

**NB: Unofficial translation,
legally binding only in Finnish and Swedish**
Finnish Transport Safety Agency

Act on Aviation Emissions Trading (34/2010)

Section 1 **Purpose**

The purpose of this Act is to promote the reduction of carbon dioxide emissions in the aviation sector in a cost-effective and economical way.

This Act implements Directive 2008/101/EC of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (*Directive on Aviation Emissions Trading*).

Section 2 **Scope of application**

This Act concerns carbon dioxide emissions from flights departing from an aerodrome situated in the territory of a European Union member state or arriving at such an aerodrome from a member state or third country.

This Act shall apply to those aircraft operators who hold a valid operating licence as specified in Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community, granted by the Finnish Transport Safety Agency or another competent authority in Finland, and to those aircraft operators who, in the list referred to in paragraph 3 of Article 18 a of the Directive on Aviation Emissions Trading, are stated as being administered by Finnish authorities.

This Act shall not apply to military flights performed by military aircraft, customs and police flights, flights related to search and rescue operations, fire fighting flights, humanitarian flights and emergency medical service flights.

Further provisions on flights referred to in subsection 3 above and on other flights to which this Act does not apply, as specified in Annex 1 to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (*General Directive on Emissions Trading*), will be given by a decree of the Ministry of Transport and Communications.

Section 3 Definitions

In this Act:

- 1) *emissions* from aircraft means carbon dioxide emissions from flights which depart from an aerodrome situated in the territory of a European Union member state or which arrive at such an aerodrome;
- 2) *emission allowance* means an allowance to release one tonne of carbon dioxide equivalent into the atmosphere during a specified period, as referred to in the General Directive on Emissions Trading;
- 3) *aviation emission allowance* means an allowance which is allocated or sold to an aircraft operator in accordance with this Act and can only be used in aviation emissions trading;
- 4) *emissions trading period* means a period of time, the length of which is determined in section 5;
- 5) *aircraft operator* means the natural or legal person who operates an aircraft at the time it performs an aviation activity included in the emissions trading scheme or, where that person is not known or is not identified by the owner of the aircraft, the owner of the aircraft;
- 6) *historical aviation emissions* means the mean average of annual emissions from aircraft during the benchmark years 2004, 2005 and 2006;
- 7) *benchmark* means a number determined by the Commission of the European Communities, which is obtained by dividing the total number of aviation emission allowances to be allocated free of charge by the sum of the tonne-kilometre data reported by aircraft operators and which is used to determine the number of free allowances allocated to air carriers falling within the scope of application of this Act;
- 8) *Climate Convention* means the United Nations Framework Convention on Climate Change (Treaty Series of the Statutes of Finland, 61/1994);
- 9) *Annex I contracting party* means a party listed in Annex I to the Climate Convention, who has a quantified emission limitation or reduction commitment specified in the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Treaty Series of the Statutes of Finland, 13/2005), hereinafter referred to as the *Kyoto Protocol*, and who has ratified the Kyoto Protocol;
- 10) *project activity* means an activity approved by one or more Annex I contracting party in accordance with Article 6 or 12 of the Kyoto Protocol and in accordance with decisions made on the basis of the Kyoto Protocol;
- 11) *emission reduction unit* means a unit which originates from an emission reduction obtained as a result of project activities carried out in another state listed in Annex I to the Climate Convention and which has been granted in accordance with Article 6 to the Kyoto Protocol and in accordance with decisions made on the basis of the Kyoto Protocol;

12) *certified emission reduction* means a unit which originates from an emission reduction obtained as a result of project activities carried out in a state not included in Annex I to the Climate Convention and which has been granted in accordance with Article 12 to the Kyoto Protocol and in accordance with decisions made on the basis of the Kyoto Protocol.

Section 4 Duties of the aircraft operator

The aircraft operator referred to in section 2 (2) above shall:

- 1) monitor its emissions and tonne-kilometres, draw up an annual report on its emissions and have the report verified;
- 2) submit the monitoring plan to the Finnish Transport Safety Agency for approval four months before the start of the second and subsequent emission trading periods;
- 3) surrender each year to the Energy Market Authority a number of emission allowances equal to the total aviation emissions produced during the previous calendar year;
- 4) submit the information necessary for the application of free aviation emission allowances to the Finnish Transport Safety Agency; and
- 5) inform the Finnish Transport Safety Agency of any changes in the operations or in emissions monitoring, and of any change of aircraft operator.

