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Environmental Regulation

(supplement to Module 12)

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Outline

- Different Approaches to Emissions Control
- Legal Issues
- ICAO's CORSIA
 - Background
 - Applicability
 - Emission Obligations Calculation
 - Safeguards
 - Reception

Two Different Approaches to Emissions Control

- Offsetting
- Cap & Trade
- Interdependencies
 - Same sector
 - Between Sectors

Legal Issues

- Legal Competency / Authority
 - WHO may regulate
- Sectorial specificity
 - WHAT is being regulated
- Sovereignty
 - Can one legislate for ANOTHER
- Double Application
 - Subjection to multiple regimes for the same emissions
- Multiplicity of relevant regimes
 - General International Law
 - Environmental Law
 - Chicago Convention
 - Air Services Agreements
- Competitive Distortions
 - Disproportionate application over certain markets/carriers compared to others

ICAO CORSIA

Background

- Tokyo Protocol
- UNFCC
- Paris Agreement
- EU ETS

- 38th ICAO Assembly
- EU ETS Stop the clock

- CORSIA

Applicability

- Phased Implementation
 - Pilot Phase (voluntary): 2021-2023
 - First Phase (voluntary): 2024-2026
 - Second Phase: 2027 -2035
 - If individual share > 0.5 % total RTK or
 - If cumulative share reaches 90% of Total RTKs*
- * Based on 2018 figures
- Exceptions
 - Least Developed Countries
 - Small Island Developing States
 - Landlocked Developing Countries

Calculation of Emission Obligations

- Sectorial, Individual & Dynamic Approach
 - Sectorial: Based on the performance of the entire sector
 - Individual: Based on the performance of each individual carrier
 - Dynamic approach: start from fully sectorial (i.e. exclude consideration of individual carrier's performance) and progressively start taking into account individual performance of each carrier
- Cap & Trade v. Offsetting
 - Emissions Units (EU): 1 EU = 1 ton CO₂
 - Offset Credits
 - Allowances
 - Interaction with several carbon markets
- Revisions
 - Periodic review by Council from 2022 onwards

Safeguards

- System Integrity
 - Environmental Integrity
 - Monitor, Reporting & Verification (MRV) System for emissions recording, notification & administration
- Competitive Safeguards
 - Each route to be covered by Scheme only if both States are subject to the Scheme (prevent unbalanced application)
 - Balancing based on “differentiation” & the special circumstances and respective capabilities of States
 - “New entry” safeguards to prevent inhibition of new entry
- Cost Safeguards
 - Conditionally available
 - Prevent “inappropriate economic burden”

Reception

- EU Response
 - Welcomed “decisive step”
 - To brief EU Council and Parliament on developments
- Industry Response
 - IATA: “Airlines Hail Historic ICAO Carbon Agreement”
- Voluntary Participation
 - ICAO: “As of 12 October 2016, 66 States, representing more than 86.5 % of international aviation activity, intend to voluntarily participate in the global MBM scheme from its outset.”

Thank you

Questions?