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Ordinance on the Acquisition of Data on Tonne-Kilometres performed by Aircraft

Report on the results of the consultation

Reference/dossier no. L271-0595

1 Introduction

1.1 Background information

As of the beginning of 2012, the emissions from all flights that take off from or land at airports in the entire European Union / European Economic Area have to be recorded in the European emissions trading scheme.

In accordance with the applicable CO₂ Act, the Federal Council is obliged to take steps aimed at limiting the level of CO₂ emissions from international air transport. Switzerland and the EU are currently conducting negotiations concerning the possibility of linking their emissions trading schemes. In addition to emissions trading for stationary industry facilities, the negotiations also cover measures to reduce CO₂ emissions from civil aviation operations.

In order to implement emissions trading in the civil aviation sector, a specific data set is required: the number of emission rights free of charge that can be allocated per aircraft operator is calculated on the basis of tonne-kilometre data collected in advance. To oblige airlines to collect the required data, the Federal Department of the Environment, Transport, Energy and Communications (DETEC) prepared a draft entitled "Ordinance on the Acquisition of Data on Tonne-Kilometres performed by Aircraft" and submitted it for consultation.

1.2 Consultation procedure

The consultation procedure was held from 11 May until 30 June 2012. The country's main air transport associations, aircraft operators and airports were invited to participate, together with the Swiss air traffic control provider, Skyguide. Other associations and interest groups were notified about the draft Ordinance in the press release concerning the simultaneously opened consultation on the CO₂ Ordinance, and via the website of the Swiss Federal Office for the Environment (FOEN).

2 Evaluation

2.1 Overview of submitted statements

The table below provides an overview of the participants in the consultation procedure:

	Invited	Submitted statements	Additional statements
Aviation associations	10	6	3
Aircraft operators	30	1	2
Airports	8	0	
Skyguide (ATC)	1	0	
Other			4
Total	49	7	9

A list of the participants in the consultation procedure is provided in Chapter 4.

2.2 Interpretation of the draft Ordinance

The majority of the participants in the consultation procedure interpret the draft of the “Ordinance on the Acquisition of Data on Tonne-Kilometres performed by Aircraft” as a preparatory groundbreaking step in the direction of the integration of Switzerland’s aviation sector into an emissions trading scheme that is linked to that of the EU. Thus in their statements of position, many of the participants focus on the overlying questions of how global CO₂ emissions from international air transport should be regulated and to what extent the integration of international civil aviation into a regional emissions trading scheme would be expedient and lawful. Most of the participants are in favour of measures within the framework of a globally applicable solution and currently reject the integration of Switzerland’s aviation sector into an emissions trading scheme that is linked to that of the EU. There is a widely held view that, as a consequence of the proposed preparatory data collection and intended integration of civil aviation into the emissions trading scheme, Switzerland could be exposing itself to the risk of legal disputes and, in the same way as the EU, would have to anticipate political resistance and retaliatory measures by third countries.

The most important concerns voiced by participants in the consultation procedure are summarised below.

2.2.1 Rejection of the draft Ordinance

Twelve participants petition the Federal Council to refrain from putting the ordinance into effect. (A4A, AEA, Aerosuisse, ASDA, BAR, economiesuisse, chambers of commerce of both Basel cantons, SHA, Swiss, SGV, United Airlines, VSF)

Three participants state that the collection of tonne-kilometre data should be postponed until at least the next general assembly of the ICAO (autumn 2013). (AACO, Air Malta, IATA)

One participant criticises the fact that, with respect to the draft Ordinance no estimate was made of the regulatory consequences and costs, and furthermore that the explanatory report does not critically examine the intended link with the EU emissions trading scheme. (SGV)

2.2.2 Criticism of the timing of the draft Ordinance and the consultation procedure

Five participants criticise the fact that, in view of the strong resistance against the EU emissions trading scheme, the draft Ordinance and the consultation procedure have come at a very bad time. (Aerosuisse, chambers of commerce of both Basel cantons, IATA, SHA, VSF)

Five participants criticise the fact that the data should be collected before the conclusion of negotiations with the EU on the linking of the respective emissions trading schemes.
(Aerosuisse, chambers of commerce of both Basel cantons, SHA, Swiss, VSF)

2.2.3 Criticism regarding compatibility with the Chicago Convention

Ten participants express the view that the collection of data for international flights is equivalent to an extra-territorial application of Swiss law, and is thus in contradiction to the fundamental principle of airspace sovereignty as per Article 1 of the Chicago Convention.