Section 5 Emissions trading periods and total number of aviation emission allowances

The first emissions trading period begins on 1 January 2012 and ends on 31 December 2012. The total quantity of aviation emission allowances to be allocated to aircraft operators during the first period shall be 97% of the historical aviation emissions.

The second emissions trading period begins on 1 January 2013 and ends on 31 December 2020. During that and subsequent emissions trading periods, the total quantity of aviation emission allowances to be allocated to aircraft operators shall be 95% of the historical aviation emissions multiplied by the number of years in the period.

In each emissions trading period, 3% of the total quantity of aviation emission allowances referred to in subsections 1 and 2 above shall be set aside in a special reserve as referred to in section 9.

Section 6 Allocation of aviation emission allowances

Of the aviation emission allowances to be issued to aircraft operators, a number equal to 85% of the total quantity of aviation emission allowances in accordance with section 5 that remains after the aviation emission allowances set aside in a special reserve by virtue of section 9 have been subtracted, shall be allocated free of charge in accordance with the application procedure specified in section 7. The remaining 15% of aviation emission allowances is sold by a separate auction.

Section 7

Application for aviation emission allowances to be allocated free of charge

Aircraft operators may apply for free aviation emission allowances for each emissions trading period separately. An application is made by submitting to the Finnish Transport Safety Agency the aircraft operator's verified tonne-kilometre data for the monitoring year in question. The monitoring year for the first and second emissions trading period is year 2010. For any subsequent emissions trading periods, the monitoring year shall be the calendar year ending 24 months before the start of the period to which the application relates.

Applications for aviation emission allowances to be allocated free of charge for the first and second emissions trading period shall be submitted by 31 March 2011. For any subsequent emissions trading periods, the application shall be submitted at least 21 months before the start of the period to which it relates.

The Finnish Transport Safety Agency forwards any received applications for free aviation emission allowances to the Commission of the European Communities at least 18 months before the start of the period to which the application relates. For the first emissions trading period, the applications are forwarded to the Commission of the European Communities by 30 June 2011.

Section 8

Issue of aviation emission allowances to be allocated free of charge

The Commission of the European Communities will, for each emissions trading period, establish the total quantity of aviation emission allowances to be allocated and auctioned, the number of aviation emission allowances in the special reserve, the number of aviation emission allowances to be allocated free of charge, and the benchmark to be used to allocate free aviation emission allowances to aircraft operators. The Finnish Transport Safety Agency issues the aviation emission allowances to be allocated free of charge to the aircraft operator for that emissions trading period within three months from the date on which the Commission adopts a decision.

The total number of aviation emission allowances to be allocated free of charge to each aircraft operator having submitted an application shall be determined by multiplying the tonne-kilometre data reported by the aircraft operator by the benchmark provided by the Commission of the European Communities.

Provisions on the benchmarking procedure for the allocation of free allowances and the content of the application will be given by a decree of the Ministry of Transport and Communications.

Section 9

Special reserve of aviation emission allowances

In each emissions trading period, 3% of the total quantity of allowances referred to in section 5 (1) and (2) shall be set aside in a special reserve for aircraft operators:

1) who start performing an aviation activity falling within the emissions trading scheme after the monitoring year for which tonne-kilometre data was submitted under section 7 (2); or

2) 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 section 7 (2), and the second calendar year of that period.

Emission allowances from the special reserve can only be issued to those aircraft operators whose activity under subsection 1, item 1, or additional activity under item 2, is not in whole or in part a continuation of an aviation activity previously performed by another aircraft operator. Nevertheless, the number of aviation emission allowances issued to an individual aircraft operator from the special reserve during each emissions trading period shall not exceed 1,000,000 allowances.

An aircraft operator who meets the prerequisites stated in subsection 1 and 2 above may submit an application for free allocation of aviation emission allowances from the special reserve to the Finnish Transport Safety Agency. The application shall be made by 30 June in the third year of the emissions trading period to which it relates.

