

Context

The Commission has proposed deferring the enforcement of the EU ETS for flights in and out of Europe for one year [2012/328 (COD)].

Introduction

The European Commission has proposed a one year “stop the clock” derogation for the aviation portion of the EU Emissions Trading System (ETS) Directive to provide ‘breathing space’ for the International Civil Aviation Organisation (ICAO) to come to a global agreement on regulating international aviation emissions. The derogation applies to all flights to and from Europe (including EFTA states and Croatia) except intra-European flights.

What is going on in ICAO?

The Kyoto Protocol charged ICAO with limiting/reducing greenhouse gas (GHG) emissions from international aviation. 10 years later, nothing had been agreed in ICAO and ICAO ruled out a global measure in favour of state/regional action leading the EU to include aviation in the EU ETS. In reaction to the EU move, ICAO agreed to reconsider the feasibility of a global market-based measure (MBM) to cut aviation’s emissions. The consideration of a MBM has proceeded on two tracks, one looking at the feasibility of a global market-based measure and one looking at the development of a framework for implementing MBMs.

When can we expect a global MBM?

The ICAO Council is working towards the September 2013 triennial Assembly. A High Level Group (HLG) has been established to consider outstanding key political questions on both the global market-based measure and the framework. It was in the context of establishing the HLG that the Commission proposed to stop the clock to give ICAO breathing space to formulate its policies.

Opposition to a global MBM

China, India, Brazil and others resist work a MBM in ICAO and support an aspirational goal of carbon neutral growth from 2020 or later. At the same time, these developing countries – dubbed the “coalition of the unwilling” – have loudly criticised the EU ETS, as led by the US. A possibility for Europe to split this opposition would be to earmark aviation revenues for climate finance. Now that the clock is stopped the question is whether ICAO members have the will or the intention to agree on a global measure. Many suspect they will play for time.

The US has been lobbying hard against a global MBM and only agreed to go along with including this item in the HLG remit provided the group was also tasked with work on the ICAO “basket of measures” - biofuels, operational measures and, critically, the MBM framework which it sees as a vehicle to contain Europe. So long as the US continues to rule out a global MBM while pressing for a framework, the only reasonable conclusion to draw is that it will serve as a means to contain and diminish Europe’s ETS. Europe needs to counter by pressing for progress on a global MBM while securing a satisfactory agreement on the framework.

What is the MBM framework?

The framework, to be adopted in 2013, will provide guidance on how states/regions should set up their own market-based measures (such as the EU ETS) in the absence of a global deal, essentially providing agreement for the development of a patchwork of MBMs across the globe. As these MBMs should not overlap, a key element of the framework is geographic scope where three alternatives are proposed:

- a. Outbound flights (all flights subject to the regulation of the country of departure);
- b. Sovereign airspace (regulation based on distance travelled in various countries, this, de facto, would mean that all international flights would be subject to multiple carbon regimes and any portions of flights over the ocean would be unregulated);
- c. National carrier (e.g. on the New York to Brussels route, all American carriers would be subject to American rules while EU carriers would be subject to EU rules).

The framework discussions are still on-going but the USA has introduced the requirement of “mutual agreement”. This would mean that as well as agreeing the framework, states would need to secure additional agreement from each other (i.e. requiring hundreds of bilateral agreements) before subjecting foreign carriers to their MBM (i.e. the EU would need a bilateral agreement with the USA to include American Airlines in the ETS under the framework if this item is agreed).

Is the framework the key to keeping the EU ETS?

The Commission and indeed T&E are seeking a global MBM as the final goal. However, the best option in the meantime, while ICAO is given time, is to agree the framework. The Commission sees the framework as a means to provide legitimacy and permanence for the EU ETS pending any global MBM (once there is a global MBM the ETS will fall away anyway) and as a potential basis for other states and regions to follow the EU’s lead. Indeed the October EU Transport Council Conclusions suggest that agreement on an MBM framework is Europe’s principal objective. This would be consistent with Europe’s need to ease diplomatic pressure from Washington.

The Commission view is that the scope of the framework should be outbound flights. But we can’t be sure that Europe’s position might not change under the pressure to agree any framework, even if unsatisfactory, within the year. T&E sees the main challenge, in this time span, as ensuring that when the clock starts again global pressure has lifted. Indeed, in the explanatory memorandum to the “stop the clock” proposal, there is a clear indication of the Commission’s willingness to amend the scope of the Directive (e.g. by excluding inbound flights). However, it will be hard to convince today’s opponents of the ETS that a revision of the EU ETS Directive comprising just outbound flights does not “infringe” other countries’ sovereignty, as this is the charge levelled against the Directive today.

The EU’s action in proposing a clock stop has demonstrated that Europe is not a barrier to global solutions and the challenge is now for the US and other leading States in ICAO to match that commitment. However, the US position is complicated by the EU ETS Prohibition Act. The US Secretary of Transportation now has the power to invoke the ban on US carrier compliance with the ETS. While the clock is stopped it is unlikely that such a step would be taken, however, any sign that the clock stop will not be agreed in Parliament and Council, could provoke action.

Policy recommendations

In conclusion, T&E regrets that the Commission has been put in this difficult position through international pressure, particularly from the US. The focus must now be on rapid progress in ICAO. Thus, T&E calls on MEPs to support the quick passage of the proposed derogation, ensuring that the clock automatically starts after one year and the scope of the derogation is not expanded in any way to intra-EU flights. In addition to this, T&E calls on MEPs to underline the reason that the clock was stopped: ICAO must agree a global MBM and a framework based on outbound flights.