

Generic Assessment Process to be followed regarding the amendment or correction of anomalies in the EU ETS Operator List

Background:

The EU ETS Operator List is owned and published by the European Commission. EUROCONTROL, as the preparer of the list, provides support with the clarification of issues relating to an operator's presence on or absence from the list and amendments to it that occur due to changes in an operator's situation.

The list of operators is generated using the best available data on the past activity of aircraft operators. The inclusion in the EU emissions trading scheme (EU ETS) is linked to the performance of an aviation activity only and is not subject to inclusion on the list. This means that aircraft operators that perform an aviation activity listed in Annex I to Directive 2003/87/EC are covered by the EU ETS whether or not they appear on the list of operators at the time of the activity. Likewise operators which stop operating flights are excluded from the scheme once they cease to perform an aviation activity listed in Directive 2003/87/EC and have surrendered the relevant allowances, rather than at the point when they are removed from the list.

Questions related to the inclusion of an aircraft operator in the EU ETS should be considered by the Competent Authorities of the administering Member State in consultation with the aircraft operator concerned.

Given the need to reflect in the list of aircraft operators any changes in an operator's status in respect to their inclusion in the EU ETS, and because of the number of different institutions involved, it became necessary to devise a series of processes to ensure that the necessary information is provided to the relevant parties.

This document sets out a generic process to be followed for the assessment of an operator's status and resulting amendment of the list of operators. It also recommends the evidence which should be requested from aircraft operators as support in each case.

The Generic Assessment Process:

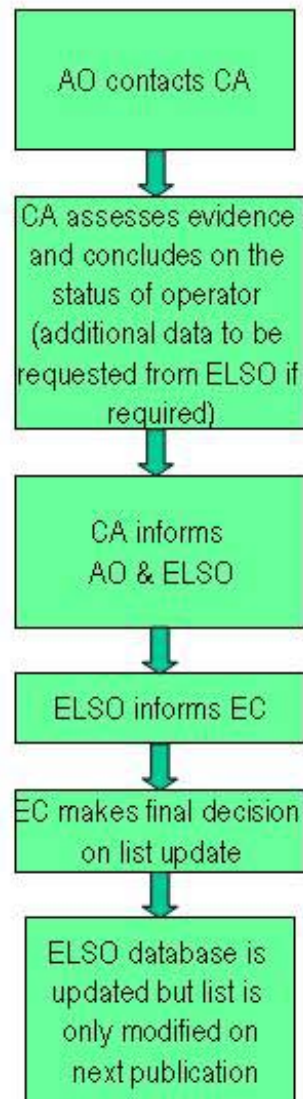
For an assessment of the status of an operator in the EU ETS and any resulting update of the list of operators, there are two possible generic processes to follow. These are summarised in the diagrams below. Although details may change according to the specific situation, the assessment-making process and the information flow should essentially be the same.

Situation 1 refers to the situation when a Competent Authority already has all the information required to make an assessment, or the Aircraft Operator is able to provide all necessary evidence to the Competent Authority.

