

# Briefing: ICAO Council discussion on including aviation in the EU-ETS

November 2011

## Context

On 2 November, the governing body of the International Civil Aviation Organization (ICAO), is scheduled to discuss a paper put forward by 26 countries calling for the adoption of a joint declaration against the inclusion of aviation emissions in the European Union Emissions Trading Scheme (EU-ETS) from 2012, originally signed in New Delhi on 30 September.

## Is there a link between legal action by US airlines and the New Delhi declaration?

Yes. Three US airlines, including United Airlines (UA) launched legal action in the UK high court against the inclusion of aviation emissions in the European Union Emissions Trading Scheme (EU-ETS) on 17 December 2009. At that time, UA's Managing Director of International and Regulatory affairs was Dr Julie Oettinger (see Annex 1).

On 7 June 2010, six months after launching this major legal action, Dr Oettinger joined the US government's Federal Aviation Administration (FAA) as head of policy, international affairs and environment. Her previous employment at United Airlines is not recorded in her official biography on the FAA website (see Annex 2).

On 30 September, 21 countries signed a joint declaration attacking the EU-ETS in New Delhi, India. Ahead of the meeting, an Indian official said "The US wanted a platform, we were more than enthused to be one..."<sup>1</sup>. A computer file of the joint declaration lists the 'author' in its document metadata as 'FAA', suggesting that a US FAA official wrote or helped write the document (see Annex 3).

On 2 November 2011, a working paper calling for the ICAO council to adopt the New Delhi declaration will be debated at the ICAO Council meeting in Montreal, Canada. The original 21 signers plus five others have put the working paper forward.

## Are the airlines of the 26 countries that have signed the ICAO Council working paper actually affected by the EU-ETS?

Airlines of eight of the countries (Burkina Faso; Cameroon; Colombia; Cuba; Guatemala; Paraguay; Peru; Uganda) are exempt from the scheme because the number of flights they operate are too small to qualify. Two thirds of emissions covered by the scheme will be from European airlines; no European countries have signed the resolution. US airlines are by far the biggest non-EU nationality covered, responsible for around 10% of emissions. Indian, Brazilian and South African airlines, to give three examples, are responsible for 1% or less each of the emissions covered, so the financial impact will be minimal on those countries.<sup>2</sup>

## What is the EU ETS?

The European Union Emissions Trading Scheme (EU ETS) is a programme aimed at reducing CO<sub>2</sub> emissions by trading and selling emissions permits on a free market. In the first phase of the scheme, around 10,000 major land-based emitters such as power stations, and metal factories were included.

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<sup>1</sup> <http://www.livemint.com/2011/09/21235903/India-to-lead-campaign-against.html?h=B>

<sup>2</sup> [http://ec.europa.eu/clima/policies/transport/aviation/docs/presentation\\_icao\\_en.pdf](http://ec.europa.eu/clima/policies/transport/aviation/docs/presentation_icao_en.pdf)

## How does the EU-ETS work?

Each year, polluters have to surrender a number of permits equivalent to the amount of CO<sub>2</sub> they emitted the preceding year. If they don't have enough allowances, they can buy them from other companies. If they have more allowances than emissions because they have become more efficient, they can sell the extra allowances. The EU puts a maximum cap on the CO<sub>2</sub> emissions that can be emitted by restricting the number of permits available on the market. As permits become more scarce, the price goes up, providing emitters an incentive to reduce their emissions where that is cheaper than buying permits.

## When and under what terms will aviation be included in the EU ETS?

Airlines will be included in the EU ETS as of 1 January 2012. Airlines will have to surrender allowances covering the emissions of all flights they have operated in a given year that departed and/or arrived at an EU airport.

Aviation emissions will be capped for the year 2012 at 97% of the sector's emissions over the period 2004-2006 (212 million tonnes of CO<sub>2</sub>). Between 2013 and 2020, the cap will be set at 95% of aviation's 2004-6 emissions. Each airline will receive 85% of their emissions permits for free, based on their 2004-6 level. From 2013 onwards they will receive 83% for free. Airlines that operate more flights (or operate less efficiently) than in 2004-6 will have to buy more permits.

## Will including aviation in the EU-ETS lead to big cuts in emissions?

No. Based on figures from the European Commission's impact assessment, including aviation in the EU-ETS will offset just one year's growth of the sector's emissions. In short, it's a first step, but other measures such as kerosene taxes and VAT on airline tickets are still needed.

## What is the impact of aviation on climate change?

Emissions from aviation are a significant contributor to climate change. The total impact of aviation on man-made climate change is 4.9%<sup>3</sup>, which includes the impact of greenhouse gas emissions including CO<sub>2</sub> and NO<sub>x</sub>, and also the vapour trails and clouds caused by planes. A lower figure of 2%, often quoted by the aviation industry, applies only to Carbon Dioxide (CO<sub>2</sub>) emissions and refers to 1990 data.

