

## Frequently Asked Questions

### Free allocation from the Special Reserve (Art 3f ETS Directive<sup>1</sup>)

#### 1. Has Regulation (EU) No 421/2014<sup>2</sup> had an impact on the amount of allowances in the Special Reserve?

No, the amount of allowances in the Special Reserve (SR) remains unchanged, being 3% of the cap as defined in Article 3c of the ETS Directive.

#### 2. How does Regulation (EU) 421/2014 affect the SR?

Regulation (EU) 421/2014 affects the SR in two respects: (1) the number of allowances *to be issued* to aircraft operators (AOs) from the SR shall be reduced in proportion to the reduction of their surrender obligations provided for in the Regulation in respect of 2013-16; and (2) consequently, allowances not issued to aircraft operators shall be cancelled (*see Article 28a (2) of the Directive as amended by Regulation (EU) 421/2014*).

#### 3. How is the allocation from the SR calculated?

The allocation is initially calculated with full-scope tonne-kilometre (TKM) data; full-scope data are used to determine the benchmark and the allocation. Thereafter, the number of allowances issued will be adjusted to the scope of Regulation (EU) 421/2014, namely the intra-EEA scope for 2013-16. As regards 2017-2020, adjustments may also be eventually needed (*see Q 14*).

#### 4. Which aircraft operators can apply for allocation from the SR?

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<sup>1</sup> 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 (OJ L 275, 25.10.2003, p. 32) as amended by Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community.

<sup>2</sup> Regulation (EU) No 421/2014 of the European Parliament and the Council of 16 April 2014 amending the Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions

Aircraft operators (AOs) who start performing aviation activities falling within Annex I of the ETS Directive after the end of 2010 and before the end of 2014 (new operators) or whose full-scope TKM data increase by an average of more than 18% annually between 2010 and 2014 can apply for allocation from the SR (Article 3f (1) of the Directive). To be entitled to apply for allocation from the SR, an AO must perform flights covered by the Annex I to the ETS Directive in 2014.

In both cases, the new or the additional activity cannot be in whole or in part a continuation of an aviation activity previously performed by another operator (see *Q&A number 6*).

Flights between aerodromes in Croatia and flights between Croatia and countries outside the EEA (additional aviation activities) should not be taken into account when calculating the aircraft operator's increase of tonne-kilometre activity data. To apply for allocation from the special reserve for the additional aviation activities<sup>3</sup> as set by the Commission Implementing Decision 2014/389/EU<sup>4</sup>, an aircraft operator will need to submit a separate application.

## **5. How is the 18% annual increase to be calculated?**

The increase is defined in Article 3f (1) of the ETS Directive as an increase "by an *average* of more than 18% *annually*". This means:

- a) The *average* increase between 2010 and 2014 has to be considered. It is not that every year the AO must increase its activity in terms of TKM by more than 18%. This criterion can be met by AOs whose TKMs grow by an amount below 18% one year, but above this threshold in other years, so that the average, taking into account the whole 2010-2014 period, shows an increase above 18%.
- b) The increase shall be *annual*. This means that, on average, the AO has to increase its TKMs by more than 18% year by year. To meet this criterion TKM should show a growth between 2010 and 2014 that reflects, on average, an annual increase of more than 18% compared with the previous year. This means that 2014 TKM data shall be greater than  $2010TKM \times 1.18^4$ . In other words, 2014 TKM data shall be more than 93.88% above 2010 TKM data, although the growth rate may vary among years.

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<sup>3</sup> All flights between two aerodromes situated in the Croatian territory, and all flights between an aerodrome situated in the Croatian territory and an aerodrome situated in a country outside the EEA area

<sup>4</sup> 2014/389/EU: Commission Implementing Decision of 23 June 2014 on additional historical aviation emissions and additional aviation allowances to take into consideration the accession of Croatia to the European Union

## **6. When should an activity be considered a continuation of an aviation activity previously performed by another aircraft operator?**

It should be kept in mind that the Directive always refers to aviation activities covered by the ETS. Its purpose is to avoid double allocation to a single activity. Thus, the activity or additional activity of an aircraft operator shall be considered a continuation of an aviation activity previously performed by another aircraft operator when that other aircraft operator maintains the entitlement to receive free allocation for the same aviation activities (flights on the same routes for which an initial free allocation had been made pursuant Article 3e). In these cases, the eligibility criterion would not be met.

The criterion should be seen as met if an aircraft operator submits a consolidated TKM report of all aircraft operators of the same company group showing on a route basis that the growth is not just a reattribution of activities from one subsidiary company to another.

To assess when this criterion is met or not, competent authorities in the administering Member States may need information to establish whether:

- There has been an acquisition by share sale of another aircraft operator or an acquisition of business assets from another operator;
- There has been an internal corporate reorganisation or a creation of a subsidiary company that involves the transfer of flight activity within the corporate group;
- There has been a restructuring as a consequence of an insolvency, scheme of arrangement or bankruptcy resulting in the creation of a new operator performing flight activity previously undertaken by another operator or the transfer of significant flight activity to an existing operator;
- There has been some outsourcing or leasing arrangements whereby existing flight activity of an operator in receipt of free allowances is transferred to a third party who becomes the effective operator of the flights.