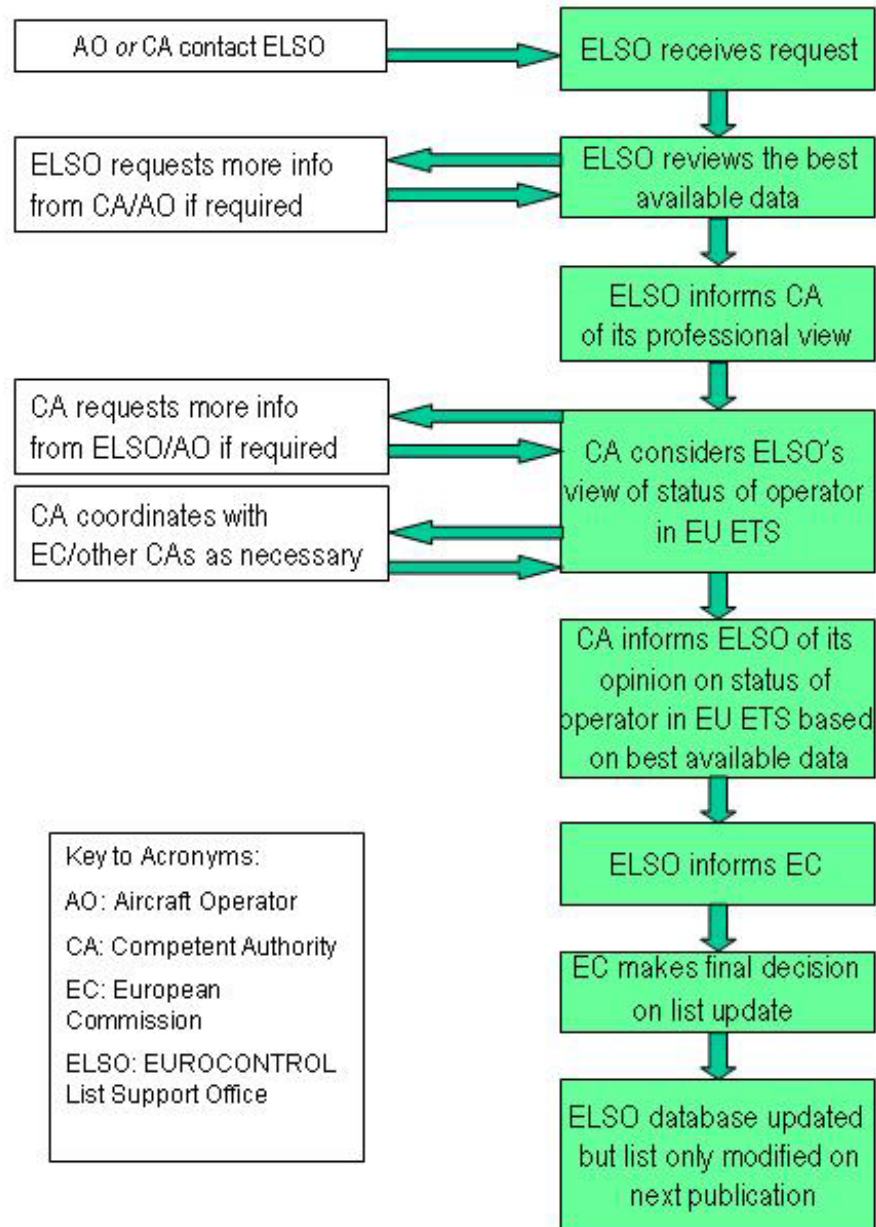
Situation 2 refers to the situation when a Competent Authority needs to request supporting data from EUROCONTROL, or where the Aircraft Operator contacts EUROCONTROL directly.

All references to contacting EUROCONTROL in this document, refer to the EUROCONTROL ETS List Support Office (ELSO), which can be contacted at ets.info@eurocontrol.int

Situation 1: Competent Authority contacted by an Aircraft Operator already has all information required to make an assessment



Situation 2: Competent Authority needs to request supporting data from EUROCONTROL, or Aircraft Operator contacts EUROCONTROL directly



The areas where these assessment-making processes should be applied are:

1. Correction of an operator's name when it has been misspelt on the list

Description: Occasionally an operator's name may be misspelt. However, due to the very similar names of some operators, it is recommended that evidence is provided to support any request for a correction.

Recommended evidence: A formal document indicating the correct spelling of the name, e.g. a certificate of incorporation, an extract from the Commercial Register (where applicable) or the operating licence (OL) where one has been issued by a Member State.

2. Changes in the name of an aircraft operator

Description: The aircraft operator continues operating as the same legal entity however changes its name.

Recommended evidence: Certificate of incorporation under the old and new company names or an extract from the Commercial Register, (where applicable), providing evidence that it is a name *change* and not the incorporation of a new company, e.g. the OL where one has been issued by a Member State.

3. Operators who cease operation

Description: When an operator permanently ceases to perform an aviation activity in accordance with Annex 1 of the Directive (flights) and has fulfilled any outstanding ETS obligations such as the surrender of allowances.

