) for each tonne of carbon dioxide equivalent emitted, for which the aircraft operator has not surrendered allowances. From 1st January 2013, where, for the year in respect of which an aircraft operator does not surrender sufficient allowances to cover emissions during that year in accordance with sub-regulation (1), the annual average Harmonized European Index of Consumer Prices published shows a percentage increase as compared to the Harmonized European Index of Consumer Prices published for the previous year, the administrative fine shall be increased by the same percentage. The administrative fine as revised

pursuant to this sub-regulation shall apply to subsequent years unless further increased in accordance with the Harmonized European Index of Consumer Prices. For the purposes of this sub-regulation, each allowance not surrendered by the aircraft operator for a tonne of carbon dioxide equivalent emitted, shall be considered as a separate contravention.

(~~5~~7) The imposition of an administrative fine as prescribed in sub-regulation (~~4~~6) of this regulation shall not release the aircraft operator from the obligation to surrender an amount of allowances equal to those excess emissions in respect of which the administrative fine is paid when surrendering allowances in relation to the following calendar year.

Use of CERs and ERUs from project activities in the EU emissions trading scheme for the period 1st January 2012 to 31st December 2012.

(Article 11a of Dir 2003/87/EC as amended by Dir 2004/101/EC and Dir 2008/101/EC)

13.

(1) During the period from 1st January, 2012 to 31st December, 2012, aircraft operators may use CERs and ERUs, up to 15% of the number of allowances they require to surrender pursuant to sub-regulation (1) of regulation 12 of these regulations.

~~(2) For the period beginning 1st January, 2013 and subsequent periods, aircraft operators may use CERs and ERUs, up to 15% of the number of allowances they require to surrender pursuant to sub-regulation (1) of regulation 12 of these regulations, or up to a revised percentage as may be published by the Commission.~~

(~~3~~2) The use of CERs or ERUs by aircraft operators pursuant to sub-regulation~~s~~ (1) ~~and (2)~~ of this regulation shall take place through the issue and immediate surrender of one allowance by the Authority ~~-~~in exchange for one CER or ERU held by the aircraft operator in the Community registry. CERs and ERUs used by aircraft operators to meet obligations under regulation 12 hereof in accordance with this

regulation shall be subsequently cancelled.

(43) CERs and ERUs that are issued and may be used in accordance with the UNFCCC and the Kyoto Protocol and subsequent decisions adopted thereunder, may be used by aircraft operators in accordance with sub-regulation~~s~~ (1) ~~and (2)~~ of this regulation:

Provided that CERs and ERUs from land use, land use change and forestry activities and, ~~for the period beginning 1st January, 2012 to 31st December, 2012~~ CERs and ERUs generated from nuclear facilities, may not be so used.

Use of CERs and ERUs from project activities in the EU emissions trading scheme for the period 1st January 2013 to 31st December 2020

(Article 11a of Dir 2003/87/EC as amended by Dir 2009/29/EC)

13a.

(1) To the extent that the levels of CER and ERU use, allowed to an aircraft operator for the period from 1st January 2012 to 31st December 2012 have not been used up, or where an entitlement to use credits is granted under sub-regulation 5, the aircraft operator may request to be issued allowances to him valid from 2013 onwards in exchange for CERs and ERUs issued in respect of emission reductions up to 2012 from project types which were eligible for use in the Union scheme during the period from 1st January 2008 to 31st December 2012. Until 31st March 2015, the competent authority shall make such an exchange on request.

(2) To the extent that the levels of CER and ERU use, allowed to an aircraft operator for the period 1st January 2012 to 31st December 2012 have not been used up, or where an entitlement to use credits is granted under sub-regulation 5, the aircraft operator may exchange CERs and ERUs issued in respect of emission reductions from 2013 onwards from project types that were registered before 2013 and which were eligible for use in the Union scheme during the period 1st January 2008 to 31st December 2012, for allowances valid from 2013

Comment [sv1]: ***NOTE TO CONSULTEES***: The interpretation by Malta of the provisions of Article 11a as amended by Directive 2009/29/EC is subject to clarifications to be provided by the European Commission via implementing provisions that are intended to be presented in due course.

onwards.

