

The Ordinance on the collection of data for the inclusion of aviation and additional activities in the emissions trading scheme (Data Collection Ordinance 2020 – DEV 2020) has been translated as a service to the non-German speaking participants in emissions trading for the aviation sector. Please note that this is an unofficial translation. Only the German version (Federal Law Gazette 2009 chapter I, page 2118 ff.) is binding. The German Emissions Trading Authority reserves the right not to be responsible for the topicality, correctness, completeness or quality of the information provided.

**Ordinance on the collection of data for the inclusion of
aviation and additional activities in the emissions trading scheme
(Data Collection Ordinance 2020)
(*Datenerhebungsverordnung 2020 – DEV 2020*)¹**

of 22 July 2009

On the basis of Section 27 subsections 2 and 3 and Section 27 subsection 6, second sentence, of the Greenhouse Gas Emissions Trading Act (*Treibhausgas-Emissionshandelsgesetz*), inserted by virtue of Article 1 number 4 of the Act of 16 July 2009 (Federal Law Gazette (*BGBl.*) I p. 1954), the Federal Government decrees as follows:

Part 1

General provisions

Section 1

Scope

- (1) This ordinance shall apply to activities within the material scope of Annex I to 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 of 25.10.2003, p. 32), most recently amended by Directive 2009/29/EC (OJ L 140 of 5.6.2009, p. 63), insofar as such activities are not covered by Annex 1 to the Greenhouse Gas Emissions Trading Act.
- (2) Notwithstanding subsection 1, this Ordinance shall apply to flights which arrive at or depart from an aerodrome situated in the territory of a Member State of the European Union to which the Treaty establishing the European Community applies, and which are performed by aircraft operators which

¹ The purpose of this ordinance is the transposition into national law of 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 of 25.10.2003, p. 32), most recently amended by Directive 2009/29/EC (OJ L 140 of 5.6.2009, p. 63).

1. are attributed to the Federal Republic of Germany as their administering Member State under the Commission list pursuant to Article 18a(3) of Directive 2003/87/EC announced in the Federal Gazette in accordance with Section 27 subsection 3, first sentence (second half), of the Greenhouse Gas Emissions Trading Act, or
2. are not attributed to any administering Member State in this list, insofar as they possess a valid German operating licence within the meaning of Article 3 of Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293 of 31.10.2008, p. 3) and do not exclusively perform privileged flights as set out in Annex 1.

Section 2

Definitions

(1) For the purposes of this Ordinance the following definitions shall apply:

1. Commissioning: First commencement of normal operation following completion of test operation;
2. Capacity: The maximum annual production quantity that is practically and legally possible;
3. Aircraft operator: A natural or legal person who operates an aircraft at the time it performs an aviation activity or, if that person is not known or is not identified by the owner of the aircraft, the owner of the aircraft;
4. Aviation activity: Flights falling within the scope of this Ordinance;
5. Monitoring guidelines: Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council (Monitoring Guidelines) (OJ L 229 of 31.8.2007, p. 1), most recently amended by Decision 2009/399/EC (OJ L 103, p. 10 of 23.4.2009);
6. Test operation: Temporary operation of an installation to test its serviceability in line with the planned course of commissioning;
7. Production quantity: Annual quantity of product units created in an installation, based on the net annual quantity of marketable products;
8. Monitoring plan: A monitoring concept in accordance with Annex I Section 4.3. of the Monitoring Guidelines;
9. Person responsible for an additional activity: Natural or legal person who has direct authority to take decisions on an additional activity and who thereby bears the economic risks of such activity; in the case of installations subject to licensing within the meaning of

Section 4 subsection 1, third sentence, of the Federal Immission Control Act, the person responsible for an additional activity is the operator of the installation;

10. Additional activity: Activity within the meaning of Annex I to Directive 2003/87/EC in stationary installations, insofar as the activity is not listed, or not listed on this scale, in Annex 1 to the Greenhouse Gas Emissions Trading Act and insofar as it is not an aviation activity.
- (2) The definitions in Annex I Section 2 numbers 1 to 5 of the Monitoring Guidelines shall also apply.

Section 3

General requirements for data determination and reporting

- (1) Aircraft operators and persons responsible for an additional activity shall be obliged to determine and notify data and information in accordance with the provisions of this Ordinance. Except as otherwise required by the provisions of this Ordinance, the data must be determined and reported in accordance with the requirements of the Monitoring Guidelines.
- (2) Where figures presuppose the making of calculations or measurements, the aircraft operator and the person responsible for an additional activity shall be obliged to explain the method of calculation and measurement used and to provide a transparent description of how the figures were arrived at. The underlying individual items of evidence are to be presented without delay if requested by the competent authority.

