

EU Court Upholds Carbon Trade Plan For Aviation

Arthur Max, Associated Press

AMSTERDAM (AP) — U.S. air carriers failed Wednesday to block an EU law charging airlines flying to Europe for their carbon pollution, yielding to a sweeping measure intended to curb climate-changing emissions from international aviation.

The European Court of Justice in Luxembourg dismissed arguments that imposing the European Union's cap-and-trade program on flights to and from European airports infringes on national sovereignty or violates international aviation treaties.

The lawsuit was brought by U.S. and Canadian airlines acting through the industry trade organization Airlines for America, but the protest was supported by China, India and other countries with international carriers.

The U.S. airlines said the regulation was tantamount to "an exorbitant tax," but the EU said the added costs would amount to a few dollars per ticket and would open the way for efficient airlines to make money rather than lose.

The carbon trading program, due to go into effect Jan. 1, is one of the widest-reaching measures adopted by any country or regional bloc to regulate emissions of greenhouse gases blamed for climate change. It aims to make airlines accountable for their carbon emissions, which contribute to global warming.

The EU said it had enacted the measure after the International Civil Aviation Organization, the U.N. regulatory agency for airlines, failed to take concrete steps to rein in carbon emissions, despite an ICAO resolution 14 years ago authorizing action.

Although only 3 percent of total human-caused carbon emissions come from aircraft, aviation is the fastest-growing source of carbon pollution.

The U.S. trade group said its members would comply with the EU directive "under protest," while reviewing legal options.

"Today's court decision further isolates the EU from the rest of the world and will keep in place a unilateral scheme that is counterproductive to concerted global action on aviation and climate change," Airlines for America said in a statement from Washington. "Today's decision does not mark the end of this case."

Under the scheme, each airline will be allocated pollution permits slightly less than its average historical emissions record. If it exceeds its limit, it can buy permits from other airlines that have emitted less than allowed and have leftover permits to sell. Emissions are counted for the entire route of an aircraft that touches down in Europe.

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Published on Industrial Maintenance & Plant Operation (<http://www.impomag.com>)

The intention is to induce airlines to emit less carbon by upgrading their fleets or becoming more efficient.

Connie Hedegaard, the European commissioner for climate action, said she was "satisfied" with the ruling and ready to work with the airlines on implementing it.

The EU law would exempt airlines if they take comparable measures to control their greenhouse gas emissions.

All revenue derived by the EU from the program will go toward fighting climate change, the EU says.

An organization of budget airlines, the European Low Fares Airline Association, welcomed the decision, which it said would compel the big carriers to follow the same rules as small airlines on internal European flights. It said 80 percent of aviation emissions originate from long-distance routes.

Environmentalists also hailed the judgment.

The EU has calculated the cost to passengers will be minimal, ranging up to euro12 (\$15.70) on a one-way trans-Atlantic flight. For many flights it will be a euro (\$1.32) or two.

But the airlines are receiving most of their permits for free for the first transition years. If the full market price of emissions is passed on to consumers — as happened with European utilities that received free permits — the airlines will benefit from windfall profits, say analysts and European legislators.

Peter Liese, the German lawmaker who ushered the bill through Parliament, said airlines should be paying about 1 euro (\$1.32) to fly to the U.S. east coast, and any airline charging substantially more is either trying to "fool the passenger" or has "a very old and dirty fleet."

The ruling by the 13 judges said the EU was within its rights to impose the scheme on commercial airlines that choose to operate at European airports, and thus fall under EU jurisdiction.

It also rejected the appeal that the measures violate the Open Skies treaty prohibition against unilateral taxation or discriminatory treatment. It said the cost to the airline is subject to an open market, from which it also may profit, and is not a tax. It also treats all flights equally, as long as they land or take off from one of the EU 27's nations.

The directive, enacted in EU law in 2008, aroused an international protest beyond those airlines that joined the lawsuit.

The U.S. House of Representatives passed a measure two months ago directing the transportation secretary to prohibit U.S. carriers from participating in the program if it is unilaterally imposed.

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Last week, U.S. transport secretary Ray LaHood and Secretary of State Hillary Rodham Clinton wrote to the EU commission reiterating Washington's objections on "legal and policy grounds," and said the U.S. would respond with "appropriate action." It did not elaborate.

"U.S. companies and citizens have to respect EU law, just like anyone else", said Jo Leinen, who chairs the European Parliament's environment committee. He said it would be "arrogant and ignorant" of U.S. lawmakers to pass legislation against the EU measure.

China and India complained about the issue at the recent 194-nation U.N. climate conference in South Africa. The New Delhi government reportedly told Indian carriers to defy the directive by refusing to submit carbon emissions data to the EU.

But the EU said all major international carriers, including those behind the lawsuit, were among some 900 airlines that have applied for free permits, and that it anticipated full compliance with the law.

Source URL (retrieved on 09/21/2014 - 4:35pm):

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