Emissions from aviation are growing faster than any other mode of transport. CO<sub>2</sub> emissions from EU international aviation increased by 110% between 1990 and 2008. Meanwhile other sectors have reduced emissions. If unmitigated, aviation emissions are expected to double or triple by 2050, putting efforts to keep global warming below 2 degrees at risk.

## Why is Europe acting alone rather than working on a global system through the United Nations?

In 1997, the Kyoto Protocol asked developed countries to work through the UN's International Civil Aviation Organization (ICAO) to reduce aviation greenhouse gas emissions. So far the institution has failed to come up with a globally-binding agreement. It ruled out introducing a global emissions trading system itself and has strongly attacked other tools such as a kerosene taxation or emissions charges. The EU took regional action partly because of this lack of progress and partly because of a 2004 ICAO resolution that said ICAO would support national or regional emissions trading as a first step towards a global system.

## What is the cost of the EU ETS for the aviation industry?

In 2012 the industry's costs are expected to be around €1.1 billion. When divided by the 90 billion litres of kerosene the industry will burn to power flights covered by the scheme, it's the equivalent of a 1.2 cent a litre fuel tax. That is 40 times less per litre than the 48 cents tax road transport pays, on average, for petrol and diesel in the EU.

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<sup>3</sup> Aviation and global climate change in the 21st century, David Lee et al, Atmospheric Environment, July 2009

## Could long-haul airlines actually profit from the scheme?

IATA, the International Air Transport Association used to think so. At the time the EU legislation was proposed IATA economic analysis estimated that the net financial impact for extra-EU flights “may be slightly positive”.<sup>4</sup> IATA has since removed that analysis from its website and continues to attack the EU-ETS in the media on an almost weekly basis.

## What is the latest regarding the legal case brought by three American airlines?

In December 2009, three American airlines attacked the legality of aviation's inclusion in the EU ETS with a case brought before the UK high court. The case was sent up to the European Court of Justice. In October, a non-binding opinion from the advising judge assigned to the case strongly rejected all of the airlines' claims. The final judgement is expected in 2012.<sup>5</sup>

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<sup>4</sup> <http://www.endseurope.com/docs/70606b.pdf>

<sup>5</sup> <http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-10/cp110104en.pdf>

# Annex 1: An official biography of Julie Oettinger highlighting her employment as head of legal affairs at United Airlines prior to 7 June 2010.



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## Speakers



### Julie Oettinger

Assistant Administrator for International Aviation  
Federal Aviation Administration (FAA)

Julie Oettinger joined the Federal Aviation Administration on June 7, 2010 as Assistant Administrator for International Aviation and Acting Assistant Administrator for Policy, Planning and Environment. Prior to joining FAA, Ms Oettinger held the position of Managing Director for International and Regulatory Affairs at United Airlines based in Washington, D.C.

Ms Oettinger also held the position of Assistant General Counsel at US Airways from 1998 to 2002 where she was responsible for all international legal affairs and all regulatory matters. From 1990 to 1998 and then again from 2002 to 2003, Ms Oettinger was Attorney Advisor in the Legal Advisor's Office at the U.S. Department of State. In this capacity, she held various positions including Legal Advisor to the aviation negotiation team from 1994-1996 and Special Assistant to the Under Secretary for International Security Affairs from 1996-1998.

Ms Oettinger was also Legal Advisor at the U.S. Embassy Panama from 1992 to 1994.

Ms Oettinger received a B.A. in 1982 from Tufts University and a J.D. in 1986 from the University of Michigan.

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## Annex 2: US government official biography of Julie Oettinger omits previous employment as head of legal affairs at United Airlines prior to 7 June 2010.



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### Julie Oettinger

#### Assistant Administrator for Policy, International Affairs and Environment

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Julie Oettinger joined the Federal Aviation Administration on June 7, 2010. As Assistant Administrator for Policy, International Affairs and Environment, she oversees the organization responsible for directing the formulation of national aviation policies, requirements and plans to implement agency goal and priorities; achieving U.S. international aviation objectives; and developing and recommending environment and energy policy.



Prior to joining, Ms. Oettinger was also the Assistant General Counsel at US Airways from 1998 to 2002 where she was responsible for all international legal affairs and all regulatory matters. From 1990 to 1998, and from 2002 to 2003, Ms. Oettinger was Attorney Advisor in the Legal Advisor's Office at the U.S. Department of State. In this capacity, she held various positions including Legal Advisor to the aviation negotiation team from 1994-1996 and Special Assistant to the Under Secretary for International Security Affairs from 1996-1998. Ms. Oettinger was also Legal Advisor at the U.S. Embassy Panama from 1992 to 1994.

Ms. Oettinger received a B.A. in 1982 from Tufts University and a J.D. in 1986 from the University of Michigan.

### Annex 3: Screen capture of Microsoft Word document of 'New Delhi declaration'.

Document properties show author as 'FAA'.

Note: the document title 'Montreal Declaration' – probably refers to the November ICAO Council meeting to be held at ICAO headquarters in Montreal, Canada.