(3) To the extent that the levels of CER and ERU use, allowed to an aircraft operator for the period 1st January 2012 to 31st December 2012, have not been used up, or where an entitlement to use credits is granted under sub-regulation 5, the aircraft operator may exchange CERs issued in respect of emission reductions from 2013 onwards from project types started from 2013 onwards in Least Developed Countries and which were eligible for use in the Community scheme during the period from 1st January 2008 to 31st December 2012, for allowances valid from 2013 onwards. This sub-regulation shall apply until such countries have ratified a relevant agreement with the Union or until 2020, whichever is the earlier.

(4) To the extent that the levels of CER and ERU use, allowed to an aircraft operator for the period 1st January 2012 to 31st December 2012 have not been used up, or where an entitlement to use credits is granted under sub-regulation 5, the aircraft operator may use credits from projects or other emission reducing activities in accordance with any agreements that may be concluded by the Union with third countries, up to levels of use as specified in such agreements, to comply with obligations under these regulations.

(5) For the period 1st January 2013 to 31st December 2020 an aircraft operator shall be entitled to use an additional quantity of CERs and ERUs up to an amount corresponding to a percentage of its verified emissions during the period from 1st January 2013 to 31st December 2020, as may be established by the Commission pursuant to Directive 2003/87/EC.

(6) For the purposes of this regulation, aircraft operators shall not use CERs or ERUs for which restrictions on use apply in accordance with

relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

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Issue of CERs or ERUs from project activities in the aviation sector.

14.

No CERs or ERUs from project activities as defined under regulation 2 of these regulations shall be issued for reductions or limitations of greenhouse gas emissions with respect to aviation activities falling within the scope of these regulations.

Resources Appeals Board.

15.

The Resources Appeals Board established in Article 33 of the Malta Resources Authority Act shall have jurisdiction to hear and determine appeals from decisions of the Authority made under these regulations.

Access to information, disclosure of information and professional secrecy ~~Access to information.~~ (Articles 15a and 17 of Directive 2003/87/EC)

~~L.N. 116 of 2005~~S.I. 504.65.

Cap. 440

Cap. 377

16.

Decisions related to the allocation of allowances to aircraft operators and ~~any information submitted in respect of the~~ reports of emissions submitted in accordance with regulation 10 shall be made available to the public ~~may be subject to public access~~ in accordance with the Freedom of Access to Information on the Environment Regulations, 2005:

Provided that any access to personal data shall be made in accordance with the Data Protection Act and that information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the applicable laws, regulations, administrative provisions and, or, the provisions of the Professional Secrecy Act: ~~.~~

Provided also that without prejudice to this regulation and to the obligation which may be imposed on the Authority to disclose any information, the Authority shall not disclose any confidential

information or any parts thereof or any other information provided in connection with the report which should be treated as commercially confidential:

Provided further that any information which shall be treated as commercially confidential shall be made known at all times to the Authority.

Registry

(Article 19 of Directive 2003/87/EC)

17.

(1) Allowances issued to aircraft operators in terms of these regulations shall be held in the Union registry.

(2) The Authority shall act as national registry administrator in respect of aircraft operator holding accounts. The national registry administrator shall perform its functions in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC. The national registry administrator shall ensure that there is no conflict of interest between itself and holders of aircraft operator holding accounts.

(3) A request to open an aircraft operator holding account shall be made by applying to the national registry administrator.

(4) An application for the opening of an account shall contain all information required by the national registry administrator and shall be in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC and any requirements and terms and conditions made by the national registry administrator.

(5) The national registry administrator shall open and administer an aircraft operator holding account for an aircraft operator in accordance

with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC and any terms and conditions it may make. The national registry administrator shall not open an account unless it is satisfied that the request is in accordance with the requirements of this regulation.

(6) An account holder of an aircraft operator holding account and its nominated authorised representatives shall act in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC and any terms and conditions made by the national registry administrator.

(7) Where an aircraft operator fails to submit an annual verified emissions report in accordance with regulations 10 and 11, the national registry administrator shall not allow the transfer of allowances or any other accounting units out of the aircraft operator holding account of that aircraft operator until the aircraft operator complies with the requirement to submit an annual emissions report:

Provided that the national registry administrator shall not prevent the surrender of allowances in accordance with regulation 12 or the cancellation of allowances in accordance with regulation 12, or the issuance of allowances in exchange for CERs or ERUs in accordance with regulation 13a.

