

Aviation and climate change – destination unknown?



EU ETS

AVIATION COMPLIANCE, ENFORCEMENT AND FUTURE POLICY

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AVOCET RISK MANAGEMENT

We look at Aviation EU ETS performance from a compliance and risk management perspective

We monitor the build-up of aviation EU ETS systemic risk (accumulating since January 2012) – much of which is underwritten by EU taxpayers

We see that EU ETS continues to be a bureaucratic compliance issue for many aircraft operators including recently exempted small emitters

EU ETS

AVIATION COMPLIANCE AND ENFORCEMENT

AVIATION EU ETS HAS FAILED TO DELIVER

EU Member States appear reluctant to enforce aviation EU ETS regulations:

- › Statutory non-compliance penalties have not been widely issued
- › Lists of non-compliant aircraft operators for 2012 were not published by 30 June 2014 deadline
- › Regulators reluctant to provide compliance information
- › The EU Transaction Log is not transparent and gives a false account of compliance figures

AIRCRAFT OPERATOR NON-COMPLIANCE



- › Statutory civil penalty of EUR100 per tonne for non-compliance including late or non-surrender of allowances
- › Plus cost of making up any allowance shortfall
- › Additional local financial penalties may also apply
- › UK for example has rights of detention and sale of aircraft on a 'fleet lien' basis

UK Enforcement Case Study – Lack of Transparency

- › The latest EU List of Aircraft Operators (Feb. 2014) assigns **710** operators to the UK
- › UK reports it is responsible for regulating **512** aircraft operators in 2013
- › The EU Transaction Log lists a total of **407** ‘compliant’ operators to the UK in 2013
- › Therefore up to **105** aircraft operators were potentially non-compliant in the UK in 2013 (difficult to provide accurate figures due to ‘Stop the Clock’ derogation)

UK Enforcement Case Study – Lack of Transparency

- › Air India and Jet Airways are two airlines assigned to UK that do not appear on the EU Transaction Log
- › Perhaps as many as 150 aircraft operators were potentially non-compliant in 2012 (prior to introduction of initial ‘Stop the Clock’ derogation)
- › The UK had only sent 18 notices to non-compliant aircraft operators informing them of potential penalty payments for 2012 (ten of which contained Eurocontrol emissions calculations)

UK Enforcement Case Study – Lack of Enforcement

- › Most UK registered non-compliant aircraft operators in 2012 were ‘small emitters’ (emitting less than 1,000 tonnes CO₂)
- › Around 361 UK regulated ‘small emitters’ have been exempted from EU ETS compliance in 2013
- › Leaving UK Environment Agency regulating a total of around 151 aircraft operators (down from 512 operators)

UK Enforcement Case Study – Lack of Enforcement

- › Will the UK issue and enforce statutory penalties for the 2012 emission year on those ‘small emitters’ that became exempted in 2013?
- › If enforcement proceeds, how long will process take?
- › If not, it would be in breach of legislation, grossly unfair and disproportional to all EU ETS emitters (aviation and statutory installations) that have incurred considerable effort, time and expense in order to comply

Elsewhere in Europe

- › Germany has deferred publication (twice) of its list on 2012 emissions year non-compliant aircraft operators (scheduled 30 June 2014). Now to be published in the electronic Federal Gazette Q1 2015
- › France continues to charge exempted 'small emitters' annual royalties (effectively a stealth tax) of €3,500 to maintain their AOHA (which is a non-closable account)
- › The UK, Netherlands, Germany and Spain do not charge small emitters to maintain their AOHA

All of Europe

- › EU regulators puts the onus on each small emitter to notify their respective CA's if they exceed the 1,000 tonne CO₂ exemption threshold
- › The 'Offside trap' - Most small emitters do not realise that the 1,000 tonne CO₂ exemption threshold is based on 'Full Scope' rather than intra - EU ('Stop the Clock') emissions
- › This makes it far more difficult for exempted small emitters to monitor compliance obligations - compliance costs are likely to be disproportional

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FUTURE EU ETS POLICY ISSUES
FOLLOWING ICAO TRIENNIAL
GENERAL ASSEMBLY 2016

THE EITHER/OR SCENARIO

Will ICAO's 2016 Triennial Assembly agree on a framework for a global aviation emissions reduction scheme by 2020?

If **YES**, can it deliver?

If **NO**, where does it leave EU ETS?

Regardless of the outcome – aviation EU ETS will need to be significantly revised

WHAT'S AT RISK FOR THE EU?

- › The EU faces a number of retaliatory risks should 'Full Scope' EU ETS be reintroduced including:
- › Cancellation or deferment of EU manufactured aircraft
- › Restriction of overflight and bilateral agreements
- › Enforcement of USA's EU ETS Prohibition Act
- › Tit for tat reprisals against EU airlines (fines, detention etc.)

WHAT'S AT RISK FOR THE EU?

- › Billions of dollars worth of UK, French, German and US Export Credit Agency guarantees are at risk in the event of EU ETS default and enforcement of statutory penalties
- › Airline have been forcing banks and lessors to remove EU ETS compliance clauses from aircraft leases and finance agreements
- › Bankers, aircraft lessors and law firms are unfamiliar with EU ETS and the risks are not being managed

THE UK'S POLICY OBJECTIVES

- › The UK's overarching policy objective is to address the growing level of aviation emissions
- › the UK's primary objective is to create the conditions to facilitate an agreement on a global measure for aviation emissions at the ICAO Assembly in 2016
- › The specific objective of this intervention is to ensure UK law is consistent with EU law and to provide clarity and legal certainty for regulators, aircraft operators, and other relevant stakeholders

THE UK'S POLICY OBJECTIVES

The UK also has a number of secondary objectives, which include:

- › preserving the competitiveness of the aviation sector
- › maintaining a level playing field in the aviation market
- › minimising administrative complexity of Aviation ETS
- › limiting additional administrative costs for aircraft operators and competent authorities.

If a global agreement at ICAO fails, will the UK's secondary objectives become its primary objectives?

PROGNOSIS

Whatever the outcome at ICAO in 2016, EU ETS existing 'equivalent measures' are unlikely to be met

We believe it will be politically difficult for the EU to reintroduce 'Full Scope' EU ETS for aviation in the event that an ICAO global emissions reduction scheme is not agreed in 2016

No more tub-thumping or policy u-turns - The EU must stand by its principles if its own emissions reduction targets are to be met – including aviation

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