Provisions on the applications referred to in this section and on the registration of aviation emission allowances allocated from the special reserve will be given by a decree of the Ministry of Transport and Communications.

Section 10

Aviation emission allowances to be auctioned

Those aviation emission allowances mentioned in section 6 which are not allocated free of charge, unallocated aviation emission allowances in the special reserve referred to in section 9, and those emission allowances referred to in section 16 (3) which cannot be registered on the aircraft operator's allowances account, shall be auctioned.

The auctioning shall be carried out in an open, harmonised, non-discriminatory and predictable manner, so that all actors have an equal opportunity to take part in the auction. The auctioning shall be carried out in a cost-effective way, and it may be performed using electronic systems.

The Energy Market Authority shall attend to any official duties related to the arrangement of auctions. Provisions on the arrangement of an auction and related schedules and procedures for the first emissions trading period as referred to in section 5 (1) may be given by a decree of the Ministry of Transport and Communications. The revenues generated from auctioning shall be transferred to the state of Finland.

Section 11

Monitoring, reporting and verification of emissions and tonne-kilometres

The aircraft operator is obliged to draw up a plan on how it intends to monitor the emissions from and tonne-kilometres of its aircraft, as this information is needed for the applications referred to in section 7 (1) and section 9 (3) above, and how it intends to report them to the Finnish Transport Safety Agency. The aircraft operator shall submit its plan to the Finnish Transport Safety Agency four months before the start of each emissions trading period. The Finnish Transport Safety Agency approves the plan.

The aircraft operator is obliged to draw up a report on the emissions caused by each of its aircraft. The first report shall be made for calendar year 2010. A report for each calendar year shall be

submitted by 31 March of the following year to the Finnish Transport Safety Agency, which forwards the report to the Commission of the European Communities.

The aircraft operator shall be responsible for ensuring that the report referred to in subsection 2 above has been verified by an approved verifier referred to in section 12. The aircraft emissions and tonne-kilometres as well as the reliability, credibility and accuracy of the monitoring system shall be verified.

The Finnish Transport Safety Agency may prescribe that an aircraft operator is not allowed to continue the transfer of allowances, if it has not submitted an emissions report by 31 March each year or if its report has not been verified as satisfactory as regards the emissions during the preceding year.

Further provisions on the plan referred to in subsection 1 above and the report referred to in subsection 2 above will be given by a decree of the Ministry of Transport and Communications.

The Finnish Transport Safety Agency may issue further provisions on the preparation and submission of monitoring plans and annual emissions reports, and on the effect of deficient monitoring on the assessment of emission quantities.

Section 12

Verifier

For the verification of tonne-kilometre data provided in the application referred to in sections 7 (1) and 9 (3) and the report required in section 11 (2), the aircraft operator shall use a verifier with knowledge of the aviation sector. The Finnish Transport Safety Agency approves the verifier in compliance with the provisions in the Emissions Trading Act (683/2004), sections 55 and 55a. As regards the verifier's obligation to notify any changes in his/her activities, withdrawal of a verifier's approval and the performance of the verification duties, the provisions in section 56–58 of the Emissions Trading Act shall apply.

Further provisions on the verifier approval procedure, assessment of eligibility for the approval and performance of the verification duties will be given by a decree of the Ministry of Transport and Communications.

Section 13

Verifier's statement

The verifier shall draw up a statement on the report specified in section 11 (2) above, stating whether the report is satisfactory. The statement shall specify all issues relevant to the verification. The emissions report can be considered satisfactory, if it has been drawn up in accordance with section 11 and if, in the opinion of the verifier, the total emissions are not materially misstated.

Further provisions on how the plans referred to in section 11 (1) and reports referred to in section 11 (2) are to be verified will be given by a decree of the Ministry of Transport and Communications.

Section 14

Project activities

An aircraft operator may use certified emission reductions (CERs) and emission reduction units (ERUs) obtained from project activities in year 2012 up to a limit of 15% of those emission allowances that the aircraft operators are required to surrender in accordance with section 19 below.

Section 15

National registry

Aircraft operators referred to in section 2 (2) above have a holding account in the national registry referred to in section 42 of the Emissions Trading Act. The aircraft operator's holding account is used to register, hold, surrender, transfer, cancel and retire aviation emission allowances and to replace any cancelled emission allowances.

