EU Reaction to ICAO’s Agreement on Aviation Emissions

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The European Commission calculated years ago that someone flying from London to New York and return generates roughly the same level of CO2 emissions as the average person in the EU does by heating their home for a whole year. And air traffic is supposed to double by 2035...

This is why the European Union decided as early as 2008 that, as part of its effort to address climate change, it would extend its so called EU emissions trading system (“ETS”) to the aviation sector.\(^1\) By 2012, in principle, emissions from all flights from, to and within the European Economic Area (EEA) – the 28 EU Member States, plus Iceland, Liechtenstein and Norway - should have been included in the EU ETS system.

But this proposal was very negatively received by third countries. Airlines for America (A4A) together with several American air carriers engaged in legal disputes against the EU Directive, arguing that it broke the EU-US open sky agreement, the Kyoto Protocol, and the International Civil Aviation Convention. After their case was lost in the European Court of Justice, a coalition of countries led by the United States, China, Russia, India, Japan, and others launched a major political offensive against the unilateral character of the EU scheme. Their major argument was that the Directive, by imposing obligations on third countries, went against the principle of sovereignty. They pleaded that a satisfactory solution could only come through a global market based scheme, as it was discussed (but with not much success at the time) in the International Civil Aviation Organization (ICAO) Assembly.

As a result of these pressures – which included retaliation threats targeting Airbus sales - the EU renounced, provisionally, imposing its system to extra-EU flights. ETS requirements for flights to and from non-European countries were “suspended” until the end of 2016, in order to give time to ICAO to develop a global ‘market-based measure’ (MBM) scheme. ICAO’s Assembly in 2013 decided in principle that a mechanism would be agreed by 2016 and applied by 2020. In the meantime, only flights within the EEA continued to be covered by the ETS system, with some exemptions for operators with low emissions.

ICAO has respected its self-imposed deadline: In its 39th session, on October 6th 2016 in Montreal, an agreement was reached on a ‘Carbon Offsetting and Reduction Scheme for International Aviation’ (CORSIA). According to the scheme, CO2 emissions for international aviation would be capped at the level of average emissions between 2019 and 2020, with participants offsetting any increases; the offsetting obligation would apply to all international flights between States that are part of CORSIA. In order to offset its emissions, an airline operator would have to buy ‘Emission Units’ originating from various emission reduction programs and projects across the globe. The specific criteria for these ‘Emission Units’ will be developed by ICAO in the next two years.

But, in order to ensure broad support, negotiating States concluded substantive compromises on the timeline of implementation, exemptions to the agreement, and the distribution of offsetting requirements among airline carriers\(^2\). The European Union fought to reduce these exceptions or delays to a minimum but with limited success. It decided, anyway, in the end, to accept the final agreement.

What will happen now?

As prescribed by the EU law, as amended to allow the ICAO process to develop, the Commission has to report to
the European Parliament and Council on the outcome of the ICAO Assembly and propose measures ‘as appropriate to take international developments into account’. These measures should have been decided before the end of this year since the ‘suspension’ of the EU ETS system for aviation was supposed to end at the end of 2016. But the Commission decided to take its time and will only present its proposals at the beginning of 2017. The decision will thus only be taken in the course of next year.

From a technical point of view, this should be manageable: even if the ‘exemption’ from the EU established ETS system automatically runs out at the end of 2016, airlines will only have to surrender carbon emissions allowances under that system in the first quarter of 2018. This leaves the whole of 2017 for a decision to be taken by the Parliament and the Council, taking into account the ICAO agreement.

It appears, however, that the EU decision will not be easy to make due to strong pressure from public opinion and environmental groups, widely represented in the European Parliament, to impose stronger rules than the ones decided in Montreal.

The political debate in the EU has been stimulated by the failure of the Paris agreement on climate change in December 2015 to address the aviation sector. Only the EU, some small developing countries and a few others, agreed to have the agreement mention ships and planes in the section on cutting emissions. This would have required ICAO and the International Maritime Organization to set sector-wide emissions reduction targets. But opposition from China, India and Gulf states such as Saudi Arabia and others won out. The way forward thus could come only from ICAO.

But – from the point of view of EU environmental activists – CORSIA, contrary to the EU ETS, will not actively reduce the aviation emissions of international flights. It will only, as mentioned above, cap emissions and require airline operators to offset any additional emissions to the 2020 levels, whilst the 2015 Paris agreement requires an actual reduction in global CO2 emissions in order to limit global warming below 2°C above pre-industrial levels. An additional concern is that the implementation of CORSIA will only be required by 2027, which does not correspond with the EU’s ambition to have the international scheme in place by 2020.

In response to this last concern, the International Air Transport Association (“IATA”) has already urged governments to participate in the ‘voluntary’ phase, hoping this might rally the EU to the ICAO scheme. According to ICAO, at least 64 states, including the EU, the US and China, representing more than 80% of the international aviation activity, have declared their intention to participate in the voluntary phase of the scheme as from 2021. Who will not join? Apparently Russia, India, South Africa, Saudi Arabia, Brazil, Chile, and the Philippines.

Nevertheless, the EU Commissioner in charge of Transport, Violeta Bulc, said herself that the deal on the table will serve to offset 83% of emissions above 2020 levels between 2021 and 2035. So, the big question that will dominate next year’s discussions at the EU level will be: do we stick to our ETS system for intra-European flights, extending (indefinitely?) the ‘suspension’ for flights in and out the EEA? (This would not be easily acceptable for European airlines). Or, do we adopt, even inside the EU, the scheme agreed in ICAO (joining its voluntary timetable)? Or will the solution also include formulae suggested by the airline industry, centred on technological improvements to reduce emissions?

1 The EU ETS is a “cap-and-trade” system of CO2 emission rights that requires included sectors to buy allowances to cover their gas emissions. The amount of available allowances is reduced every year to encourage ‘polluters’ to reduce their emissions. The EU expects that sectors covered by the EU ETS will reduce their emissions by 21% by 2020 and by 43% by 2030, in comparison with 2005 levels.

2 First, the implementation of the scheme would be phased in two parts: a voluntary phase taking place between 2021 to 2026, followed by a mandatory phase from 2027 through 2035, in which all remaining ICAO states would participate.

Second, the agreement includes a number of exemptions to CORSIA inspired by the principle of common but differentiated responsibilities among States. Countries with a small international aviation sector or highly dependent of international aviation will be exempted during the mandatory phase. This exception includes the Least Developed Countries (LDCs), Small Island Developing States (SIDS) and Landlocked Developing Countries (LLDCs). Furthermore, airline carriers that are too small, i.e., emitting less than 10,000 metric tons of CO2 emission from international aviation per year are also excluded, as well as flights for humanitarian, medical or fire fighting purposes.

Third, the agreement tries to address the concern that existing airline operators with little growth expectations beyond 2020 will in practice be exempted from efforts to reduce their emissions. Therefore, it foresees in a transition from a collective effort to offset the sector’s emissions towards an approach with more individual responsibility for airline carriers. In practice, as of 2030,
the importance of individual air operator’s emissions will gradually increase in the calculation of “Emission Units” that any operator is required to buy.

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