

Insight: Asset Finance

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Will the EU ETS Aviation Emissions Directive be Grounded?

The International Civil Aviation Organisation (ICAO) emerged on 4 October 2013 from its much-anticipated 38th General Assembly meetings in Montreal with what looks like a consensus on the use of market based mechanisms (MBM) for international aviation emissions.¹ The parties confirmed that by 2016 the ICAO will have “tools in place” to develop a market-based measure and a world-wide carbon management plan for aviation, to commence in 2020. The scope of the General Assembly decision has significant implications for the application of the EU ETS to the aviation sector.

On the assumption that the ICAO would be effective in tackling the climate change impacts of international aviation emissions, the EU allowed a one-year moratorium on enforcement of the EU ETS (for all flights originating outside of the EU that land in or take off from an EU member state).²

Significantly, the European Commissioner for Climate Action, Connie Hedegaard, made it clear at the time that if the 2013 ICAO General Assembly failed to make “sufficient progress” EU ETS requirements would be applied in full to all flights to and from non-European countries from 1 January 2014 onwards. The fact that the ICAO General Assembly did not deliver a draft international agreement with measures to reduce aviation emissions, or develop targets for ICAO member countries, sets eyes squarely back on the EU.

Are the results of the General Assembly “sufficient progress” for the European Commission? At the General Assembly meetings, the EU proposed that until 2016, when development of a global program would commence, the EU should be entitled to include international airlines in the EU ETS coverage. However, the General Assembly rejected this proposal.³ In a move that ultimately limits the options available to the EU, the ICAO decision states that until a global system is put into place, countries’ existing emissions



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¹ For further details on the 38th General Assembly, see <http://www.icao.int/meetings/a38/Pages/default.aspx>

² For background to this, see White & Case Client Insight *High Hopes for Regulating International Aviation Emissions*, dated March 2013 at www.whitecase.com

³ For more information see http://ec.europa.eu/clima/news/articles/news_2013100401_en.htm

trading systems (relevant to the EU, in particular) may only cover airlines in regional airspace. With this statement before them, the European Commission must take a hard look at the impact of the EU ETS on the European aviation sector. For the interim, the European Commission has confirmed only that it will coordinate with the European Parliament and the EU member states to “assess the ICAO decision in more detail before deciding on the next steps with respect to the EU emissions trading system.”⁴

Only a very carefully crafted European response can keep both sides of the debate at bay until an international regime takes form.

Members of the aviation sector and interested individuals can contribute to a consultation issued by the European Commission, which commenced on 30 September 2013 (at <http://ec.europa.eu/clima/consultations>). The consultation is designed “to collect experiences, suggestions and opinions related to international and EU policies tackling climate change impacts from international aviation emissions through market-based measures”, including international policy options for the ICAO and how to reduce the administrative burden of the EU ETS on small aircraft operators.

⁴ See http://ec.europa.eu/clima/policies/transport/aviation/index_en.htm