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ERA INPUT TO THE CONSULTATION ON IMPLEMENTING THE AVIATION EMISSIONS TRADING SYSTEM “STOP THE CLOCK” DECISION IN UK REGULATIONS

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ref: EU ETS

Dear Sir or Madam

With reference to the open consultation launched by the UK Department for Transport (DfT) and the Department of Energy and Climate Change (DECC) on the implementing tools to transpose the Aviation Emissions Trading System “Stop the Clock” decision in UK legislation, the European Regions Airlines Association (ERA) is pleased to submit its considerations and comments on this sensitive issue on behalf of our membership.

About ERA

Founded in 1980, the European Regions Airline Association is a non-profit trade association representing some 50 intra-European airlines which annually carry 70.6m passengers on 1.6m flights to 426 destinations in 61 European countries. ERA also represents and supports more than 120 Associate and Affiliate members including airframe and engine manufacturers, airports, suppliers and service providers from all over Europe.

Introduction

On 12th November the European Commissioner for Climate Action, Connie Hedegaard, announced a 12-month moratorium on the implementation of the EU ETS scheme applicable to all flights from and to non-EU Countries departing from or landing in Europe. This means that the EU will not impose the monitoring and reporting obligations and will not require air operators to surrender allowances in April 2013 for emissions from flights originating from or departing to non-EU/EEA/EFTA Countries + Switzerland and Croatia (“non-international flights”). The only condition is that these operators have not received, or have returned, free allowances received in 2012 for such flights. The scheme will however remain fully implemented for non-international (for example intra-EU) flights.

The amendments were formally presented in a proposal for decision, issued by the Commission on 20th November that will need to be formalised and adopted through ordinary legislative procedure (co-decision) with the support of both the Council and the European Parliament.



The alleged rationale for this move is to create a “positive atmosphere” and to allow ICAO enough time to progress with the on-going discussions on a credible global Market Based Mechanism (MBM) by the next ICAO Assembly, in September/October 2013.

The European Commission has stated very clearly that, in case no substantial results are reached by ICAO by next autumn, the EU ETS legislation would automatically revert back to applying to all flights.

The “stop-the-clock” was announced by a press-conference, but no formal aviation stakeholders consultation meeting has ever been organized by DG Climate Change since then to discuss the full implications of this decision.

Legal Issues

The proposed suspension raises several questions for operators, both within the European Union and in other countries. From a legal standpoint, this suspension (the idea being that Directive 2003/87/EC will remain in force, but will have a derogation that covers extra-European flights) needs to be established through the EU “co-decision” procedure, which means that it needs consultation and agreement of the three EU institutional bodies: the Commission, the Council and the Parliament. The legislative proposal was published on 20 November 2012 and DG Climate Change is confident that the derogation will be approved by April 2013.

This estimate only concerns the approval of an amendment to the existing Directive, however, as indeed the EU ETS regulation is a “Directive”, once the changes are formally published, they will still need to be implemented into national law in 27 different Member States, each of which will have its own legal requirements and timing.

This means that there could be a lack of uniformity not only on the types of implementing measures and their contents, but also on the timing of their coming into effect. As a consequence, the Competent Authorities (CAs) of the EU Member States will find themselves in a difficult position. They will have to continue applying the EU ETS Directive until this has been amended and the amendments transposed and implemented in national law, even though they are aware of the will of the Commission to stop the clock on extra-European flights.

Wrong and discriminatory option

Notwithstanding the legal ‘soundness’ of the proposal, the solution chosen by the Commission was the easy option and effectively creates an intra-EU scheme, ironically penalising the same European carriers that have always been supportive of the scheme as a valid market-based measure to tackle CO2 emissions from aviation rather than simply imposing a one year suspension for all flights.

An intra-EU Emissions Trading Scheme is likely to result in competitive distortions to the detriment of many European regional and point-to-point carriers, whose operations take place primarily within Europe. The main beneficiaries of this proposal are likely to be non-EU carriers that will receive a substantial “EU ETS discount” on their international flights and will ultimately be able to cross-subsidise their operations within Europe.

It is disappointing to read that the UK DfT, in its Impact Assessment to the Consultation, is aware of the potential competitive distortions from the Stop the Clock proposal (*in respect of indirectly limiting suppliers, airlines operating solely in the EEA have also raised concerns that foreign or UK airlines that operate both extra-EEA and intra-EEA flights may be able to cross-subsidise tickets on intra-EEA*



*flights, causing them a competitive disadvantage on intra-EEA flights) but eventually underestimates or disregards their effects (Some published studies have assessed whether additional cross subsidisation is likely to occur as a result of the inclusion of aviation in the EU ETS. For example, the European Commission's Impact Assessment on the inclusion of aviation in the EU ETS indicates that additional cross subsidisation is unlikely to occur as a result of the inclusion of aviation in the EU ETS regardless of the scope of the Aviation EU ETS. However, no published studies have been identified that have specifically assessed the potential for the "Stop the Clock" Decision to result in additional cross subsidisation).*The lack of sound studies assessing the impact of the Stop the Clock decision on cross-subsidisation is an unacceptable flaw to the whole Commission's plans.

Aside from the financial and competitive implications, the Commission's proposal seems to contradict its environmental objectives. By exempting international flights, that account for up to 80% of the total CO₂ emissions from aviation in Europe, from their obligations the whole ETS scheme for aviation will become environmentally ineffective. If it is accepted that environmental effectiveness is no longer a priority then why not simply exempt all flights whilst an international solution is agreed?

Regional air carriers, flying mainly intra-EU routes, are the collateral victims of the political move of the Commission. The already unrealistic administrative burden compared to the size of their operations and their low level of emissions is now even worse, with no stability in the process which is time-limited and conditional on an ICAO positive result. This creates distortion of competition between operators flying only intra-EU and having to comply at a high cost to them to the full EU ETS regulations, and operators flying only "internationally". Moreover, it imposes a dual recording of data for operators flying both within the EU and international.

Conclusion

The EU is right in recognising that more time is needed for the International Community to find a solution to an International problem. But creating an intra-EU ETS is not the right answer. The fair solution is to 'stop the clock' for everyone while industry and regulators work towards a commonly agreed international solution.

Even though for the vast majority of ERA airline members and EU carriers nothing has changed other than non-EU carriers (and some EU carriers' non-EU flights) have been relieved of their obligations, ERA's position has consistently been that a suspension of the scheme until ICAO has been able to find a solution is a positive step but that the proposed intra-EU only scheme remains strongly opposed.

In a joint ERA-IACA press release, issued on 13th November, the Directorate pointed out that *by implementing a two tier scheme where intra EU operators are still obliged to fully implement the law, the European Commission will continue to impose cost and complexity on intra-EU operations with little or no overall environment benefit.* Ultimately both ERA and IACA called *on the EU Member States and the Parliament to extend the moratorium to all flights.*

As a general remark, the ERA expresses its concerns over intrusive legislative interventions in the market driven carbon market through proposals aimed at distorting the interplay of supply and demand.

A complete and structural change to the existing legislation would simply result in higher business and investment uncertainties and in higher costs to air operators, in a context of already harsh economic conditions in Europe and fierce opposition to the EU ETS scheme by non-EU Countries.



As long as the options envisaged by the Commission are not better described and carefully examined by full, published and comprehensive impact assessments, no further and detailed comment can be submitted by ERA on behalf of its members.



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