



MALTA RESOURCES AUTHORITY

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

**- Explanatory memorandum for draft legal notice –
- 23rd July 2012 -**

INTRODUCTION

The Malta Resources Authority (MRA) is preparing amendments to Legal Notice 445 of 2010, European Community Greenhouse Gas Emissions Trading Scheme for Aviation Regulations, 2010. To this effect, MRA is holding a public consultation on the proposed amendments.

BACKGROUND

Directive 2003/87/EC¹ establishes a greenhouse gas emissions allowance trading scheme within the European Community. This scheme was expanded to include aviation activities (all flights departing from or arriving at an aerodrome situated in the territory of a Member State of the European Union²) through Directive 2008/101/EC³, with the full binding participation of aircraft operators starting as from 1st January 2012, albeit that a number of preparatory functions (e.g. submission and approval of monitoring plans, application for free allowances in respect of the first two trading periods) had already commenced in earlier years.

The EU Emissions Trading Scheme (EU ETS) Directive was further amended by Directive 2009/29/EC⁴ which focussed principally on updating elements relating to stationary installations; it however also includes changes to the scheme that are relevant for the aviation sector.

Directive 2003/87/EC was originally transposed by Legal Notice 140 of 2005 (LN 140/2005). Subsequently, Legal Notice 445 of 2010 (LN 445/2010) was published in order to transpose the provisions relating to the aviation sector.

¹ 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.

² Except for certain exemptions as defined in Annex I to the Directive.

³ 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.

⁴ 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.

SCOPE

Amendments to LN 445/2010 are being proposed for three main reasons:

- (1) to update the legal notice with provisions introduced by Directive 2009/29/EC (e.g. provisions relating to use of international credits);
- (2) to include any provisions originally inscribed in Directive 2008/101/EC but which have yet to be transposed through LN 445/2010 (e.g. provisions relating to operating bans);
- (3) to update or introduce provisions which are left up to the respective Member States to provide for (e.g. updating of penalties for non-compliances other than for the non-surrender of allowances and introduction of fees).

PROPOSAL

The main changes and additions that are being proposed mainly reflect the following elements:

- Updating of definitions and the introduction of additional terms in the list of definitions to reflect new elements of the EU ETS Directive (Regulation 2).
- Introduction of fees in respect of certain functions (Schedule 5):
 - application for free allowances (submission of a tonne-kilometre report);
 - application for free allowances from the special reserve (submission of a tonne-kilometre report);
 - submission of a monitoring and reporting plan for tonne-kilometre reporting;
 - submission of a monitoring and reporting plan for annual emissions reporting;
 - application for the opening of an aircraft operator holding account in the Union registry;
 - annual maintenance fee for an aircraft operator holding account.

In order to keep such fees at a minimum, the fee structure proposed is further complemented by the accrual to the competent authority of part of the revenue from the auctioning of Chapter II allowances.

- Clarity provided regarding notification of deviations from and changes to approved monitoring and reporting plans (Regulations 6, 10).
- Introduction of specific reference to acceptance of tonne-kilometre and annual emissions reports by the Authority and related conditions (Regulations 7, 11a respectively). In the case of annual emissions reports, provisions allowing the competent authority to determine annual emissions where no reports are submitted are retained.
- Legal basis provided for the auctioning of aviation allowances attributed to Malta in accordance with the EU ETS Directive (Regulation 7a).
- New approach to penalties relating to non-submission of annual emissions monitoring and reporting plans and annual reports, as applicable from 1st January 2012. There is a shift from the existing range of penalties to definite fees differentiated according to the extent of the non-compliance (in terms of reportable emissions) (Regulation 11b).
- Provisions on use of international credits updated to reflect revisions introduced by Directive 2009/29/EC (Regulation 13a).

- Introduction of provisions relating to the registry system (i.e. the system used for accounting of emissions) in so far as it relates to aircraft operator holding accounts (Regulation 17).
- Inclusion of provisions on requests to the Commission on operating bans against aircraft operators that fail to comply with the provisions of these regulations (Regulation 18).

The proposed amendments also take into consideration a number of implementing provisions adopted by the Commission pursuant to Directive 2003/87/EC, including, *inter alia*:

- Regulations (EC) No 2216/2004, (EC) No 920/2010 as amended and Regulation (EU) No 1193/2011 (Registries Regulations);
- Regulation (EU) No 1031/2010 (Auctioning Regulation) as amended;
- Regulation (EU) No 600/2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC (Verification and Accreditation Regulation);
- Regulation (EU) No 601/2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC (Monitoring and Reporting Regulation).

A number of editing amendments are also being proposed in order to tidy up the text and ensure clarity where it was deemed necessary.

INSTRUCTIONS TO STAKEHOLDERS

Attached with this explanatory memo you may find a copy of the 3rd order draft of the proposed regulations. This is being presented in the form of track changes to the original text of LN 445/2010. Added text is underlined. Deleted text is marked in strikethrough.

To facilitate referencing with Directive 2003/87/EC, a consolidated version of the amended EU ETS Directive and the original text of Legal Notice 445 of 2010 are also being provided. Side notes are included to cross-refer regulations in the Maltese legislation with relevant articles in the directive.

The public consultation period runs from **23rd July 2012 until 20th August 2012**.

Written comments should be submitted using the comments (excel) template provided for the purpose. Submissions should be made to:

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In case of any clarifications needed you may also contact Mr Saviour Vassallo on:

+356 22955115.