(8) Where an aircraft operator fails to surrender allowances in accordance with regulation 12, the national registry administrator shall not allow the transfer of allowances or any other accounting unit out of the aircraft operator holding account of that aircraft operator until the aircraft operator complies with the requirement to surrender allowances:

Provided that the national registry administrator shall not prevent the surrender of allowances in accordance with regulation 12 or the cancellation of allowances in accordance with regulation 12, or the issuance of allowances in exchange for CERs or ERUs in accordance with regulation 13a.

(9) Where an aircraft operator fails to comply with any requirements of decisions and regulations adopted by the Commission in respect of registries or terms and conditions made by the national registry administrator in respect of registries, the national registry administrator may prevent the transfer of allowances or other accounting units into and out of the aircraft operator holding account held by that aircraft operator until non-compliance is rectified:

Provided that the national registry administrator shall not prevent surrender of allowances in accordance with regulation 12 or the cancellation of allowances in accordance with regulation 12.

(10) The opening of an aircraft operator holding account shall be subject to the payment, by the aircraft operator for whom the account is to be opened, of the fee prescribed in respect of the opening of an aircraft operator holding account in Schedule 5. An aircraft operator holding account shall not be opened by the national registry administrator unless and until such fee is paid.

(11) An annual maintenance fee as prescribed in Schedule 5 shall be paid by the account holder of an aircraft operator holding account by not later than 31st March of each year, starting from the first year subsequent to the year when the account is opened pursuant to sub-regulation (5). No transfer of allowances or other accounting units into or out of an aircraft operator holding account may take place unless and until such fee is paid.

Operating Ban.

(Article 16(5) of Directive 2003/87/EC)

18.

(1) Where an aircraft operator fails to comply with the requirements of these regulations and where enforcement measures fail to ensure compliance, the Authority may, after consultation with the regulatory authority responsible for aviation, ask the Minister to request the Commission to decide on the imposition of an operating ban on that aircraft operator. Such a request shall be made in accordance, where applicable, with decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(2) The Minister, before requesting the Commission to decide on the imposition of an operating ban on an aircraft operator shall serve a notice to the aircraft operator which shall include:

(a) evidence that the aircraft operator has not complied with its obligations under these regulations and any decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and

(b) information on enforcement action which has been taken in respect of the aircraft operator; and

(c) a draft of the request that the Minister intends to submit to the European Commission under sub-regulation (1).

The aircraft operator shall be given an opportunity to make submissions to the Minister, within a period of time indicated in the notice, which shall be of not more than 20 days, before the Minister submits a request for an operating ban to the Commission.

(3) The request made by the Minister to the Commission pursuant to

sub-regulation (1) shall include:

(a) evidence that the aircraft operator has not complied with its obligations under these regulations and any decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and

(b) information on enforcement action which has been taken in respect of the aircraft operator; and

(c) a justification for the imposition of an operating ban at Union level; and

(d) a recommendation for the scope of the operating ban and any conditions that should be applied.

Submission of applications, monitoring and reporting plans and reports

19.

The Authority may require that submissions of applications, monitoring and reporting plans and reports under these regulations are made in the form and manner and by means of the medium as specified by it.

Revenue accruing from the auctioning of allowances

20.

The Authority shall, annually, receive from the auctioneer 10% of revenue accruing from the auctioning of allowances in accordance with regulation 7a. The Authority shall use money received under this sub-regulation, *inter alia*, to cover administrative costs relating to the management of the Community emissions trading scheme.

Schedule 1

Regulations 1(2), 3, 4(2), 4(6) (b), 5(1) (a), 5(3) (a), 6(1), 10(1), 10(1) (b), 10(8), and 12(1).