Recommended evidence: Evidence from the Operator as deemed appropriate by the individual Competent Authority for that State. To ensure no flights are still being operated, this should be supported by EUROCONTROL traffic data.

4. Splitting up of operators (from the current date onwards)

Description: Two (or more) operators have been listed as one entity, but are already, or will be in the future, separate legal entities. The operators then have to be split from the current date onwards. For example, a subsidiary of a parent company becomes an independent operator.

Recommended evidence: Individual fleet lists are submitted declaring the fleet of each operator, supported by separate certificates of incorporation/VAT

numbers and, for commercial operators, separate AOC's/OL. EUROCONTROL traffic data where appropriate.

Potential Consequences: After splitting the operators, the newly identified operators' administering MS will have to be determined. The new administering Member State will have to be determined at the end of the year in which newly formed operators started their activities. It may be that a newly identified operator's administering MS will differ from that of the old operator.

5. Splitting of operators to include reallocation of historical traffic

Description: Two (or more) operators have been listed as one entity but are in fact separate legal entities. The operators wish to split and have their historical traffic reallocated.

Recommended evidence: Individual fleet lists declaring the fleet of each operator, including all historical fleets for the period the split is requested, supported by separate certificates of incorporation/VAT numbers and, for commercial operators, separate AOC's/OL. EUROCONTROL traffic data where appropriate.

6. Removing double listings from the list

Description: Operators which are the same legal entity have been listed more than once.

Recommended evidence: ETS Fleet lists and evidence of ownership/operation of the aircraft registrations in question e.g. AOC, certificate of incorporation, CRCO account history

7. Mergers of operators

Description: Two operators merge to form one company or one operator buys another one. Historical traffic of these operators will not be affected.

Recommended evidence: Evidence of ownership/operation of the aircraft registrations, new OL, or other documents providing evidence of the merge.

Potential Consequences: In cases where a new company is established, its administering Member State will have to be determined at the end of the base year. Additionally, if the two merged companies cease activity as those entities, they may need to be removed from the list and the relevant authorities informed. Such cases, and the recommended evidence that is required, should be dealt with on a case by case base.

8. Service companies

Description: A company which is listed informs its CA that it is a services or management company and not an Aircraft Operator.

Process: The services or management company should complete and submit the Fleet List for Services Companies according to the process described by the EC:

http://ec.europa.eu/environment/climat/aviation/operators_en.htm.

9. Ad hoc situations

Description: a situation where an official decision needs to be made which doesn't fit into one of the categories above.

Recommended evidence: To be decided by Competent Authorities and/or EC as appropriate (with advice from ELSO if required).

10. Exempting flights under the Annex I exemptions (a) – (h)

Description: An operator claims that some of its flights, which are not currently exempted, should be exempted under the Annex I exemptions (a) – (h).

Recommended evidence: This evidence will be highly variable depending on the exemption being applied for. For example, for a humanitarian or medical evacuation flight the operator could provide documentation from the organisation on behalf of whom the flight was being performed, or, for a training flight, documentation evidencing and recording the training. However, it is recognised that much Competent Authority discretion will need to be exercised in these cases.

10.1 Exempting flights under the Annex I exemptions (j) *de minimis*

Description: An operator who currently, according to Eurocontrol's data, is non-commercial claims that its flights should be exempted because it is in fact a commercial air transport operator and meets the *de minimis* criteria.

Recommended evidence: According to Directive 2008/101/EC and Commission Decision 2009/450/EC for the purposes of the ETS, a commercial air transport operator is one who provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail for remuneration. This status might be demonstrated by the production of a valid AOC that shows the commercial nature of the operator. If required by the Competent Authority, additional evidence supporting the operator's commercial status may be required.

Process: AOCs can be assessed directly by the Competent Authority and ELSO/EC informed accordingly. Alternatively, evidence can be sent to ELSO for assessment by the EUROCONTROL Central Route Charges Office (CRCO). The Competent Authority, aircraft operator and the European Commission shall be informed accordingly of the results of this assessment.