Part 2

Reporting duties for aircraft operators

Section 4

Determination of emission data, reporting and preparation of the monitoring plan

- (1) The aircraft operator shall prepare in accordance with Annex I and Annex XIV to the Monitoring Guidelines a monitoring plan for monitoring and reporting the carbon dioxide emissions arising from its aviation activities from 1 January 2010 onwards which it is required to report pursuant to subsection 5, and shall submit it to the competent authority for approval. If the list mentioned in Section 1 subsection 2 number 1 is announced in the Federal Gazette by 25 July 2009, the latest date for submission of the monitoring plan pursuant to Annex XIV Section 6 subsection 1 of the Monitoring Guidelines shall be 31 August 2009; otherwise the deadline for submission of the monitoring plan shall be six weeks after the announcement of such list.

- (2) If the aircraft operator files an application under Section 6 subsection 1 by the critical date pursuant to subsection 1, second sentence, and if such application is rejected, the deadline for submitting the monitoring plan shall be six weeks starting from the announcement of the decision.
- (3) If the aircraft operator has not submitted a monitoring plan by the critical date pursuant to subsection 1, second sentence, and has not filed an application under Section 6 subsection 1, it shall be obliged to submit the monitoring plan later within a period to be set by the competent authority. If the competent authority needs additional information for the verification of the monitoring plan submitted, the aircraft operator shall be obliged to supply such information to the competent authority on request within a period to be set by the competent authority. If a monitoring plan fails to satisfy the requirements of this Ordinance, the aircraft operator shall be obliged to remedy the identified deficits within a period to be set by the competent authority and to submit a monitoring plan which satisfies the requirements of this Ordinance.
- (4) If an aircraft operator does not commence aviation activities until after 25 July 2009 or is no longer exempted pursuant to Section 6, it shall be obliged to submit the monitoring plan pursuant to subsection 1, first sentence, to the competent authority without delay. Subsection 3 shall apply with the necessary modifications.
- (5) With effect from 1 January 2010 the aircraft operator must determine the carbon dioxide emissions arising from its aviation activities during the calendar years 2010 and 2011 in accordance with Annex I and Annex XIV to the Monitoring Guidelines on the basis of an approved monitoring plan for each of the two calendar years and report them to the competent authority by 31 March of the following year. The obligation in the first sentence of this subsection shall not include emissions by privileged flights in accordance with Annex 1.
- (6) If an aircraft operator does not fall within the scope of this Ordinance until after 25 July 2009, the determination and reporting obligations pursuant to subsection 5 shall in each case relate to the entire calendar year in which this event occurs.
- (7) If the Monitoring Guidelines are amended after 25 July 2009 and if the Commission specifies a later date for submission of the monitoring plan than the critical date pursuant to subsection 1, second sentence, such date shall be the critical date pursuant to subsection 1, second sentence. If the Monitoring Guidelines are amended after 25 July 2009 and if such amendments relate to the determination of the emissions mentioned in subsection 1, first sentence, and subsection 5, first sentence, the aircraft operator shall prepare the monitoring plan and determine and report the emissions in accordance with the amended Monitoring Guidelines. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall announce the amendments relevant to the aircraft operator pursuant to the first and second sentences of this subsection in the Federal Gazette.

Section 5

Determination of data on distances and payloads, reporting and preparation of the monitoring plan

- (1) The aircraft operator shall determine the distances flown as a result of its aviation activities, except insofar as these are privileged flights pursuant to Annex 1, in the calendar year 2010 and the payloads transported in that year in accordance with Annex I and Annex XV of the Monitoring Guidelines and shall report them to the competent authority by 31 March 2011. If the competent authority needs additional information for the verification of the report pursuant to the first sentence of this section, the aircraft operator shall be obliged to supply such information to the competent authority on request within a period to be set by the competent authority.
- (2) For the purpose of determination and reporting in accordance with subsection 1, first sentence, the aircraft operator shall prepare a monitoring plan pursuant to Annex I and Annex XV to the Monitoring Guidelines and submit it to the competent authority for approval. If the list mentioned in Section 1 subsection 2 number 1 is announced in the Federal Gazette by 25 July 2009, the latest date for submission of the monitoring plan pursuant to Annex XV Section 3 subsection 2 of the Monitoring Guidelines shall be 31 August 2009; otherwise the deadline for submission of the monitoring plan shall be six weeks after the announcement of such list.
- (3) Section 4 subsections 2 to 4 and Section 4 subsection 6 shall apply with the necessary modifications. Section 4 subsection 7 shall apply with the necessary modifications, provided that the amendments to the Monitoring Guidelines relate to the critical date pursuant to subsection 2, second sentence, and to the distance flown and the payload transported.
- (4) The obligations pursuant to subsections 1 and 2 shall not apply if the aircraft operator, in an irrevocable written declaration to the competent authority, waives its future claim to free allocation of allowances for the allocation period 2012 and the allocation periods 2013 to 2020.

Section 6

Exemption for listed aircraft operators with privileged flights

- (1) On application by an aircraft operator attributed to the Federal Republic of Germany as its administering Member State under the Commission list pursuant to Article 18a(3) of Directive 2003/87/EC, the competent authority shall exempt this aircraft operator from the obligations under Section 4 and 5, insofar as
 1. the aircraft operator performed only privileged flights pursuant to Annex 1 during the calendar year 2008, or
 2. it is to be expected that the aircraft operator will perform only privileged flights pursuant to Annex 1 during the calendar years 2010 or 2011; the exemption shall apply to the calendar year for which the aircraft operator is expected to satisfy the requirement.

