

European Court of Justice: Background

****Details specific to the Aviation Directive case are highlighted****

The European Court of Justice (“ECJ”)

Role: The European Court of Justice (“ECJ”) is the highest court in the European Union (EU), and similar to the U.S. Supreme Court. It interprets EU law, including whether an EU law is consistent with international law and EU treaty obligations.

Cases: If a court case in the EU deals with a question of EU law that is new or unclear, the EU country, or “member state,” must refer the case to the ECJ, which will interpret the law and decide whether it is valid. The legal challenge to the Aviation Directive dealt with a new matter of EU law – whether the Aviation Directive is consistent with international law; thus, the United Kingdom’s High Court was required to refer the case to the European Court of Justice, which it did in 2010.

Precedent setting: When the ECJ rules on a matter related to European Law, that ruling becomes a precedent that courts in other EU member states must follow.

Judges: There are **27 judges in the ECJ, one from each EU member state.** The “Grand Chamber” of 13 judges heard the EU Aviation Directive case in July 2010; this 13-judge “chamber” is reserved for the court’s most important cases; the fact that the Aviation Directive was heard by the Grand Chamber indicates that the EU is taking this case very seriously. Most cases in the ECJ are decided by chambers of three or five judges.

Advocates General: Advocates General are esteemed attorneys appointed to the ECJ to provide independent, unbiased opinions to the Court. The judges consider the Advocate General’s opinion to help them decide the case, but are free to make a decision that is different from the Advocate General’s opinion.

Consensus: Unlike the U.S. Supreme Court, the ECJ judges make decisions by consensus. There are, thus, no dissenting opinions, and no record of judges voting for or against a certain decision.

What the October 6, 2011 Advocate General’s opinion means, and what happens next

1. On Oct. 6, 2011, the Advocate General assigned to the aviation case is expected to publish her opinion, a formal recommendation to the Court regarding resolution of the case.
2. Upon the release of the Advocate General’s opinion, the 13 members of the Grand Chamber who heard oral arguments on July 5, 2011 will begin their deliberations.
3. The ECJ is expected to issue a final opinion on this case in early 2012.
4. After the ECJ ruling, the case will be sent back to the High Court in the United Kingdom. The UK Court will then issue its ruling based on the ECJ’s opinion.

Background

- In 2008 the EU passed a law that will regulate greenhouse gas emissions from commercial aviation beginning in 2012. The law is called a “directive,” which is a type of legislation in the EU.
- The Aviation Directive is an amendment to the European Union’s emissions trading system, a market-based system for reducing emissions, which went into effect in 2005 through Directive 2003/87/EC.
- American Airlines, United Airlines, Continental Airlines (United and Continental have since merged), and the Air Transport Association of America, the airlines’ trade association, in 2009 challenged in a United Kingdom court the validity of the Aviation Directive, claiming it illegal under international law (the 1947 Chicago Convention on Civil Aviation, U.S.-EU Open Skies agreement, and customary international).
- The Aviation Environment Federation, Center for Biological Diversity, Earthjustice, Environmental Defense Fund, European Federation for Transport and Environment and WWF-UK, and intervened in the case in support of the EU law in March, 2010. These organizations submitted legal briefs and made arguments in court to support the EU law that reduces greenhouse gas emissions from aviation.

Environmental Defense Fund

For additional background on the EU Aviation Directive, visit edf.org/aviation