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Aviation and shipping account for around 5 per cent of global greenhouse gas (GHG) emissions. So it is surprising there is no global system to oversee or limit greenhouse gas emissions from these sectors. However, during 2016, that may change – leading to new environmental controls on airlines.

Since 2012, aircraft operators have been required to comply with the EU Emissions Trading System (EU ETS). Currently, this only covers carbon emissions from flights **which take off and land** within the European Economic Area. This derogation will expire in December 2016, the deadline by which the International Civil Aviation Organisation (ICAO) has agreed to deliver a global framework to regulate aviation emissions. If no global framework is agreed, the EU ETS will be extended to apply to all flights which either **land or take off** in the EU.

In February 2016, the ICAO announced that it has agreed an international carbon dioxide standard, which will lead to greater aircraft fuel efficiency. However, the ICAO member states still need to agree on a "market-based mechanism" in time for the EU's December 2016 deadline. The ICAO aims to have the talks completed by September 2016, in time for approval at the General Assembly meeting in October.

So what does this mean for the aviation sector?

EU Emissions Trading System (EU ETS) and the application to aviation

The EU ETS is the EU's key regulatory framework to reduce emissions of greenhouse gases. It requires operators of industrial installations to report on their annual emissions, and to buy and surrender allowances equivalent to those emissions. It covers around 12,000 factories, refineries, power stations and other industrial facilities in the EU.

In 2008 the EU tried to include the aviation sector within the EU ETS. However, many non-EU countries opposed this, arguing it was a breach of sovereignty, and that they should not have to pay emission offsets to European governments.

The US airline industry brought a legal challenge against the UK government, and the EU faced further pressure from the US, China and Russia. In November 2012 the EU agreed to "stop the clock" on the broader application of the EU ETS scheme to flights into or out of Europe, whilst the ICAO develops a global scheme.

Following the "stop-the-clock" decision, aircraft operators do not have to submit monitoring plans, report GHG emissions or surrender allowances for flights to and from countries outside the EEA until 31 December 2016.

Key obligations – operators with intra-EEA flights

For those operators who do currently have to comply with the EU ETS, the key obligations are to:

- prepare and comply with an emissions plan;
- monitor reportable GHG emissions each year;
- submit an annual emissions report each year (by 31 March) which must be verified by an independent verifier; and
- surrender allowances equivalent to those emissions (one allowance per tonne of CO₂ equivalent).

Most aircraft operators receive some free allowances from the European Commission. If an operator does not have enough allowances, they will need to buy them through the carbon markets.

Failure to comply can make the operator liable for financial civil penalties or, in the most serious cases, at risk of an EU-wide operating ban or seizure of an aircraft.

US – coordination with international efforts

In July 2015, the US Environmental Protection Agency (EPA) released a proposed rule finding that GHG emissions from certain classes of engines used in aircraft contribute to air pollution that endangers public health and welfare, pursuant to the US Clean Air Act. Specifically, this draft rule proposes that US subsonic propeller-driven aircraft with a maximum take-off mass (MTOM) greater than 5,700 kilograms and subsonic propeller-driven aircraft with a MTOM greater than 8,618 kilograms contribute to GHG air pollution that endangers public health and welfare. This endangerment finding is a prerequisite to EPA developing specific standards for aircraft engines.

Concurrent with the release of this proposed rule, EPA also issued an Advanced Notice of Proposed Rulemaking (ANPR) to solicit input from stakeholders on the potential implementation of international CO₂ standards for aircraft. It is important to note that the ANPR does not, in and of itself, propose or impose any regulatory requirements on aircraft, though ANPRs typically serve as the precursor to EPA subsequently proposing and implementing a regulation. EPA's ANPR solicits comments on a variety of issues, including:

- the stringency level for the CO₂ standards;
- the types of aircraft that are subject to any CO₂ standard (e.g. in-production aircraft, new aircraft, etc.);
- implementation dates for any CO₂ standard.

In its proposed rule and ANPR, EPA states that the Agency, along with the US Federal Aviation Administration, intend to work within the ICAO to establish international CO₂ standards. Once such an agreement is reached, EPA will then promulgate domestic Clean Air Act standards equivalent to the ICAO standards.

Global solution

Many in the aviation industry support a single global carbon offsetting scheme, as opposed to a patchwork of state and regional mechanisms. In an open letter published in the Financial Times in October 2015, a group of 28 aviation industry chief executives and trade association leaders called for a joint approach to deliver emissions reduction across the sector.

International Civil Aviation Organisation (ICAO)

The ICAO is the UN body with responsibility for aviation. It has been leading negotiations to develop a global

framework for GHG emissions, and in 2013 announced the intention to create a global market-based measure (MBM) by 2016. The ICAO is currently reviewing the options for MBMs which include:

- a global compulsory offsetting scheme;
- a global compulsory offsetting scheme with additional revenue-raising; and
- a global emissions cap and trade scheme.

It is likely that a single global scheme will be created. The proposals include:

- a commitment to achieve a global annual fuel efficiency improvement of 2 per cent until 2020;
- an "aspirational" improvement rate of 2 per cent for each year from 2021 to 2050;
- exemptions for routes to and from developing states; and
- directing any revenue received from a global MBM towards mitigating the environmental impact of aircraft engine emissions.

ICAO member states agreed to report in 2016 with a proposal that could be implemented by 2020. In February 2016, the ICAO's Committee on Environmental Protection adopted a new emissions standard, which would apply to new aircraft design from 2020 and current in-production aircraft from 2023. The measures are particularly strict for larger aircraft, which both produce the greatest emissions and have access to a wide range of emission reduction technologies.

Whilst this is crucial progress, it remains to be seen whether the ICAO member states can agree on an MBM in time for the December 2016 deadline. The ICAO aims to have the talks completed by September 2016, to be approved at the General Assembly meeting in October.

IATA approach

IATA is the international trade association for airlines, which represents 260 airlines or around 83 per cent of the world's air traffic. IATA has adopted a resolution supporting the efforts of its member airlines to develop a single global MBM. IATA also outlined several principles for MBMs including minimising competitive distortion and that MBMs should not be used to reduce air traffic.

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