



Special Edition: Aviation Nr.2

Who is really affected by the EU-ETS? A Recommended Approach

In order to secure the free allocation of Emission Rights for Airline Operators for the 9 years from 2012 until 2020 it is crucial to submit Monitoring Plans to the Competent Authorities until Aug. 31st of this year. Even a small operator with CO₂-Emissions of 15,000 tonnes yearly could lose a free allocation with a value of appr. 300,000€.

One can argue, that the EU Commission has published [the list of affected aviation operators](#) already, but it turned out that this list is not binding.

It is in each operators own responsibility to identify whether it is affected by the European Emissions Trading Scheme or not.

This GALLEHR+PARTNER CO₂ Newsletter provides therefore a suitable approach in assessing this question efficiently.

The EU Operator List

Based on Eurocontrol analysis, the EU Commission published a preliminary list of the aircraft operators affected by the EU-ETS, to the best of their knowledge. In general all aircraft operators with flights from and to the EU area are affected by the European Emissions Trading Scheme from 2012 on.

But, if an operator is not on the list, it does not

mean that an operator is not affected by the ETS. Here care is required. The EU-Commission has published an FAQ¹ list where exactly this is defined:

Is the list binding? First FAQ1

“Aircraft operators performing an aviation activity listed in Annex I to the Directive are covered by the EU ETS whether or not they are on the list of operators.”

The consequence of this is, that every aircraft operator has to decide for themselves whether they are affected or not, but how?

Recommended Approach

All aircraft operators should do the following:

1. Obtain complete operator's flight list (use ICAO designator or registration marking).
2. From this list select only the flights arriving at or departing from an EU aerodrome.
3. Reduce this selection by applying the “Flight Exemptions” a) to i) of EU-Directive Annex I
→ “ETS-Flights”

If the operator has the status “**non-commercial**” (see chapter “Commercial / Non-Commercial Operators”), **the operator is affected** and has to monitor the selected “ETS-Flights”.

¹ [EU Aviation FAQ](#)

4. If the operator has the status “**commercial**”, it should analyse if it is affected by the ETS (see below discussion on exemption “j” of Annex I EU-Directive).

To point 1: Operator’s Flight List

Before generating the relevant operator’s flight list, the operator definition should be clear:

“Aircraft operator means the person who operates an aircraft at the time it performs an aviation activity listed in Annex I or, where that person is not known or is not identified by the owner of the aircraft, the owner of the aircraft”². The Guidance³ gives further explanations: “From an EU ETS point of view, aircraft operators are defined by the call sign used for Air Traffic Control (ATC). In general, this is the unique ICAO designator in box 7 of the flight plan... When the unique ICAO designator is not available, the aircraft operator will be identified by the registration marking of the aircraft, which should then be used as a call sign for ATC purposes in the flight plan.”

To complete the flight list correctly it is important to know which flights have to be assigned to which operator. Therefore, the interpretation within the Guidance³ is again very helpful, as it states:

“If you have a unique ICAO designator, you have to monitor all flights under this designator. Where an ICAO designator is not available you are identified as an aircraft operator by the registration markings of your aircraft. In that case you must monitor all flights under these registration markings.”

Also the complexity of code sharing and leasing is discussed in this document:

“Whether code sharing, dry leasing or wet leasing, long or short term leasing is applied by an aircraft operator has no bearing on identifying the aircraft operator. The unique ICAO designator (or registration marking) entered in box 7 of the flight plan determines whether you are the aircraft operator for a particular flight and thus that you have to monitor this particular flight. This means that leased-in aircraft and ad hoc or sub charter flights could still be assigned to you if your ICAO

designator (registration marking) is entered in box 7 of the flight plan.”

