



## EXTRACTS OF A36-MIN. P/9 (MINUTES OF THE NINTH PLENARY MEETING)

### RESERVATIONS MADE TO ASSEMBLY RESOLUTIONS A36-22, A36-24 AND A36-28

**Reservation by Portugal on behalf of the Member States of the European Community (EC) and the other States Members of the European Civil Aviation Conference (ECAC) with regard to Assembly Resolution A36-22 (*Consolidated statement of continuing ICAO policies and practices related to environmental protection*) – Appendix L only (*Market-based measures, including emissions trading*)**

The Delegate of Portugal, speaking on behalf of the Member States of the European Community (EC) and the other States Members of the European Civil Aviation Conference (ECAC), referred to paragraph 17.4.2.38 of WP/355. He recalled that during the eleventh meeting of the Executive Committee (EX/11), the Member States of the EC and the other States Members of ECAC had entered a formal reservation in relation to Appendix L (*Market-based measures, including emissions trading*) of Resolution 17/1 (re-numbered A36-22): *Consolidated statement of continuing ICAO policies and practices related to environmental protection*, which he understood would be reproduced in the minutes of the Executive Committee. The reservation pronounced by the Delegate of Portugal in the Executive Committee reads as follows:

“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 Intergovernmental Panel on Climate Change (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 United Nations Framework Convention on Climate Change (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 Appendix L to operators of other States in respect of air services to, from or within their territory. On the contrary, the Chicago Convention recognizes 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 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 (*ICAO Programme of Action on international aviation and climate change*). 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.”

The Delegate of Portugal proposed several amendments to paragraph 17.4.2.38 of WP/355 all of which were approved. At the start of the second sentence, on line 3, “The delegation representing the European Union” was replaced by “The delegation speaking on behalf of the member States of the European Community”; in line 4, the words “expressed its reservation” were replaced by “entered its formal reservation”; and, in line 5, the text in parentheses was replaced by “(the full text of the written formal reservation will be reproduced in the minutes of the Executive Committee)”.

**Reservation by Australia with regard to Assembly Resolution A36-24 (*Non-chemical disinsection of the aircraft cabin and flight deck for international flights*)**

The Delegate of Australia intervened to register a reservation on Resolution 18/1 (re-numbered A36-24) (*Non-chemical disinsection of the aircraft cabin and flight deck for international flights*), presented in WP/360, as it was felt that the results from the limited research on non-chemical methods of disinsection, such as air curtain technology, were inconclusive. The Delegate of Australia recalled that at the previous Assembly, a similar reservation had been entered by Australia on A35-13: *Non-chemical aircraft disinsection of the cabin and flight deck for international flights* (A35-Min. P/9, Agenda Item 11, para. 11).

**Reservation by Argentina with regard to Assembly Resolution A36-28 (*Term limits for the Offices of Secretary General and the President of the Council*)**

With regard to Resolution 24/1 (re-numbered A36-28): *Term limits for the Offices of Secretary General and the President of the Council*, presented in WP/368, the Delegate of Argentina recalled the various approaches put forth in WP/136 (*Limit on the number of mandates for the positions of Secretary General and President of the Council*), paragraph 24.3, sub paragraphs a) to d), which were intended to maintain consistency with Articles 51 (*President of the Council*) and 94 (*Amendment of Convention*) of the Chicago Convention. He found it unfortunate that none of the approaches had been adopted by the Assembly which meant that Argentina could not withdraw its reservation and raised the question of resorting to Article X (*Relations with the International Court of Justice*) of the *Agreement between the United Nations and the International Civil Aviation Organization* (Doc 7970).

The Delegate of Argentina was concerned that the adoption of Resolution 24/1 (re-numbered A36-28) would create a situation that was counter to Article 51 thereby setting a precedent that could impact upon future decisions on other matters.