



**Unite response to the Department of Energy and Climate Change (DECC)
Consultation into the Inclusion of Aviation into the European Emissions
Trading Scheme (EU ETS)**

1 Introduction

- 1.1. **This response is submitted by Unite the Union, the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, transport, financial services, print, media, construction, local government, education, the health service and not for profit sectors.**
- 1.2. Unite, is the largest trade union in the United Kingdom (UK) civil aviation industry, representing more than 80,000 members.
- 1.3. In this response Unite will not only focus the just the questions posed, but also areas where it believes there are areas which need highlighting and where possible amendment is in our opinion necessary to ensure the minimum impact on the working lives of its members and that of the travelling public.

2 *Q1 - Do you have any comments on the interpretation of "aircraft operator" in the regulations?*

- 2.1. Unite believes that the definition of an aircraft operator is sufficient to capture the majority of commercial civil aviation applications.

3 *Q2 - Do you have any comments in relation to the proposed methodology for allocating operators within the United Kingdom?*

- 3.1. Unite is not in a position to comment on the issues raised by this question.

4 *Q3 - Do you have any comments on the timeframes we are proposing for the regulator to approve benchmarking plans?*

- 4.1. Unite believes that given the amount of records kept on the movement of passengers and freight by air and the financial records of each company on the volumes of fuel purchase, this should provide enough data to enable the rough calculation of aviation emissions. The average of any data gathered from data produced during actual flights will, however, result in no more than a rough

estimate of future fuel burn levels. There are a significant number of factors that can cause variation in fuel burn levels including load factors, atmospheric conditions and congestion of flight corridors.

- 4.2. One suggestion would be to utilise, the great circle, direct route between the arrival and departure airports and calculate the level of fuel burnt utilising this flight path in still weather with the ideal vertical and horizontal flight trajectory. A multiplier could then be applied to the route to take account of these additional variable flight conditions which cause aircraft to stray away from the ideal path and the need to vector around obstacles such as military airspace and in preparation for landing.
- 4.3. Unite does not wish to see a repeat of the situation which prevailed in Phase 1 of the EU ETS with the energy sector, where far too many credits were issued. Nor does it wish to see a situation where too stringent a cost implication is applied, which, given the financial implications, causes airlines to reduce operational capacity and hence jobs.
- 4.4. Given the recently published results of a paper into the environmental effects of aircraft operations and airspace charging regimes¹, Unite would like to see a unification of air traffic management costs and an end to aircraft utilising the most cost effective route rather than the most environmentally friendly path to and from destinations.

5 *Q4 - Do you have any comments on the costs involved in approving benchmarking plans?*

- 5.1. Unite is not in a position to comment on the issues raised by this question.

6 *Q5 - Do you have any comments on the above process in the event that a benchmarking monitoring plan is rejected?*

- 6.1. Unite believes that given the direct correlation between CO₂ release and fuel burn it is difficult to see why the aviation companies concerned would not have exact figures already in existence for the amount of fuel consumed by their aircraft in previous years, as stated earlier. Once the mass of fuel is known it is simply a matter of multiplication to arrive at the mass of CO₂ released. Given the overall trend towards passenger growth, (despite the recent financial down turn), any fuel burn figures used from past results would have to take into account the relative number of passengers carried, the distance travelled and the aircraft fleet mix. All of these facts are routinely gathered in the UK by the CAA.

¹ The Environmental Effects of Aircraft Operations and Airspace Charging Regimes - Dr David Gillingwater, Dr Lucy Budd, Dr Robert Caves of the Transport Studies Group at Loughborough University and Dr Tom G. Reynolds of the Institute for Aviation and the Environment at University of Cambridge - 13/02/09
<http://www.omega.mmu.ac.uk/Events/OMEGA%2039%20Charging%20study%20final%20report%20RMG%20rev.pdf>