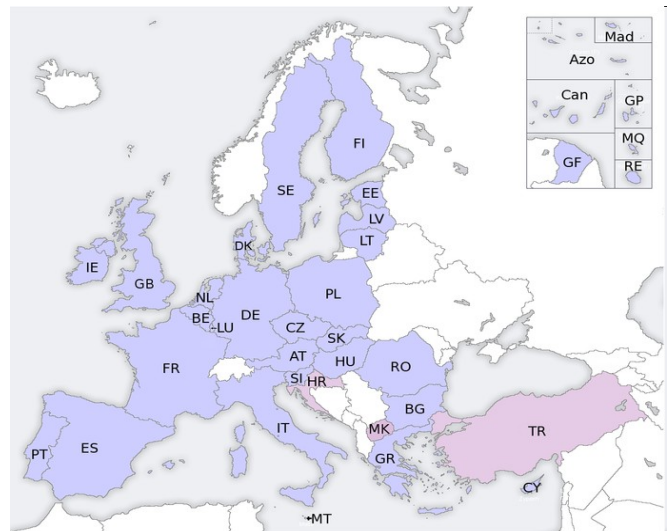
If the operator provides capacity for third parties (e.g. perform ACMI operations, use code sharing or leased in or leased out aircraft), then the operator has to identify which ICAO designator (or registration marking) is used in the flight plans and consider only those flights with the operator’s ICAO designator (or registration marking).

Operators flying within the EU territory can obtain their flight list from the Eurocontrol website.

To point 2: EU Territory

Only flights arriving at or departing from an EU aerodrome should be selected for the further analysis. The following areas are affected by the EU-ETS:

- + The territory of the EU member states (blue)



- + The EU overseas (outermost) areas³, which are Guadeloupe; French Guiana; Martinique; Réunion; Azores; Madeira; Canary Islands; Aland Islands; Akrotiri and Dhekelia. Any flights to or from these areas would fall under the scope of the EU ETS scheme provided that the flight is not exempted based on Annex I of the EU ETS Directive.

On the other hand, aerodromes situated in Andorra (XALV), Channel Islands (EGJJ, EGJB & EGJA), Faeroe Islands (EKVG), Liechtenstein (LSXB), San Marino, Vatican City and Monaco LNMK are not affected⁴.

² [EU Directive 2008/101/EC](#)

³ [EU ETS Aviation Guidance 1.0 280509 from the CA of The Netherlands and England & Wales](#)

⁴ [Eurocontrol Process Description](#)

To point 3: Flight Exemptions²

The following flights will be exempted in the ETS (see also Appendix 1 of this document!):

| Ex.2 | Kind of flight | CRCO Code5 | Field 18 of flight plan5 |
|------|-----------------------------------------------------------------------------------------------------------|--------------|--------------------------------------------------------------------|
| a) | State flight on official mission by non-EU officials | S | |
| b) | Military flights Customs and police flights | M, X, P | |
| c) | Search and rescue flights Fire fighting flights Humanitarian flights Emergency medical service | R or H or | STS/SAR STS/FFR STS/HUM STS/MEDEV AC or STS/HOSP |
| d) | Visual flights | | |
| e) | Arrival = departure airport (no intermediate landing) | | |
| f) | Training flights | T or | RMK/Trainin g flight |
| g) | Scientific research, testing | N or | STS/FLTCK |
| h) | Flights with certified maximum take-off mass less than 5.7 t | | |
| i) | Public service obligation flights within outermost regions or routes with less than 30 000 seats per year | | |

“Appendix 2 to the Procedures for Air Navigation Services ... 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.”⁵

Hints:

- + In theory it would be to the operator's advantage to have in 2010 few exemptions, and from 2012 on as many exemptions as possible.
- + Read also Appendix 1 with more detailed descriptions of the exemptions.

The application of the exemptions a) to i) would result in the remaining “**ETS-Flights**”.

The following distinction is now necessary:

Commercial / Non-Commercial Operators

“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.”²

“All commercial air transport operators must hold an Air Operator's Certificate (AOC) under Part I of Annex 6 to the Chicago Convention. If you do not have such a certificate you are not a commercial air transport operator for the purpose of the scheme.”³

NON-commercial operators, e.g. business and private operators, would be **obliged to participate** in the EU-ETS for the remaining “ETS-Flights” regardless of how many flights they operate or the amount of CO₂ they emit!

To point 4: “De Minimis” - Exemption j)

The current legislation has defined thresholds for excluding smaller **commercial** operators:

Exemption j)

“This activity shall not include...flights... 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.”²

This exemption is to safeguard the economic position of small companies as it is known from the stationary sector. It is negatively worded which makes it quite difficult to understand. For a better understanding section 18 of the Directive can be consulted: “To further avoid disproportionate administrative burdens, commercial air transport operators operating, for three consecutive four-month periods, fewer than 243 flights per period should be exempt from the Community scheme.”