(A4A, AACO, Aerosuisse, ASDA, BAR, chambers of commerce of both Basel cantons, SHA, Swiss, United Airlines, VSF)

One participant notes that the legality of data collection for international flights will be disputed on several fronts.

(IATA)

Three participants point out that the ruling of the European Court of Justice on the legality of the EU emissions trading scheme does not address all legal issues in a conclusive manner.

(A4A, IATA, United Airlines)

Two participants add that the question of legality of data collection may need to be re-examined by Swiss courts.

(A4A, United Airlines)

2.2.4 Possibility of retaliatory measures by third countries

Twelve participants refer to the strong political resistance from third countries against the EU emissions trading scheme and a corresponding ICAO Council declaration in November 2011.

(A4A, AACO, AEA, Aerosuisse, ASDA, BAR, chambers of commerce of both Basel cantons, IATA, SHA, Swiss, United Airlines, VSF)

Eleven participants warn that data collection is perceived by third countries as a preparatory step towards the integration of civil aviation into the emissions trading scheme. They refer to the already resolved as well as threatened retaliatory measures by third countries in response to the EU emissions trading scheme, and point out that Switzerland, too, could become a target of such measures.

(AACO, AEA, Aerosuisse, ASDA, BAR, economiesuisse, chambers of commerce of both Basel cantons, IATA, SHA, Swiss, VSF)

Six participants point out that Switzerland is particularly at risk of lawsuits and political retaliatory measures since it would be the first third country that formally recognises the EU emissions trading scheme, and it also possesses less political clout than the EU.

(Aerosuisse, ASDA, chambers of commerce of both Basel cantons, SHA, Swiss, VSF)

Eight participants warn that the threatened retaliatory measures by third countries could result in disadvantages for Swiss and European airlines.

(AEA, Aerosuisse, ASDA, economiesuisse, chambers of commerce of both Basel cantons, SHA, Swiss, VSF)

One participant points out that any imposed retaliatory measures could have a particularly negative impact on Switzerland's tourism and export sectors.

(economiesuisse)

2.2.5 Statements in favour of global measures at the ICAO level

Twelve participants express the view that it will only be possible to deal with the problem of CO₂ emissions from air transport by introducing global measures.

(A4A, AACO, AEA, Aerosuisse, ASDA, BAR, chambers of commerce of both Basel cantons, IATA, SHA, Swiss, United Airlines, VSF)

Seven participants refer to Switzerland's role as mediator within the ICAO and warn that, if the Ordinance were to enter into force, it would hardly be possible for Switzerland to continue playing this role.

(AEA, Aerosuisse, ASDA, chambers of commerce of both Basel cantons, SHA, Swiss, VSF)

Two participants are of the view that the planned data collection will make it more difficult to find a solution at the global level.

(AEA, IATA)

2.2.6 Criticism regarding insufficient legal basis

Seven participants argue that the legal basis for the Ordinance is insufficient. Firstly, Article 2, paragraph 3 of the applicable CO₂ Act stipulates that an international agreement is a prerequisite for civil aviation, but no such agreement would exist. Secondly, in accordance with Article 58, paragraph 2 of the Swiss Federal Civil Aviation Act, only the regulation of aircraft registered in Switzerland would be permissible. And thirdly, the term "installation" as defined in Article 16 of the revised CO₂ Act would not be applicable to aircraft.

(Aerosuisse, BAR, economiesuisse, chambers of commerce of both Basel cantons, SHA, Swiss, VSF)

2.2.7 Criticism regarding administrative burden

Seven participants note that the collection and verification of tonne-kilometre data will give rise to an enormous administrative burden for aircraft operators.

(A4A, Aerosuisse, chambers of commerce of both Basel cantons, IATA, SHA, United Airlines, VSF)

One participant points out that the required data could in fact be obtained from the corresponding Swiss airport statistics.

(VSF)

2.2.8 Criticism regarding the potential introduction of alternative measures

Two participants demand that aircraft operators must be informed about the details of alternative measures if the collected data are to be used for this purpose. They are of the opinion that such alternative measures should not be based on Article 25a of the EU emissions trading scheme directive.