- 6.2. As stated previously Unite believes that the calculation method utilised, should also be drawn from the great circle distance between two points, with an additional allowance for the stacking and vectoring requirements of the airports in question, allowing for necessary diversions to avoid military airspace, bad weather and other aircraft. There should not be any allowance made for flights which utilise routes around higher cost air traffic control zones. A set additional distance allowance for all flights may be inappropriate given the congestion levels around some airports of which Heathrow is a prime example.
- 6.3. Stacking around Heathrow can last for up to 18 minutes and the aircraft may well be sat in a queue ready to depart for 20 minutes. Given these levels of delay, a considerable proportion of fuel would be consumed through factors beyond the control of the airline. Additionally some of the most complicated and densely trafficked sectors of sky in the world can be found within Europe's 6120 square kilometres of airspace. During 2007 23,000 movements a day on average, (a total of over 8.1 million air traffic movements) were handled. According to Eurocontrol, this overall demand for air travel is predicted to increase by 2.7-3.7% per annum until 2025 despite the current down turn caused by the economic climate².
- 6.4. Unite therefore believes that within the benchmarking exercise, records are kept of the fuel burn figures for every flight together with details of delays and diversions caused by external factors necessary for the safety of the aircraft passengers and crew.
- 6.5. Unite also supports the addition of capacity at airports where this can be achieved sustainably in order to reduce congestion levels and hence unnecessary fuel burn. Unite does not believe in expansion at all costs and would welcome environmental limits being placed on the utilisation of these facilities.

7 Q6 - Do you have any comments on the process for the regulator to approve emissions monitoring plans?

- 7.1. Whilst historically it may be easy to apportion blame for additional fuel burn, and hence CO₂ emissions, utilising this data to predict the volume which may be released, may well prove to be far more difficult, especially as factors which effect the levels released (such as the weather) can be far from totally accurate. Additionally as newer lighter and hence more efficient aircraft become available, allowances may need to be adjusted between the time of the benchmark being set and the commencement of the scheme.
- 7.2. Setting a benchmark should therefore take account of the ideal route and diversions from these routes flown, rather than adding a set distance as standard to the great circle path between two points. Factors such as the passenger and freight density on these flights and hence the efficiency of the

² The Year to March has seen an 11% decline in passenger numbers putting the industry back to levels not seen since 2004. None the less the long term predictions indicate that the growth of aviation is very resilient historically indicating a long term 5% growth in passenger numbers per annum.

operation as a whole, should be taken into consideration. Any plan should therefore take into account the routes operated as it would be inappropriate for an airline to include a route within its predictions which it subsequently cancels. Equally limiting the benchmark to a stated maximum may also restrict the growth of the services offered.

8 *Q7 - Do you have any comments on the charge we are proposing to cover the administrative costs involved in approving benchmarking plans?*

8.1. Dependent upon the level of detail utilised given the above, the £750 charge to analyse these plans may prove to be far short of the actual cost to properly examine these proposals. The number and nature of the variables involved in the plan's construction and the additional constraint of a time window within which these plans are to be either accepted or rejected may well increase the costs beyond this figure. According to the EU the list of airlines which will need to submit a plan to the UK regulator is considerably more than any other nation within Europe. Unite therefore feels that the cost charged to the airlines for the plans analysis should be representative of the costs involved so as not to over burden or under burden the airlines or the governments finances.

9 *Q8 - Do you have any comments on the above process in the event that an emissions monitoring plan is rejected?*

9.1. Unite believes that if the regulators have considered all the above aspects which determine the level of fuel burn and have reached an unbiased decision over the proposals which make reasonable allowance for health and safety requirements and flight congestion difficulties, then there should not be any grounds for an appeal.

10 *Q9 - Do you have any comments on the above process in the event that an emissions monitoring plan is rejected and then resubmitted?*

10.1. Clearly given the size of the industry and the general running costs involved on a daily basis, Unite would expect some less scrupulous airline operators to submit proposals which were exaggerated. If the Regulator makes the criteria utilised in arriving at their decision abundantly clear and provides an easily understandable methodology to be applied, there should not be a situation where proposals are rejected on more than one occasion. If an operator does not submit an acceptable plan then they should be allowed only a very limited number of opportunities to get it right with an ever increasing financial burden to cover the costs involved.