Categories of Activities to which these Regulations Apply

Activities	Greenhouse gases
Aviation Flights which depart from or arrive in an aerodrome situated in the territory of a Member State: This activity shall not include: (a) 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, of a country other than a Member State, where this is substantiated by an appropriate status indicator in the flight plan; (b) military flights performed by military aircraft and customs and police flights; (c) flights related to search and rescue, fire fighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate authority; (d) any flights performed exclusively under visual flight rules as defined in Annex 2 to the Chicago Convention; (e) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made; (f) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers and/or cargo or for the positioning or ferrying of the	Carbon dioxide

aircraft;

(g) flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;

(h) flights performed by aircraft with a certified maximum take-off mass of less than 5 700kg;

(i) flights performed in the framework of public service obligations imposed in accordance with Regulation (EEC) No 2408/92 on routes within the outermost regions, as specified in Article 299(2) of the Treaty establishing the European Community, or on routes where the capacity offered does not exceed 30 000 seats per year;

(j) flights which, but for this exclusion, would fall within the definition of aviation activity as listed here, performed by a commercial air transport operator operating either:

- fewer than 243 flights per period for three consecutive four-month periods; or

- flights with total annual emissions lower than 10,000 tonnes per year.

Flights performed exclusively for the transport, on official missions, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government, of a Member State may not be excluded under this paragraph.

Schedule 2

Regulation 2

Greenhouse gases

Carbon dioxide (CO_2)

Methane (CH_4)

Nitrous Oxide (N_2O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF_6)

Schedule 3

Regulations 6(2) (a), 10(2) (a) and 11a(3).

Principles for Monitoring and Reporting of Emissions and Tonne-kilometre Data from Aviation Activities

Monitoring of carbon dioxide emissions from aviation activities

Emissions shall be monitored by calculation. Emissions shall be calculated using the formula:

Fuel consumption × emission factor

Fuel consumption shall include fuel consumed by the auxiliary power unit. Actual fuel consumption for each flight shall be used wherever possible and shall be calculated using the formula:

Amount of fuel contained in aircraft tanks once fuel uplift for the flight is complete – amount of fuel contained in aircraft tanks once fuel uplift for subsequent flight is complete together with fuel uplift for that subsequent flight.

If actual fuel consumption data are not available, a standardised tiered method shall be used to estimate fuel consumption data based on best available information.

Default IPCC emission factors, taken from the 2006 IPCC Inventory Guidelines or subsequent updates of these Guidelines, shall be used unless activity-specific emission factors identified by independent accredited laboratories using accepted analytical methods are more accurate. The emission factor for biomass shall be zero.

A separate calculation shall be made for each flight and for each fuel.

Reporting of emissions

Each aircraft operator shall include the following information in its report under sub-regulation (6) of regulation 10 of these regulations:

A. Data identifying the aircraft operator, including:

(i) name of the aircraft operator,

(ii) its administering Member State,

(iii) its address, including postcode and country and, where different, its contact address in the administering Member State,

(iv) the aircraft registration numbers and types of aircraft used in the period covered by the report to perform the aviation activities listed in Schedule 1,

(v) the number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Schedule 1 were performed,

(vi) address, telephone, fax and e-mail details for a contact person, and

(vii) name of the aircraft owner.

B. For each type of fuel for which emissions are calculated:

(i) fuel consumption,

(ii) emission factor,

(iii) total aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1, for which the operator in question is considered to be the aircraft operator,

(iv) aggregated emissions from:

— all flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1, for which the operator in question is considered to be the aircraft operator and which departed from an aerodrome situated in the territory of a Member State and arrived at an aerodrome situated in the territory of the same Member State,

— all other flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1, for which the operator in question is considered to be the aircraft operator

(v) aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Schedule 1, for which the operator in question is considered to be the aircraft operator and which:

— departed from each Member State, and

— arrived in each Member State from a third country,

(vi) uncertainty.

Monitoring of tonne-kilometre data

For the purpose of applying for an allocation of allowances in accordance with regulation 4 or regulation 5 of these regulations, the amount of aviation activity shall be calculated in tonne-kilometres using the following formula:

tonne-kilometres = distance × payload

where:

'distance' means the great circle distance between the aerodrome of departure and the aerodrome of arrival plus an additional fixed factor of 95 km; and

'payload' means the total mass of freight, mail and passengers carried.

For the purposes of calculating the payload:

(a) the number of passengers shall be the number of persons on-board excluding crew members;

(b) an aircraft operator may choose to apply either the actual or standard mass for passengers and checked baggage contained in its mass and balance documentation for the relevant flights or a default value of 100 kg for each passenger and his checked baggage.