(A4A, United Airlines)

2.3 Statements regarding individual elements of the draft Ordinance

Subject to the fundamental objections summarised above (section 2.2), various participants also comment on individual elements of the draft Ordinance.

2.3.1 Double administrative burden for aircraft operators

Three participants express the view that data collection should be carried out in coordination with the enforcement mechanism of the EU emissions trading scheme, and thus that each aircraft operator should only be subject to the administration of one national authority.

(AACO, IATA, United Airlines)

Two participants demand that, for flights that are already recorded in the EU emissions trading scheme, a second data collection should be waived.

(AEA, Air Malta)

Two participants propose that, for aircraft operators already integrated into the EU emissions trading scheme, the monitoring plans and reports should be obtained from the relevant national authorities within the EU.

(AACO, IATA)

Two participants propose that aircraft operators already integrated into the EU emissions trading scheme should be given the option to draft the monitoring plans and reports specific to Switzerland or to apply the monitoring plans and reports authorised by the EU emissions trading scheme to Swiss

flights and to submit only the data for these flights to the Swiss authorities.
(A4A, United Airlines)

2.3.2 Optional versus mandatory data collection

Three participants demand that data collection should not be declared mandatory, but rather should be optional in line with the principle that is applied in the EU emissions trading scheme (i.e. in the form of an application for allocation of emission rights free of charge in a future emissions trading scheme).
(AACO, Air Malta, IATA)

2.3.3 Thresholds for operators with a low number of flights

Two participants argue that, unless a threshold is specified for operators with a low number of flights, the Ordinance will not be implementable.

(A4A, United Airlines)

One participant criticises the fact that, in the consultation documentation, no provision has been made for a *de minimis* threshold for commercial air operators.

(VSH)

2.3.4 Deadline for submitting monitoring plans

Five participants complain that the foreseen deadline of 30 September 2012 for submitting monitoring plans is too tight.

(A4A, AACO, Air Malta, IATA, United Airlines)

Three participants demand that, in the event of a postponement of the deadline for data collection, the deadline for submitting monitoring plans should also be postponed accordingly.

(AACO, IATA, United Airlines)

Two participants demand that the deadline for submitting monitoring plans should be postponed until 30 November 2012 at the earliest. Furthermore, if the negotiations with the EU are not concluded by 30 September 2012, the deadline must be postponed again.

(AACO, IATA)

Two participants demand that, for submitting monitoring plans, aircraft operators should be granted a deadline of at least 120 days from the date of entry into force of the Ordinance.

(A4A, United Airlines)

2.3.5 Scope of application for data collection

One participant states that flights with helicopters with a take-off weight of more than 5,700 kg should also be exempted from the data collection requirement, since the process of collecting data would be entirely disproportional to the volume of collected data.

(SHA)

2.3.6 Confidentiality of data

Two participants demand that the confidential treatment and archiving of data must also be guaranteed in the event that data are forwarded to other parties.

(A4A, United Airlines)

2.3.7 Criteria for the verification of monitoring reports

One participant draws attention to the fact that some of the criteria for the verification of monitoring reports are not clear and should be adapted to the requirements specified in the EU emissions trading scheme.

(PWC)

3 Abbreviations

A4A	Airlines for America
AACO	Arab Air Carriers Organisation
AEA	Association of European Airlines
ASDA	Association Suisse de Droit Aérien et Spatial
BAR	Board of Airline Representatives in Switzerland
DETEC	Federal Department of the Environment, Transport, Energy and Communications
EEA	European Economic Area
EU	European Union
FOCA	Swiss Federal Office of Civil Aviation
FOEN	Swiss Federal Office for the Environment
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
PWC	PricewaterhouseCoopers
SGV	Swiss Trade Association
SHA	Swiss Helicopter Association
VSF	Swiss Airports Association

4 Participants

Aviation associations	A4A, AACO, AEA, Aerosuisse, ASDA, BAR, IATA, SHA, VSF
Aircraft operators	Air Malta, Swiss, United Airlines
Airports	-
Skyguide (air traffic control)	-
Other	economiesuisse, chambers of commerce of both Basel cantons, SGV, PWC