10.2. Unite believes that once that airline has used up this limited number of opportunities, they are issued the ultimate sanction of being excluded from any free allocation. It is our belief that allocations should then be based on a default value, based only on existing routes and aircraft types, with associated credit reductions if routes are cancelled. Where such a default plan is utilised no allowance should be made for diversions above a set distance for whatever reason. Such a default position would restrict growth and should act as an adequate deterrent to frivolous or inflated proposals.

- 11 ***Q10 - Do you have any comments about the draft provisions of the Monitoring and Reporting Decision being listed in the Regulations?***
- 11.1. Unite does not wish to comment on the issues raised by this question.
- 12 ***Q11 - Do you have any comments in relation to the issue of notices in order to obtain information to ensure monitoring plans provide complete information in line with the Monitoring and Reporting Decision or when further information is needed in respect of an audit or inspection that is not provided by the operator under the Regulations?***
- 12.1. Unite believes that if the regulators should have the ability to serve notice by any reasonable means including by fax or telex. These methods are still one of the airline industries principle methods of communication.
- 13 ***Q12 - Do you have comments on the process for determining emissions or any suggestions as to how the appropriate regulators would make a determination of emissions for aviation operators in the light of the high number of non- European operators that the UK will be regulating?***
- 13.1. Unite agrees that in the event of non compliance by an operator a standardised matrix of emissions should be utilised by aircraft type, route, frequency and the level of average congestion in the approach and departure phases of using UK and non domestic airports. Unite also agrees that a period of time should be allowed to the operation in which to comply, but feels that a 90 day period is far too excessive.
- 14 ***Q13 - Do you have any comments on the introduction of a civil, rather than criminal, penalties and enforcement regime for aviation? If so, please provide examples where appropriate.***
- 14.1. Unite feels that every opportunity should be extended to an operator, to enable them to pay any penalties. This period should reduce significantly however with every repeat offence and ultimately lead to the seizure of aircraft and assets for persistent late or non-payment. Criminal penalties have a high burden of proof requirement where there can be no doubt over the guilt of the party in question, including the need to show intent before convictions, and consequently can require international cooperation to enforce and secure judgements.
- 14.2. Civil actions on the other hand would appear to be far more appropriate as we are looking at the civil issue between the regulator and the operator over the payment for carbon credits. Additionally the burden of proof needs only to be on the balance of probabilities.
- 15 ***Q14 - We would welcome any comments on the civil penalty for not submitting an emissions plan by 31 August 2009, or where it is submitted by this deadline but rejected, for failing to resubmit an emissions plan***

within 15 working days of the rejection. Please provide evidence to support your comments where possible.

15.1. Unite believes that not receiving any free allocation of allowances and the cost of a new submission review would be punishment enough to deter non compliance by 31 August. A £5,000 penalty in an industry which has daily running costs measured in millions is clearly not strong enough to deter non compliance.

16 ***Q15 - Do you have any comments on the introduction of a civil penalty for failure to monitor in accordance with the monitoring plan?***

16.1. Unite does not wish to add further on the issues raised by this question.

17 ***Q16 - We would welcome any comments on the civil penalty for not submitting a verified emissions report by 31 March 2011. Please provide evidence to support your comments where possible.***

17.1. Unite does not wish to comment on the issues raised by this question.

18 ***Q17 - We would welcome any comments on the civil penalty for failing to comply with the Monitoring and Reporting Decision or for not responding to an information notice. Please provide evidence to support your comments where possible.***

18.1. Unite does not wish to comment on the issues raised by this question.

19 ***Q18 - We would welcome any comments on the civil penalty for the misreporting of activity data and emissions data, details above. Please provide evidence to support your comments where possible.***

Q19 - We would welcome any comments on the appropriate action in the case of an operator intentionally misreporting or falsifying activity or emissions related records for financial gain.

19.1. Unite believes that deliberately misreporting activity data and emissions data would (given the financial implications) fall within the definition of an act of fraud, and therefore should be treated as such.

19.2. If there has been an over allocation there clearly should be the ability to recover allowances issued and if these credits have been utilised then the regulator should have the power to recover the funds from the company necessary to purchase these credits at the market price prevailing at the time. This authority should include the ability to seize assets of the company if the funds are not paid promptly. Unite believes, however, that seizure of the aircraft itself should be the action of last resort, with every appropriate measure taken to ensure no negative impact on the passengers and crew.

