

Member State, that being a matter for the national court to determine. Standards such as those set out in the transitional provisions in Paragraph 36(4) of Order No 1729 of 21 December 2006 on the protection of animals during transport cannot, however, be regarded as proportionate since the same Member State has adopted less restrictive standards, such as those in Paragraph 9(1) of that order, under the system of general law;

- it precludes the adoption, by a Member State, of standards applicable to the transport by road of pigs defining in greater detail the requirements provided for by that regulation in respect of access to animals in order to check regularly their welfare conditions, which relate only to journeys of more than eight hours' duration; and
- it does not preclude the adoption, by a Member State, of standards according to which, where pigs are being transported by road, the animals must have a minimum surface area which varies according to their weight, that surface area being, for a 100 kg animal, 0.42 m² where the journey time is less than eight hours and 0.50 m² for journeys of more than eight hours.

(¹) OJ C 234, 28.8.2010.

Judgment of the Court (Grand Chamber) of 21 December 2011 (reference for a preliminary ruling from the High Court of Justice, Queen's Bench Division (Administrative Court) — United Kingdom) — Air Transport Association of America, American Airlines Inc., Continental Airlines Inc., United Airlines Inc. v Secretary of State for Energy and Climate Change

(Case C-366/10) (¹)

(Reference for a preliminary ruling — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Directive 2008/101/EC — Inclusion of aviation activities in that scheme — Validity — Chicago Convention — Kyoto Protocol — EU-United States Air Transport Agreement — Principles of customary international law — Legal effects thereof — Whether they may be relied upon — Extraterritoriality of European Union law — Meaning of 'charges', 'fees' and 'taxes')

(2012/C 49/12)

Language of the case: English

Referring court

High Court of Justice, Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Claimants: Air Transport Association of America, American Airlines Inc., Continental Airlines Inc., United Airlines Inc.

Defendant: Secretary of State for Energy and Climate Change

Interveners: International Air Transport Association (IATA), National Airlines Council of Canada (NACC), Aviation Environment Federation, WWF-UK, European Federation for Transport and Environment, Environmental Defense Fund, Earthjustice

Re:

Reference for a preliminary ruling — High Court of Justice, Queen's Bench Division (Administrative Court) — Validity of Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (OJ 2009 L 8, p. 3) — Whether certain rules and/or provisions of international law may be relied upon

Operative part of the judgment

1. The only principles and provisions of international law, from among those mentioned by the referring court, that can be relied upon, in circumstances such as those of the main proceedings and for the purpose of assessing the validity of Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community, are:

— first, within the limits of review as to a manifest error of assessment attributable to the European Union regarding its competence, in the light of those principles, to adopt that directive:

— the principle that each State has complete and exclusive sovereignty over its airspace,

— the principle that no State may validly purport to subject any part of the high seas to its sovereignty, and

— the principle which guarantees freedom to fly over the high seas,

— and second:

— Articles 7 and 11(1) and (2)(c) of the Air Transport Agreement concluded on 25 and 30 April 2007 between the United States of America, of the one part, and the European Community and its Member States, of the other part, as amended by the Protocol, and

— Article 15(3) of that agreement, read in conjunction with Articles 2 and 3(4) thereof.

2. Examination of Directive 2008/101 has disclosed no factor of such a kind as to affect its validity.

(¹) OJ C 260, 25.9.2010.