



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 October 2007

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**ENV 546
AVIATION 177**

NOTE

from : General Secretariat
to : Delegations

Subject : Outcome of the 36th Session of the Assembly of the International Civil Aviation
Organisation (Montreal, 18 to 28 September 2007)

Delegations will find annexed information from the Presidency on the above subject, which will be dealt with under "other business" at the meeting of the Council (Environment) on 30 October 2007.

**OUTCOME OF THE 36TH SESSION OF THE ASSEMBLY OF THE
INTERNATIONAL CIVIL AVIATION ORGANISATION
(Montreal, 18 to 28 September 2007)**

The 36th triennial Assembly of the International Civil Aviation Organisation (ICAO) took place in Montreal from the 18th to 28th of September, 2007. A key strength of the European perspective is the common line taken by the Member States, supported by all the non-EU states in the ECAC (totalling 42 European States).

With respect to environment, discussions centred around two key decisions: a resolution on the inclusion of third country carriers into an emissions trading scheme (Appendix L) and a resolution to create a "Programme of Action" on international aviation and climate change (Appendix K).

A Statement of Reservation was entered by the EC/ECAC Member States containing formal written reservation to Appendix L and a strong message of disappointment with respect to the levels of ambition in ICAO's Programme of Action outlined in Appendix K (see Annex).

Appendix L: Aviation and Market-Based Measures

The European approach to include emissions from international aviation into the EU ETS was met with strong reservation by third countries. All non-European ICAO contracting states (with notably firm opposition from Australia, Canada, the US, China, Argentina, Brazil and Nigeria) expressed the position that third country operators' inclusion should only be possible if based on mutual consent.

The final resolution of the Assembly (Appendix L) expressly states that mutual agreement is required before third country carriers can be included in emissions trading schemes. It also extends the moratorium on the use of greenhouse gas emissions charges indefinitely.

Appendix K: ICAO Programme of Action

This resolution creates an initiative to address environmental and climate change aspects of international aviation. Europe defended the position that this Programme of Action should consider the possibility of concrete goals and/or binding targets, and that it would be preferable to have a report early enough to be relevant to post-Kyoto negotiations before December 2009, with the possibility of a special Assembly being held in June 2009.

However, with respect to its scope, deliverable targets and timing, Appendix K remains vague referring only to "possible aspirational goals". The resolution also does not specify a date for the Programme of Action report, referring only to "an appropriate time, taking into account the fact that the UNFCCC COP 15 takes place in December 2009", bringing into question the ability to effectively deal with aviation emissions in the post-Kyoto regime negotiations.

**WRITTEN STATEMENT OF RESERVATION ON BEHALF OF THE MEMBER STATES
OF THE EUROPEAN COMMUNITY (EC) AND THE OTHER STATES MEMBERS OF
THE EUROPEAN CIVIL AVIATION CONFERENCE (ECAC)
[made at the 36th Assembly of the International Civil Aviation Organization
in Montreal, 18-28 September 2007]**

The Member States of the European Community (EC) and the other States members of the European Civil Aviation Conference (ECAC) support a comprehensive approach to reducing aviation emissions, encompassing progress on technology and standards, operational measures, and market-based measures. We believe that it is necessary actively to pursue such a comprehensive approach since, as confirmed by the 4th Assessment Report from the IPCC, none of these measures will have a sufficient impact on aviation emissions in isolation.

In line with its international obligations and the decisions taken at the 35th Assembly, notably Resolution A35-5, the European Community is considering a legislative proposal to incorporate emissions from international aviation into its existing emissions trading scheme. This demonstrates the European Community's commitment to taking meaningful action to reduce aviation emissions, whilst allowing air transport to continue to develop and sustainably grow, taking into account the particular situation of developing countries. We also believe that by developing such a scheme at regional level, as part of a comprehensive approach, Europe is making a constructive contribution to the response of the international civil aviation community to addressing its impact on the environment.

Regrettably, it has become clear to us at this 36th Assembly that, ten years after having been requested by the UNFCCC to take action to limit or reduce emissions, it has not been possible for ICAO to agree on essential elements of this comprehensive approach. In particular, the programme put forward for agreement at this Assembly is unambitious, piecemeal and lacking in credibility on market-based measures (both greenhouse gas emissions charges and emissions trading). Europe believes that the carbon market is the most promising avenue for mobilising resources on the scale necessary to take effective action on climate change. Thus the forty-two States of the European Community and ECAC consider that market-based measures are an essential tool for addressing the climate impact of aviation.

Europe is resolved to go forward with a comprehensive approach to reducing aviation emissions and contribute effectively to the international response to addressing climate change. It remains convinced that the inclusion of aviation in the EU Emissions Trading Scheme would be fully consistent with its international obligations in particular the key principles of sovereignty and non-discrimination. Europe intends to pursue these policies and adhere to these principles. Whilst Europe is committed to multilateral action to address the effects of aviation emissions, mutual agreement is not a pre-condition for the implementation of market-based measures which are consistent with the Chicago Convention. Europe strongly urges ICAO to demonstrate the type of leadership that is being demonstrated in other bodies such as the UNFCCC.

The forty-two States of the European Community and ECAC regret that, contrary to usual practice, the resolution has not been adopted by consensus and that no meaningful effort has been made to reflect in Appendix L the views of a substantial number of members of ICAO.

They recall that there is no provision in the Chicago Convention which may be construed as imposing upon the Contracting Parties the obligation to obtain the consent of other Contracting Parties before applying market based measures referred to in Annex L to operators of other states in respect of air services to, from or within their territory. On the contrary, the Chicago Convention recognises expressly the right of each Contracting Party to apply on a non-discriminatory basis its own air laws and regulations to the aircraft of all States.

They are of the view, therefore, that the operative provisions in Appendix L covering market based measures lack any legal foundation in the Chicago Convention. They further recall that Assembly resolutions cannot be used to in order to diminish their rights or to add to their obligations under the Chicago Convention.

Accordingly, they reserve the right under the Chicago Convention to enact and apply market based measures of the type referred to in Appendix L, on a non-discriminatory basis to all operators of all States providing services to, from or within their territory.

On this basis, the Member States of the European Community and the other States members of ECAC hereby enter a formal reserve on Appendix L.

Whilst being ready and willing to continue to take part in ICAO activities aimed at promoting the reduction of aviation emissions, the forty-two States of the European Community and ECAC must also express in the strongest terms their great disappointment with the lack of ambition and concrete actions in the resolutions tackling greenhouse gas emissions being adopted by this Assembly, in particular in relation to Appendix K. However, Europe can accept the provisions on the timing of the high-level meeting under the programme of action on international aviation and climate change.

Europe urges that the meeting should be held before September 2009 but that if it is decided to hold the meeting after that date, it is timed to take into account guidance from the 15th Conference of the Parties to the UNFCCC.

We request that this intervention be formally recorded in the minutes of this meeting.