- 19.3. The power to seize aircraft and sell them off for non payment already exists under The Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft for Eurocontrol) Regulations and other similar legislation.
- 20** ***Q20 - Do you think there could be exceptional circumstances under which an aircraft operator is not able to comply with the Regulations despite making every possible effort to do so? Please provide examples.***
- 20.1. Unite cannot think of any exceptional circumstances under which an aircraft operator would not be able to comply with Regulations, especially if they are making every possible effort to do so.
- 21** ***Q21 - Do you consider it appropriate to follow a similar precedent for the aviation emissions trading scheme?***
- 21.1. As stated earlier, Unite believes that where the power to seize the aircraft for non payment is exercised it should be a priority to ensure it is done in a way that causes minimal disruption to the passengers and crew.
- 22** ***Q22 - Can you suggest effective, dissuasive and proportionate methods of enforcement that do not involve the power to detain aircraft, especially in relation to overseas based regulatees who may have no significant assets permanently located in the UK?***
- 22.1. All aircraft require a place to land and fuel to continue their journey. If an aircraft has not paid all the funds necessary to cover the carbon credits then it should be denied access to fuel and / or permission to enter UK or European airspace.
- 22.2. Equally if the aircraft operator is part of an alliance of airlines, which provides a code or profit sharing arrangement, this should be treated as a significant asset. Consequently if an alliance member has not paid, pressure should be brought to bear on the other alliance members to withhold payment of any profits to this airline and suspend any code sharing agreements that may be in place.
- 23** ***Q23 - Do you agree that the appropriate regulator should have the power to seek leave of the court to sell any aircraft that has been detained for 40 days in order to recover any fees or penalties that remain outstanding?***
- 23.1. Unite agrees that the appropriate regulator should have the power to seek leave of the court to sell any aircraft or other assets that have been detained. Given the cost or storage of an aircraft at some of the UK's major airports, Unite recommends that the aircraft in question is moved to an isolated airfield whilst being held. The fees applicable for the relocation and storage of the aircraft should be added to the amount outstanding.
- 24** ***Q24 - Do you agree that the circumstances in which an operator will not continue to detain an aircraft as outlined in Reg. 17 provide for effective, dissuasive and proportionate sanctions?***

24.1. Unite agrees that the circumstances outlined in Regulation 17 do provide grounds for the seized aircraft to be released. If all leased aircraft are effectively exempt from the seizure process the principle weapon of last resort has been removed from the appropriate regulators arsenal. Consequently Unite would recommend that all aircraft operators using leased aircraft should only be allowed to use such aircraft in UK airspace if sufficient assets are made available to cover the credits required for that journey. In effect such aircraft should be bonded so as to ensure payment is made available to the appropriate regulator or other authority if the airline operator does not pay for any outstanding credits, etc.

25 *Q25 - Do you agree with the extension of powers to sell aircraft to include the equipment of aircraft and any stores used in connection with its operation?*

25.1. Unite believes that the appropriate regulator should have available the powers to sell off seized assets as an action of last resort. If it becomes known that an airline operator could continue to operate without payment and face losing their aircraft they may think twice about ignoring the obligations imposed, If however the aircraft in question is ending its useful lifespan and would be valued at less than the outstanding bill, the UK could become the dumping ground for old aircraft and equipment.

25.2. Unite believes that the appropriate regulator should have the authority to impose bond restrictions on older aircraft to ensure that the costs of outstanding will be met if the aircraft has to be sold. Such a move would also encourage a move toward newer cleaner aircraft.