Reporting of tonne-kilometre data

Each aircraft operator shall include the following information in its application under regulation 4 or regulation 5 of these regulations:

A. Data identifying the aircraft operator, including:
   (i) name of the aircraft operator;
   (ii) its administering Member State;
   (iii) its address, including postcode and country and, where different, its contact address in the administering Member State;
   (iv) the aircraft registration numbers and types of aircraft used during the year covered by the application to perform the aviation activities listed in Schedule 1;
   (v) the number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Schedule 1 were performed;

(vi) address, telephone, fax and e-mail details for a contact person, and

(vii) name of the aircraft owner.

B. Tonne-kilometre data:

(i) number of flights by aerodrome pair;

(ii) number of passenger-kilometres by aerodrome pair;

(iii) number of tonne-kilometres by aerodrome pair;

(iv) chosen method for calculation of mass for passengers and checked baggage;

(v) total number of tonne-kilometres for all flights performed during the year to which the report relates falling within the aviation activities listed in Schedule 1.

Schedule 4

Regulations 7(1) (a), 11(1) (a) and 11a(3).

Criteria for Verification

General Principles

1. Emissions from flights falling within aviation activities listed in Schedule 1 shall be subject to verification.

2. The verification process shall include consideration of the report pursuant to sub-regulation (6) of regulation 10 of these regulations and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, in particular:

(a) the reported activity data and related measurements and calculations;

(b) the choice and the employment of emission factors;

(c) the calculations leading to the determination of the overall emissions; and

(d) if measurement is used, the appropriateness of the choice and the employment of measuring methods.

3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the aircraft operator to show that:

(a) the reported data is free of inconsistencies;

(b) the collection of the data has been carried out in accordance with the applicable scientific standards; and

(c) the relevant records of the aircraft used to perform the aviation activities covered by the report are complete and consistent.

4. The verifier shall be given access to all sites and information in relation to the subject of the verification.

5. The verifier shall take into account whether the aircraft operator is registered under the European Community eco-management and audit scheme (EMAS).

Methodology

Strategic analysis

6. The verification shall be based on a strategic analysis of all the aviation activities covered by the report carried out by the aircraft operator. This requires the verifier to have an overview of all the activities and their significance for emissions.

Process analysis

7. The verification of the information submitted shall, where appropriate, be carried out at the sites used by the aircraft operator to perform the aviation activities covered by the report. The verifier shall use spot-checks to determine the reliability of the reported data and information.

Risk analysis

8. The verifier shall submit all the aircraft for which the aircraft operator is responsible to an evaluation with regard to the reliability of the data of each source contributing to the overall emissions of the aircraft operator.

9. On the basis of this analysis the verifier shall explicitly identify those sources with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the choice of the emission factors and the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those sources with a high risk of error and the abovementioned aspects of the monitoring procedure.

10. The verifier shall take into consideration any effective risk control methods applied by the aircraft operator with a view to minimising the degree of uncertainty.

Report

11. The verifier shall prepare a report on the validation process stating whether the report pursuant to sub-regulation (6) of regulation 10 of these regulations is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to sub-regulation (6) of regulation 10 of these regulations is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially misstated.

Minimum competency requirements for the verifier

12. The verifier shall be independent of the aircraft operator, carry out his activities in a sound and objective professional manner, and understand:

(a) the provisions of these regulations, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1) of Directive 2003/87/EC as amended by these regulations and any requirements made by the Authority;

(b) the legislative, regulatory, and administrative requirements relevant to the activities being verified; and

(c) the generation of all information related to each aircraft for which the aircraft operator is responsible, in particular, relating to the collection, measurement, calculation and reporting of data.

Additional provisions for the verification of aviation emission reports

13. The verifier shall in particular ascertain that:

(a) all flights falling within an aviation activity listed in Schedule 1 have been taken into account. In this task the verifier shall be assisted by timetable data and other data on the aircraft operator's traffic including data from Eurocontrol requested by that aircraft operator;

(b) there is overall consistency between aggregated fuel consumption data and data on fuel purchased or otherwise supplied to the aircraft performing the aviation activity.

Additional provisions for the verification of tonne-kilometre data submitted for the purposes of regulations 4 and 5 of these regulations

14. The general principles and methodology for verifying emissions reports as set out in this Schedule shall, where applicable, also apply correspondingly to the verification of aviation tonne-kilometre data submitted under sub-regulation (2) of regulation 4 of these regulations and sub-regulation (2) of regulation 5 of these regulations.