⁵ [EU: detailed interpretation of the aviation activities listed in Annex I to Directive 2003/87/EC \(DRAFT\)](#)

➔ **Commercial operators are not affected from the EU-ETS** if one of the following two criteria is true:

1. they operate less than 243 flights “ETS-Flights” **in each** period January – April, May – August and September – December. The local departure time of flights determines in which four month-period flights have to be taken into account. The word “consecutive” means that the calendar year is not important for the assessment. For example the three consecutive periods before June 19th 2009 are May – August 2008, September – December 2008 and January – April 2009. State flights on official missions for EU officials may not be excluded. **OR**
2. they operate remaining “ETS-Flights” with less than 10,000 t CO₂ per year, e.g. in 2008.

Nevertheless, commercial operators currently exempted from the ETS are not on the safe side until 2020, because exceeding BOTH thresholds means that the operator will be affected subsequently.

Operators should be careful with the following points 33 and 34 in the available DRAFT EU-interpretation⁵ and in the Guidance³.

GALLEHR+PARTNER is convinced that the wording of these points is not in-line with the Directive as these two paragraphs should be combined with an “**AND**”. We submitted this comment to the Competent Authority for England & Wales, the Environmental Agency (EA). The EA confirmed our opinion and stated, that the wording of the above mentioned paragraphs 33 and 34 “*is not in accordance with the EU-Directive.*” The EA then complemented “*In order for a commercial operator to be exempt from the scheme they have to be below at least one of the thresholds*”.

Summary & Recommendations

- + Do not rely on your CA or the EU list of operators. Make your own assessment as to whether you are included in the system or not.
- + If you do not submit the monitoring plan until August 31st this year you may not get any free allocation until 2020.
- + Only **62 days** left! From July 1st the deadline to submit both monitoring plans is within only 62 days!
- + In the end the national EU Member State’s legislation of your CA is binding and the EU-directive only indirectly.
- + Submit CO₂ and t-km monitoring plans which give you the maximum of flexibility in optimising your monitoring and reporting.

If you need a competent and target orientated navigation through all advantages of the coming carbon obligations, especially in administrative-, management- and strategic questions, GALLEHR+PARTNER is ready to support you.

GALLEHR+PARTNER collected extensive experience in the Emissions Trading and Risk Management market since 2003 and have helped small, medium and large operators to gain significant additional profits or avoid financial losses.

We are ready to support you!

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Appendix 1: Further Description of Exemptions^{2,5}

| | |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a) | NON-EU state flights: “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. ...Flights for the positioning or ferrying of the aircraft are not covered by this exemption.” |
| b) | Military, customs and police flights: “Military flights mean flights directly related to the conduct of military activities. Military flights performed by civil registered aircraft are not covered by this exemption. Similarly, civil flights performed by military aircraft are not exempted under this paragraph. Customs and police flights performed by both civil registered and military aircraft are exempted.” |
| c) | Search and rescue, fire-fighting, humanitarian, emergency medical flights: “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.” |
| | Search and rescue flights: “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.” |
| | Fire-fighting flights: “Fire-fighting flights mean flights performed exclusively to provide aerial fire fighting services, which means the use of aircraft and other aerial resources to combat wildfires.” |
| | Humanitarian flights: „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.” |
| | Emergency medical service flights: “Emergency medical service flights mean flights with the exclusive purpose 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.” |
| d) | Visual flights: “Any flights performed exclusively under visual flight rules (VFR) as defined in Annex 2 to the Chicago Convention” |
| e) | Circular flights: “Flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made.” |
| f) | Training flights: 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 aircraft.” |
| g) | Scientific research, checking, testing or certifying Flights for the positioning or ferrying of the aircraft are not to be excluded. |
| | Scientific research flights: “This category exempts flights with the only purpose 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.” |
| | Test flights: “Flights performed exclusively 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 5 700 kg |
| i) | Public service obligation flights: “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.” Also flights on routes where the capacity offered does not exceed 30,000 seats per year are exempted. |