26 *Q26 - Please provide any comments on the proposed use of the proceeds of any sale of a detained aircraft, particularly the order of priorities*

26.1. Unite believes that the proceeds of any forced aircraft sale be utilised primarily in the purchase of the requisite value of carbon credits following which the funds should be used in the following order :-

- in payment of any airport charges incurred in respect of the aircraft which are due from the aircraft operator to the person owning or managing the aerodrome at which the aircraft was detained under these Regulations;
- in payment of the expenses incurred by the appropriate regulator in detaining, keeping and selling the aircraft, including its expenses in connection with the application to the court;
- in payment of the charges in respect of any aircraft which the court has found to be due by virtue of section 73(1) of the Transport Act 2000;
- in payment of the penalty imposed under regulation [14] in respect of which the aircraft was detained and sold;
- in payment of any customs duty which is due in consequence of the aircraft having been brought into the United Kingdom;

26.2. Such an order should minimise the knock on effects of the non payment to the other operators at the airport – particularly the airport operator, therefore reducing any potential detrimental effect to the finances of the airport operator.

27 Q27 There is a legal obligation to ensure effective transposition of European legislation. Having regard to the different types of aircraft and operators who will be within the scope of the scheme, do consultees believe that effective regulation may be achieved without:

(a) empowering the appropriate regulator to detain aircraft at all aerodromes located within its jurisdiction, rather than just those designated, or pending designation under section 88 of the Civil Aviation Act. It should be noted that around 10 aerodromes capable of taking aircraft falling within the scope of the regulations are not designated, but because of operational restrictions only a small number of these can be expected to be used by operators within the scope of ETS in practice; and

(b) imposing a corresponding duty on aerodrome operators to cooperate and assist the appropriate regulator in this regard and imposing a penalty for their failing to do so?

27.1. Unite believes that without the ultimate deterrent of the appropriate regulator in having the power to potentially seize aircraft there may well be some operators who may attempt to circumvent the legislation and payment of credits. Airlines from the United States have for example already stated that they will act to oppose the introduction of a requirement to pay for emissions, believing that the emissions trading scheme is a breach of the Chicago agreement.

27.2. International treaties stemming back to the Chicago Convention signed in 1948, forbid tax on aviation fuel. Consequently several prominent US airlines have stated publicly their opposition to aviation's inclusion in the EU ETS as they see it as an indirect tax on fuel. This position may change with the change in administration under the Obama leadership, but the industry position in the US was very vocally anti any scheme of this nature. The convention's protection was introduced when civil aviation was a fledgling industry, in need of protection from governments hungry for a new source of tax revenue. Today the industry is in a difficult period due to the economic downturn and negative publicity generated by environmental groups which have caused a passenger preferences change, particularly on short haul routes for surface transport. It is hoped, however, that these economic climate problems would have resolved themselves by the time aviation enters the scheme proper in 2012.

27.3. It is possible therefore that deliberate actions by some airlines may transpire in defiance of the inclusion of their airline under the scheme. If so, in order to maintain a balanced global market, there needs to be the ability to enforce the rulings of the appropriate regulator. At the same time the innocent parties operating the airports should not be adversely affected by this action by the airline.

27.4. Unite feels, therefore, that there should be a duty on the airport operator to co-operate with the regulator.

28 *Q28 Do you have any comments regarding the treatment of over-allocation following false or misleading statements?*

28.1. Unite believes that if there has been any over allocation that the excess should be returned to the regulator and where the airline operator in question has already utilised these allowances. If so the airline in question should be required to purchase back what is needed at the current market price plus a penalty percentage if the statements submitted were deliberately false or misleading.

29 *Q29 We would welcome any comments on the appeals process*

29.1. Unite believes that as the appropriate regulator would be acting on behalf of the government, their activities would fall within the ultimate remit of a judicial review. Such a process is often drawn out over several months or even years in order to resolve disputes. If an airline is allowed to continue operations while such a review is pending, it could undermine the schemes integrity and the market for travel services to Europe. Equally if the operator would be prevented from acting it would again place jobs at risk.

29.2. Unite would recommend the use of an independent arbitative body to attempt to resolve disputes over decisions prior to any major costs being incurred.

30 *Q30 Do you have any comments on the submission of plans and reports as outlined in Regulation 30?*

30.1. Unite does not wish to comment on the issues raised by this question.

31 *Q31 Do you have any comments on appropriate authorities issuing directions and guidance to the appropriate regulators?*

31.1. Unite would welcome the issuing of clear precise guidance which does not leave room for ambiguity in their wording. Such guidance would hold the potential to eliminate disputes.