- (2) In the case of subsection 1 number 2 the applicant shall state the changes compared with the nature or extent of the aviation activities to date on the basis of which it can be expected to perform only privileged flights pursuant to Annex 1.
- (3) The exemption shall expire if, during a calendar year for which exemption has been granted, the aircraft operator also performs flights that are not privileged pursuant to Annex 1. In such a case the determination and reporting obligations pursuant to Section 4 subsection 5 and Section 5 subsection 1, first sentence, shall in each case relate to the entire calendar year during which the exemption pursuant to the first sentence of this section expires.

Part 3

[only relevant for additional activities in stationary emissions trading]

Part 4

Methods

Section 10

Electronic communication

The competent authority may prescribe that aircraft operators and persons responsible for an additional activity must use the electronic forms provided on the competent authority's website and transmit the completed electronic forms by electronic means. Any orders pursuant to the first sentence of this section shall be announced in the electronic Federal Gazette by the competent authority at least one month before expiry of the set transmission deadline.

Section 11

Verification

- (1) Before submission, the reports pursuant to Sections 4 and 5 and the data notifications pursuant to Sections 7 to 9 must be verified by a verifier announced by the competent authority. The requirements pursuant to Annex V to Directive 2003/87/EC shall apply with the necessary modifications.
- (2) When verifying data notifications by persons responsible for an additional activity in the case of installations with carbon dioxide emissions averaging less than 25 000 tonnes per annum in the calendar years 2005 to 2008, the verifier may dispense with on-site inspection of the installation.
- (3) The competent authority shall announce the verifiers in accordance with the requirements of Section 5 subsection 3, second and third sentences, of the Greenhouse Gas Emissions Trading Act.

Part 5
Sanctions and Entry into Force

Section 12
Administrative offences

An administrative offence within the meaning of Section 19 subsection 1 number 4 of the Greenhouse Gas Emissions Trading Act is committed by anyone who deliberately or negligently

1. contravenes Section 4 subsection 3, first sentence, including in conjunction with subsection 4, second sentence, by failing to submit a monitoring plan or to submit it on time,
2. contravenes Section 4 subsection 3, second sentence, including in conjunction with subsection 4, second sentence, by failing to send an item of information or to send it correctly, completely or on time,
3. contravenes Section 4 subsection 5, first sentence, by failing to report to the competent authority or to do so on time,
4. contravenes Section 5 subsection 1, second sentence, by failing to transmit an item of information correctly or completely, or
5. contravenes Section 7 subsection 1, first sentence, in conjunction with Section 7 subsection 5, Section 8 subsection 2 or Section 9 subsection 2 by failing to make a communication or to do so correctly, completely or on time.

Section 13
Competent authority

The competent authority for the purpose of this Ordinance shall be the Federal Environment Agency.

Section 14
Entry into force

This Ordinance shall enter into force on the day after its promulgation.

Berlin, 22 July 2009

Annex 1
(to Section 1 subsection 2 number 2,
Section 4 subsection 5, second sentence,
Section 5 subsection 1, first sentence,
and Section 6)

Privileged flights

1. Flights performed exclusively for the transport, on official missions, of the following persons:
 - a) reigning monarchs and their immediate family,
 - b) heads of state, heads of government and government ministersof a country other than a Member State of the European Union, where this is substantiated by an appropriate status indicator in the flight plan;
2. military flights performed by military aircraft and customs and police flights;
3. flights related to search and rescue, firefighting flights, humanitarian flights and emergency medical service flights, provided they are authorised by the appropriate competent authority;
4. flights performed exclusively under visual flight rules within the meaning of Sections 28 and 31 to 34 of the Air Traffic Code (*Luftverkehrs-Ordnung*);
5. flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;
6. 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 in the flight plan; such flights must not serve to transport passengers or freight or to position or ferry the aircraft;
7. flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment, whether airborne or ground-based;
8. flights performed by aircraft with a certified maximum take-off mass of less than 5 700 kg;
9. flights performed in the framework of public service obligations in accordance with Article 16 of Regulation (EC) No. 1008/2008 on routes within outermost regions as specified in Article 299(2) of the Treaty establishing the European Community or on routes where the capacity offered does not exceed 30 000 seats per year and

10. flights as specified in Section 1 subsection 2 which are not covered by numbers 1 to 9 and are performed by an aircraft operator who provides scheduled or on-demand flights for the public which transport passengers, freight or mail (commercial air transport operator), provided that either

- a) such operator performs fewer than 243 such flights in each of three consecutive four-month periods, or
- b) the total annual emissions of flights by this operator are lower than 10 000 tonnes per year;

such privileged treatment shall not apply to flights performed exclusively for the transport, on official mission, of reigning monarchs and their immediate family, heads of state, heads of government or government ministers of a member state of the European Union.

[Annex 2 is not reproduced here]

unofficial translation