Section 16

Annual allocation and registration of aviation emission allowances

The Finnish Transport Safety Agency determines the number of aviation emission allowances to be allocated free of charge to each aircraft operator annually during the emissions trading period, by dividing the total quantity of emission allowances calculated in accordance with section 6 above by the number of years during which that aircraft operator is performing aviation activities in that emissions trading period.

By 28 February each year, the Energy Market Authority records the number of aviation emission allowances to be allocated free of charge to each aircraft operator during that year on the operator's holding account in the national registry.

In case the air operator certificate or operating licence issued to the aircraft operator's organisation is no longer valid, or if an operating ban has been imposed on the aircraft operator by a decision of the Commission of the European Communities in accordance with section 25 (1) below, or if the aircraft operator ceases to perform the aviation activity falling within this Act, the Energy Market Authority may not, after the certificate or licence has been revoked or the activity has ceased, record any annual aviation emission allowances on that aircraft operator's holding account. The Finnish Transport Safety Agency informs the Energy Market Authority of any revocations and orders mentioned in this subsection.

Section 17

Registration of aviation emission allowances to new aircraft operators

By 28 February each year, the Energy Market Authority records a number of aviation emission allowances calculated under section 8 above to those aircraft operators who have started to perform the aviation activities falling under this Act on 1 January 2011 or later, and have not previously applied for any aviation emission allowances as referred to in section 6.

The provisions in subsection 1 above shall not apply to those aircraft operators whose activity is, in whole or in part, a continuation of an aviation activity previously performed by another aircraft operator.

Section 18

Registration of aviation emission allowances when the aircraft operator changes

If the aircraft operator has changed, the new aircraft operator shall notify the change to the Finnish Transport Safety Agency and the Energy Market Authority, which records the emission allowances for that year on the new aircraft operator's holding account in the registry in accordance with section 16 (2) above.

Section 19

Obligation to surrender allowances and cancellation of allowances

By 30 April each year, each aircraft operator shall surrender to the registry a number of emission allowances equal to the total emissions from each aircraft during the preceding calendar year, as verified in accordance with section 11. The provisions in section 5 of the Act on the Calculation of Time Limits (150/1930) shall not apply to this period. The Energy Market Authority shall cancel the surrendered allowances.

To meet the obligation laid down in subsection 1 above, the aircraft operator may use certified emission reductions (CERs) and emission reduction units (ERUs) obtained from project activities. The Energy Market Authority shall ensure that the surrendered emission reductions and emission reduction units are cancelled.

The Energy Market Authority shall ensure that the emission allowances, certified emission reductions and emission reduction units surrendered by aircraft operators are transferred to Member States' retirement accounts for the Kyoto Protocol's first commitment period only to the extent that those allowances, CERs and ERUs correspond to emissions included in Finland's national total emission quantities.

Section 20

Replacement of cancelled allowances

The Energy Market Authority shall record emission allowances on the appropriate account in the registry for emissions trading period 2013–2020 and for any subsequent emissions trading periods to replace those emission allowances which exist on the account from the preceding emissions trading period and which have not been used to meet the obligation to surrender allowances in accordance with section 19.

Section 21

Right to information and inspection

The Finnish Transport Safety Agency and the Energy Market Authority have the right to obtain any information necessary for supervision and for the implementation of this Act from aircraft operators and, notwithstanding the secrecy provisions in the Act on the Openness of Government Activities (621/1999), from verifiers.

To oversee compliance with this Act and any provisions issued by virtue of it, the Finnish Transport Safety Agency and the Energy Market Authority have the right to carry out an inspection at any premises other than those used as a permanent residence by the aircraft operator. The aircraft operator shall, on request, present to the inspecting authority those documents and records in its data system and give access to those equipment and facilities that may be relevant for the oversight

of compliance with this Act and any provisions issued by virtue of it. The inspecting official has the right, free of charge, to take copies of the documents to be inspected and printouts of any records in the data systems.