32 *Q32 Do those operators that are likely to fall under Northern Irish regulation, have any comments in relation to the appeals procedure in Northern Ireland?*

32.1. Unite does not wish to comment on the issues raised by this question.

33 *Q33 Please provide any additional comments on the draft regulations that have not been covered by the questions above.*

33.1. Unite is not concerned over many of the finer details of the draft regulations. Its principle goal is to ensure the legislation encourages the reduction of aviation's environmental impact in a manner which is not overly oppressive. The method of enforcement of decisions by the appropriate regulator should also be

measured and ensure that the impact on the job security of the crews both on board and on the ground is not put at risk. Equally Unite does not believe that the airport operator should be obliged to provide staff to assist in the enforcement procedure. Nor should the operator act as an obstacle to enforcement of the regulators actions.

- 33.2. Unlike most industries covered by the EU ETS, growth in the demand, for aviation, is historically very robust, as populations grow and expand. Consequently any allocations will inevitably inhibit the airline operator's ability to expand and may cause the rationalisation of routes. This may cause considerable disruption to local businesses if routes are withdrawn from regional airports and their connectivity to international hub interchanges.
- 33.3. Carbon leakage will always be a problem in a situation which is not global in its scope. Unite therefore believe that measures should be taken to take into account the total distance travelled of goods or passengers, not just the distance from their origin airport to the final destination. If this measure is not taken freight may well be shipped to an airport just outside the EU ETS zone, only to be shipped by road into and across Europe. Equally long haul passenger flights may conduct an additional stop in their flight plans so that it could be argued that their flight distance with respect to any calculation of emissions was only from the airport closer to the zone.

34 Conclusion

- 34.1. If the aim of the scheme is to reduce emissions it needs to be remembered that flights can now circumvent Europe entirely by using routes via alternatives like Dubai to New York across the Atlantic which would add a significant amount of unnecessary emissions to that currently produced³. Aviation emissions are a global problem which cannot be solved by regional solutions alone. When placing this additional burden on European aviation, care needs to be taken not to disrupt the global market competitiveness of this industry and the nations that form the European Union.

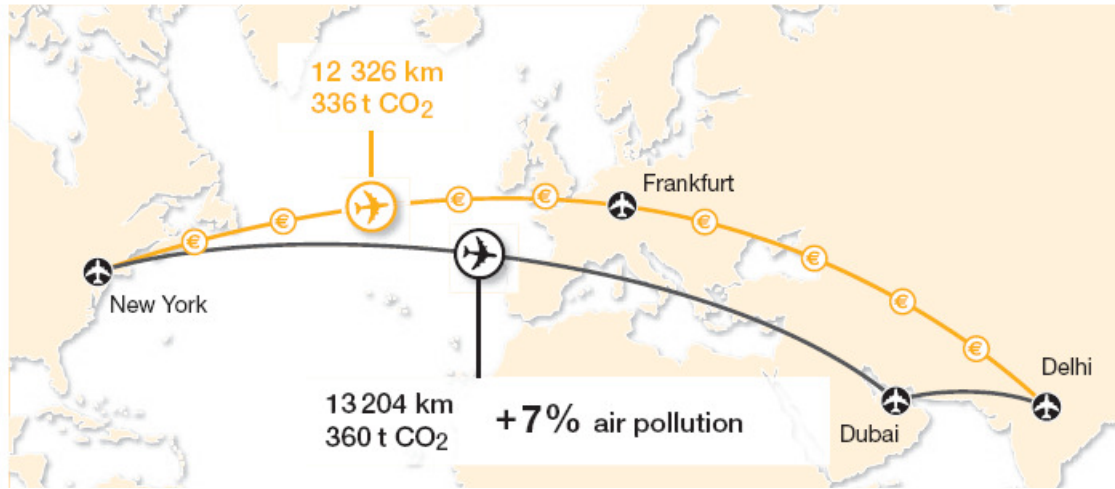
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³ See Appendix 1 below

Appendix 1 Example of the effect the EU ETS inclusion of aviation may have on the level of emissions



Source

http://konzern.lufthansa.com/en/downloads/presse/politikbrief/09_2008/Emissions_Trading.pdf