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Foreign carriers must pay EU carbon fees

By Joshua Chaffin in Brussels and Andrew Parker in London

Airlines based outside the European Union must abide by an EU regulation requiring them to pay for their carbon pollution, Europe's highest court has ruled, setting the stage for a deepening political showdown over a linchpin of the bloc's climate policy.

In a highly-anticipated ruling, the European Court of Justice found on Wednesday that the EU's carbon emissions trading scheme did not infringe on the sovereignty of other nations, and that it was compatible with international law.

The ruling is the final European-level judgment in a case that was filed two years ago by Airlines for America, the US aviation industry association, together with American Airlines and United Continental.

It opens the door to possible retaliation by governments outside the EU. Last week, Hillary Clinton, the US secretary of state, warned in a letter that Washington would be "compelled to take appropriate action" if the EU did not reconsider its plans to include US airlines within the bloc's carbon emissions trading scheme.

The EU is proposing that all airlines that take off or land at European airports should comply with its anti-pollution scheme from January 1.

In a statement, the European Court of Justice confirmed the "validity" of EU legislation that brings aviation activities within its emissions trading scheme. "Application of the emissions trading scheme to aviation infringes neither the principles of customary international law at issue nor the open-skies agreement," added the court.

Airlines for America said it was reviewing its options for a further legal challenge before London's High Court, which last year sought a preliminary ruling from the European Court of Justice. The case is expected to return to London next year.

"Today's court decision further isolates the EU from the rest of the world ... Today's decision does not mark the end of this case," said Airlines for America.

The EU's plans prompted protests last month by 26 other countries including Japan, India,

Russia and the US. China said it was preparing to take Brussels to court over the EU's plans, after hinting one of its airlines could cancel a planned order with Airbus, the European aircraft manufacturer.

Connie Hedegaard, Europe's climate commissioner, has refused to back down, insisting the EU legislation bringing airlines within the emissions trading scheme was justified.

Ms Hedegaard said on Wednesday she was "very satisfied" with the European Court of Justice's ruling, adding: "A number of American airlines decided to challenge our legislation in court and thus abide by the rule of law. So now we expect them to respect European law."

United Continental confirmed it would comply with the EU emissions trading scheme. American Airlines declined to comment.

The EU has left open the possibility international airlines could be exempted from its carbon emissions trading scheme if their home countries can prove that they are taking "equivalent measures" to reduce pollution. European officials predicted talks on that front would now intensify.

Andreas Arvanitakis, associate director at Thomson Reuters Point Carbon, which analyses carbon markets, predicted the EU measures would add €9bn in additional costs to airlines by 2020.

The EU emissions trading scheme is the world's largest carbon market and the bloc's central policy to halt global warming.

It requires certain European companies, including power stations and oil refineries, to purchase allowances to cover the amount of carbon they emit into the atmosphere.

Although the aviation industry only accounts for about 3 per cent of global carbon emissions, its share is growing quickly as passenger traffic increases around the world.

Airlines have argued that the task of reining in their emissions should be left to the International Civil Aviation Organisation, a UN standard-setting body.

But environmental groups hailed the European Court of Justice's ruling. "It is certain now, in less than two weeks time the international aviation sector will be part of the EU emissions trading system," said Tomas Wyns, director of the Centre for Clean Air Policy-Europe.

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