## **7. What happens if an AO moves from one MS to another (including changing its AOC)? Would it be considered as eligible to apply for allocation from the SR as a new entrant?**

If the AO keeps the entitlement for the initial allocation, it would not be eligible for allocation from the SR. If, on the contrary, it does not keep the allocation, it would be entitled to apply.

If however, for any reason, another AO maintains an entitlement for the initial allocation of the one that changes its administering state, this last one would not be eligible to apply to the SR.

## **8. How should mergers and splits be treated?**

In case an aircraft operator splits into two aircraft operators or two aircraft operators merge into one aircraft operator the new AO or AOs in principle would not be eligible to apply for allocation from the SR as new entrants, as they would be performing an activity already allocated allowances for. However, in the case no allowances were allocated for the aviation activities of the aircraft operator(s) before the merger or split, the new operator(s) would be eligible to apply for allocation from the SR as a new entrant.

An AO, after a merger or split, who is performing aviation activities already allocated allowances for, may meet the criterion for annual increase of activity above 18%.

In the case of mergers and splits changes to the national aviation allocation tables shall be made in accordance with Article 55 of Commission regulation (EU) No 389/2013. The sum of the allocations would be left unchanged.

## **9. When and to whom should AOs operators submit applications for allocation from the SR?**

AOs wishing to apply for allocation from the SR shall submit their applications to the competent authority of their administering Member States before 30 June 2015 (Article 3f (2)).

## **10. What must the content of the applications be?**

According to Article 3f (3) of the ETS Directive, applications shall include verified full scope 2014 TKM data and evidence that the criteria for eligibility are fulfilled.

Existing AOs who apply based on an increase of activity shall also specify:

- the percentage increase in TKM between 2010 and 2014;
- the absolute growth in TKM in the same period;
- the absolute growth in TKM in that period above the annual 18% (on average) threshold.

Member States' competent authorities may require additional information or documentation.

**11. If 2014 data are incomplete, or if the AO has only performed aviation activities during some months in 2014, could an estimation or extrapolation of data be used?**

No. Only verified tonne-kilometre data from aviation activities actually performed and fully documented by the aircraft operator shall be included. It is not possible to use any estimation. So, in cases where the aviation activities have not been performed during the whole year it is not possible to include extrapolations for periods when the aircraft operator was not carrying out those activities.

**12. How will the allocation be calculated?**

Allocation from the SR will follow the adoption of the corresponding *benchmark* by the Commission.

Once all the applications have been sent by competent authorities to the Commission, the Commission shall proceed to adopt the benchmark, calculated by dividing the number of allowances in the SR by the sum of eligible TKM data (Article 3f (5)). Eligible TKM data will include all TKM data of new AOs and TKM data above the annual 18% increase threshold of those AOs that have increased their activity.

In application of Article 3f (6) of the ETS Directive, if the resulting benchmark is higher than the one used for the initial free allocation for AOs, then, this initial benchmark will be used. The benchmark used for the initial allocation was 0,00513749531377628 allowances per tonne-kilometre, equivalent to 0,000642186914222035 allowances per tonne-kilometre per year.

The benchmark should be adopted before 30 June 2016.

The allocation to each AO will then be calculated by the Member States by multiplying the benchmark by the eligible TKM data. Eligible TKM data will include all TKM data for new AOs and TKM data above the annual 18% increase threshold for those AOs that have increased their activity (Article 3f (7)).

The allocation to an AO whose TKM data show an increase above the 18% threshold shall not exceed 1 000 000 allowances (Article 3f (2)).

**13. Adjustments, annual allocation and issuance**

According to Article 3f (7) of the Directive, the annual amount of allowances is obtained by dividing the total allocation by the number of full calendar years remaining in the period (so, by four, from 2017 to 2020).

The allocation, calculated as explained in Q&A 12, refers to the whole 2013-2020 period, but it will be issued on yearly basis between 2017 and 2020.

Adjustments shall be made to the amount to be issued according to the scope of ETS in different years. For the period 2013-2016, the scope and the adjustments to be made are regulated by Article 28a of the Directive. For the years 2017 to 2020 any eventual adjustments will depend on the future legislation, if any (see Q 14).

Thus, as Article 28a obliges to adjust the allocation corresponding to half of the 2013-2020 period, half of the allocation initially obtained should be adjusted to the intra-EEA scope. Adjustments to the other half will depend on the new legislation to be eventually adopted after 2016 (see Q 14).

Once adjustments have been done, the total resulting amount (adding the two parts) will be divided by four to determine the annual amount to be issued during the remaining years of the period, starting in 2017.

Member States will publish the allocation to each AO within 3 months from the date on which the Commission adopts a decision on the benchmark (Article 3f (7)). This means that the publication should occur not later than 30 September 2016.

**14. What would happen with the allocation and issuance of allowances from the SR if, following the 2016 ICAO Assembly, a legislative proposal is presented by the Commission to implement an international agreement on a global market-based measure from 2020, as foreseen in Article 28a (8) of the ETS Directive?**

Any such legislation proposed by the Commission would also address the allocation from the SR.

**Timeline**

2014: Monitoring of TKM by AOs

30/6/2015: Applications to be sent to CAs

31/12/2015: CAs to send applications to EC

30/6/2016: Adoption of the benchmark by EC

30/9/2016: Allocation and publication by CAs

2017: First issuance