

# Can the EU sail through the aviation storm?

ENDS Europe

3 Aug 2011

Europe faces growing opposition to its inclusion of foreign airlines in the EU emissions trading scheme (ETS). Roz Bulleid considers whether an exemption for countries with "equivalent measures" could provide a solution.

Frustrated by the lack of global action on aviation emissions, the EU made the controversial decision three years ago to extend the ETS to all airlines flying into and out of its airports. Emissions would be capped at 212.9 million tonnes of CO<sub>2</sub> in 2012.

Three US airlines challenged the legality of the move in late 2009 and a European court ruling is expected around the end of the year. But with the start of the new regime just five months away, a second, political counter-attack is building.

The European Commission has suggested these government-led challenges can be settled through a provision on equivalent measures in the 2008 directive on aviation and the ETS. This allows it to exempt incoming flights from countries with policies that "have an environmental effect at least equivalent to that of [the directive]".

But it is not clear whether this will appease disgruntled foreign countries and provide sufficient stability for a jittery carbon market, or how the system would work in practice.

## Political tensions

The US government raised a formal complaint about the inclusion of its airlines in the ETS at a meeting with the EU in June, and a cross-party bill introduced to the House of Representatives on 20 July would ban US airlines from the scheme altogether. What position the government will adopt on this law remains to be seen.

China has raised concerns about the cost of the ETS. It is also worried about the implications for the principle of "common but differentiated responsibility" which allows developing nations to do less than developed ones to tackle climate change.

Suggestions that a Chinese order from aircraft maker Airbus might be cancelled in retaliation prompted representatives from the EU aviation industry to write in May to the commission, urging it to exclude flights beyond the EU.

Russia is also unhappy and last week an official in the Indian government said his country would challenge the EU through the World Trade Organization (WTO).

Trade associations representing airlines around the world have welcomed this trend. This week, for instance, Andrew Herdman, director general of the Association of Asia Pacific Airlines (APAA), said that the EU had to accept it had "over-reached its authority, and must now fundamentally rethink its position".

The eventual outcome of these political threats will depend to some extent on the opinion of the European Court of Justice. If it agrees the ETS is an extra-territorial and illegal tax, the commission will be forced to look again at the scheme.

The court may instead back the commission's view, which is that participation in the ETS is a condition of entry to EU airports and not a tax. But even if this is the case, the EU will not be shielded from challenges through the International Civil Aviation Authority (ICAO) or WTO, or retaliations against EU airlines.

Legal challenges will take some time, allowing the ETS to begin in the meantime, but the airlines have until April 2013 before they need to submit any carbon allowances, notes David Henderson of the Association of European Airlines (AEA).

The trade association is urging the commission to find a solution as quickly as possible, warning that its members would bear the brunt of any trade war.

### **Definition problems**

The section of the 2008 directive covering equivalent measures is only three paragraphs long and says nothing about judging or approving equivalent measures proposed by third-country governments, or how their performance would be tracked.

The commission says this is deliberate. It does not want to dictate what other countries come up with and will consider any suggestions.

Bill Hemmings, of green group T&E, also thinks this is the right approach: "The wording is a bit vague, but I do not think you would want it too restrictive either."

But for the US government, MEPs, and airline associations the lack of detail is a sticking point. "There has been no indication as to how such equivalence might be determined, or indeed the processes involved," says Mr Herdman at the APAA.

"In any case, there is a danger that the potential proliferation of national measures would only add further complexity, without being environmentally effective."

The potential success of the equivalent measures approach depends very much on the country in question. China is already aiming to reduce carbon emissions from its airlines by 20% by 2020 and has introduced a set of guidelines to this end. It also has the advantage of a relatively new, and therefore efficient, fleet.

The commission has written to the Chinese government asking for more details regarding its plans and thinks an agreement might be reached. ENDS understands negotiations may also be under way with the United Arab Emirates.

But the US looks unlikely to follow this route. It would be hard for any measures to win approval when the House of Representatives is expected to vote in favour of an anti-EU ETS bill. American airlines, and indeed the International Air Transport Association (IATA), also remain wedded to an international approach.

The debate about equivalent measures is "not helpful", says IATA spokesman Chris Goater. If the EU were to wait for international action, there would be no need for such measures, he argues. "Why haven't [EU officials] defined what they are looking for and made it clear? They seem to have been getting themselves into a muddle."

The US has held discussions with the EU on equivalent measures, an official at the state department, which leads negotiations with the EU, told ENDS. But the country still has many questions and she refused to speculate on its future course of action.

The official also reiterated the US government's general dissatisfaction with the EU approach: "The US objects on both legal and policy grounds to this attempt to unilaterally impose its aviation policy on the rest of the world."

Some observers think the US government will decide to do nothing. Being seen to bow to industry lobbying would be embarrassing for the Obama administration and may hamper its efforts to create a single global emissions trading scheme.

### **No easy fix**

Whatever the outcome of ongoing talks, equivalent measures are unlikely to please all parties involved. By leaving outgoing flights in the ETS, they may not satisfy foreign airlines. There may also be debate about the real environmental benefits.

Mr Hemmings at T&E says the inclusion of all inbound flights in any equivalent measure also seems to limit what would count. Attempts to update national fleets would probably not qualify, for example, as they would only affect domestic airlines.

"In theory the equivalent measures provision should allow for an adult debate between countries. But the current debate is not grown-up – it is a simple case of using all means to overturn the legislation," he argues.

Damian Ryan of the Climate Group also thinks it may be hard to find truly equivalent measures. "The commission might have to agree, for political reasons, to measures that are above and beyond what countries are doing right now, but are not as much as the EU is trying to achieve with a physical cap," he says.

The EU executive might also find it hard to monitor progress in countries such as China which are wary of sharing detailed data, warns Mr Ryan.

But whatever the outcome of the legal and political wrangles, they are in themselves useful, he believes. "This is valuable in that it is forcing discussions to take place." And even the airlines taking legal action are measuring their emissions and adopting new strategies, he says. "This is good as it is all about learning by doing."

Read more: <http://www.endseurope.com/26881/can-the-eu-sail-through-the-aviation-storm#ixzz1ytSCdnoN>