15. The verifier shall in particular ascertain that only flights actually performed and falling within an aviation activity listed in Schedule 1 for which the aircraft operator is responsible have been taken into account in that operator's application under regulation 4 and regulation 5 hereof. In this task the verifier shall be assisted by data on the aircraft operator's traffic including data from Eurocontrol requested by that operator. In addition, the verifier shall ascertain that the payload reported by the aircraft operator corresponds to records on payloads kept by that operator for safety purposes.

Schedule 5

Regulations 4(3), 5(2), 6(1), 10(1), 17(7) and 17(8)

Fees applicable.

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[1. The fee that shall be payable to the Authority in respect of the submission of an application for the allocation of free allowances pursuant to sub-regulation (3) of regulation 4 shall be determined using the formula:

Fee in euro = (value of tonne-kilometres reported by the aircraft operator X 0.0006422 X (0.5/100)),

and shall not be less than one hundred euro (€100) and not more than two thousand euro (€2000).]

[2. The fee that shall be payable to the Authority in respect of the submission of an application for the allocation of free allowances from the special reserve pursuant to sub-regulation (2) of regulation 5 shall be determined using the formula:

Fee in euro = (quantity of tonne-kilometres reported by the aircraft operator X 0.0006422 X (0.5/100)),

and shall not be less than one hundred euro (€100) and not more than two thousand euro (€2000).]

3. A fee of six hundred euro (€600) shall be payable to the Authority in respect of the submission of a monitoring and reporting plan for tonne-kilometre data pursuant to sub-regulation (1) of regulation 6.

4. The following fees shall be payable to the Authority in respect of the submission of a monitoring and reporting plan for annual emissions pursuant to sub-regulation (1) of regulation 10:

(a) for an aircraft operator declaring in the plan an estimation of annual emissions lower than twenty five thousand tonnes (25,000) of carbon dioxide equivalents and declaring the use of a simplified procedure for the calculation of annual emissions, two hundred euro (€200);

(b) for an aircraft operator declaring in the plan an estimation of annual emissions lower than twenty five thousand tonnes (25,000) of carbon dioxide equivalents and declaring the use of actual fuel consumption data for the calculation of annual emissions, four hundred euro (€400);

(c) for an aircraft operator declaring in the plan an estimation of annual emissions equal to or greater than twenty five thousand tonnes (25,000) of carbon dioxide equivalents, [six hundred euro (€600)].

6. A fee of two hundred euro (€200) shall be payable to the national registry administrator, pursuant to sub-regulation (10) of regulation 17, in respect of an opening of an aircraft operator holding account in the Union registry.

7. The annual maintenance fee that shall be payable each year to the national registry administrator in respect of an aircraft operator holding account pursuant to sub-regulation (11) of regulation 17 shall be:

(a) for an account holder of an aircraft operator holding account opened in respect of an aircraft operator for which emissions during the previous calendar year were less than one thousand (1,000) tonnes of carbon dioxide equivalents, fifty euro (€50);

(b) for an account holder of an aircraft operator holding account opened in respect of an aircraft operator for which emissions during the previous calendar year were equal to or more than one thousand (1,000) tonnes of carbon dioxide equivalents and less than ten thousand (10,000) tonnes of carbon dioxide equivalents, one hundred and fifty euro (€150);

(c) for an account holder of an aircraft operator holding account opened in respect of an aircraft operator for which emissions during the previous calendar year were equal to or more than ten thousand (10,000) tonnes of carbon dioxide equivalents and less than twenty five thousand (25,000) tonnes of carbon dioxide equivalents, three hundred euro (€300);

(d) for an account holder of an aircraft operator holding account opened in respect of an aircraft operator for which emissions during the previous calendar year were equal to or more than twenty five thousand (25,000) tonnes of carbon dioxide equivalents and less than five hundred thousand (500,000) tonnes of carbon dioxide equivalents, seven hundred euro (€700);

(e) for an account holder of an aircraft operator holding account opened in respect of an aircraft operator for which emissions during the previous calendar year were equal to or more than five hundred thousand (500,000) tonnes of carbon dioxide equivalents, one thousand, five hundred euro (€1,500).