Section 22

Administrative enforcement

The Finnish Transport Safety Agency may require anyone who violates this Act or any provisions based on it to rectify the negligence or to otherwise fulfil his/her duty. To intensify the effect of the requirement, the Agency may impose a conditional fine or a threat of suspending the activity in whole or in part, or of having the omission corrected at the expense of the defaulting party.

To conditional fines, orders of suspension and orders of execution, the provisions of the Conditional Fine Act (1113/1990) shall apply.

Section 23

Aviation emissions trading violation

Anyone who, deliberately or through gross negligence,

- 1) fails to draw up a monitoring plan as referred to in section 4 and have it approved by the Finnish Transport Safety Agency, or neglects the report or verification referred to in section 4;
- 2) provides false information to the authority;
- 3) uses an emission reduction or emission reduction unit contrary to section 14; or
- 4) fails to present the documents and records referred to in section 21 (2),

shall be sentenced to a fine for an *aviation emissions trading violation*, unless a more severe punishment is prescribed elsewhere in law.

In case of violation against an order or prohibition intensified by a conditional fine imposed on the basis of this Act, punishment for the same violation may be waived.

Section 24

Penalties

The Finnish Transport Safety Agency publishes the names of aircraft operators who are in breach of the requirements to surrender sufficient emission allowances under this Act.

If the aircraft operator fails to surrender sufficient allowances by 30 April of each year to cover its emissions during the preceding year, the Finnish Transport Safety Agency orders the operator to pay an excess aviation emissions penalty to the state. The penalty shall be EUR 100 for each tonne of carbon dioxide equivalent emitted, for which the operator has not surrendered allowances. As regards the enforcement of the penalty, provisions in section 63 of the Emissions Trading Act shall apply.

In addition to payment of the excess aviation emissions penalty as referred to in subsection 2 above, the aircraft operator shall surrender an amount of emission allowances equal to the missing allowances when surrendering emission allowances in relation to the following calendar year.

Section 25

Operating ban

If an aircraft operator fails to comply with the requirements of this Act and if the measures in sections 22-24 above have not been sufficient to ensure compliance, the Finnish Transport Safety Agency may request the Commission of the European Communities to decide on the imposition of an operating ban on the aircraft operator concerned. Any request by the Finnish Transport Safety Agency shall include:

- 1) evidence that the aircraft operator has not complied with its obligations under this Act;
- 2) details of the enforcement action taken by the Agency;
- 3) a justification for the imposition of an operating ban at Community level; and
- 4) a recommendation for the scope of an operating ban at Community level and any conditions that should be applied.

The Finnish Transport Safety Agency is responsible for ensuring that the decision of the Commission of the European Communities is implemented in Finland.

Section 26

Fees for performances by authorities

The Finnish Transport Safety Agency and the Energy Market Authority are entitled to charge a fee for the handling of a permit, notification, approval or other issue under this Act. Moreover, the Energy Market Authority is entitled to charge a fee for duties related to the keeping of accounts in the national registry.

While respecting the provisions of the Act on Criteria for Charges Payable to the State (150/1992), further provisions on the Finnish Transport Safety Agency's performances subject to a charge and the fees charged for them, as referred to in subsection 1 above, are given by a decree of the Ministry of Transport and Communications, and further provisions on corresponding performances by the Energy Market Authority and the fees charged for them are given by a decree of the Ministry of Employment and the Economy.

Section 27

Appeal against a decision made by the Energy Market Authority or by the Finnish Transport Safety Agency

Any decision made by the Energy Market Authority or the Finnish Transport Safety Agency by virtue of this Act is subject to appeal as provided for in the Administrative Judicial Procedure Act (586/1996).

The decisions referred to in subsection 1 above must be observed regardless of appeal, unless otherwise decided by the appellate authority.

Any charge determined by the Energy Market Authority or the Finnish Transport Safety Agency for a performance under public law may be appealed as specified in the Act on Criteria for Charges Payable to the State.

Section 28
Appeal against verifier's statement or decision

Rectification of a verifier's statement may be applied from the verifier within 14 days of receiving the notification of the decision. Instructions for a rectification request must be attached to the statement.

The decision issued by the verifier in the rectification procedure may be appealed to an administrative court, as laid down in the Administrative Judicial Procedure Act.

Section 29
Entry into force

This Act enters into force on 1 February 2010.

Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.