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En vue de la videoconférence informelle des membres du groupe Aviation du 8 mars 2022, les délégués trouveront en annexe un nouveau compromis de la Présidence sur la proposition en objet.

Les changements en comparaison du dernier compromis développé sous Présidence Slovène sont indiqués en **gras** et ~~barré~~.

Le projet de compromis pour le préambule sera développé ultérieurement.

2021/0205 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on ensuring a level playing field for sustainable air transport

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down harmonised rules on the uptake and supply of sustainable aviation fuels.

Article 2

Scope

This Regulation shall apply to aircraft operators, Union airports, and to aviation fuel suppliers.

A Member State may decide, where appropriate, that an airport located on its territory is **to be** treated as a Union airport ~~under~~ **for the purposes of** this Regulation. The Member State **concerned** shall notify ~~their~~ **its** decision to the Commission and the **European Union Aviation Safety Agency (the 'Agency')**, ~~as per Article 10 a year prior to the inclusion of the airport before that decision becomes applicable.~~ The Commission shall publish the information in the *Official Journal of the European Union* and provide an updated **and consolidated** list of the concerned airports which shall be easily accessible.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

- ‘Union airport’ means an airport as defined in Article 2(1) of Directive 2009/12/EC of the European Parliament and of the Council³, where passenger traffic was higher than 1 million passengers or where the freight traffic was higher than 100000 tons in the reporting period, and is not situated in an outermost region, as listed in Article 349 of the Treaty on the Functioning of the European Union;
- **‘Managing body of the airport’ means the entity referred to in article 3 of Directive 96/67/EC ⁴ or, where the Member State concerned has reserved the management of the centralized infrastructures for fuel distribution systems to another body pursuant to Article 8 of directive 96/67/EC, that other body;**
- ‘aircraft operator’ means a person that operated at least 500 commercial air transport flights departing from Union airports in the reporting period or, where that person may not be identified, the owner of the aircraft;
- ‘commercial air transport flight’ means a flight operated for the purposes of transport of passengers, cargo or mail for remuneration or hire, or business aviation flights;
- ‘aviation fuel’ means the fuel manufactured for direct use by aircraft;
- ‘sustainable aviation fuels’ (‘SAF’) means **drop-in** aviation fuels that are either synthetic aviation fuels, with the exception of biofuels produced from ‘food and feed crops’ as defined in Article 2, second paragraph, point 40 of Directive (EU) 2018/2001, and which comply with the sustainability and greenhouse gas emissions criteria laid down in Article 29 of ~~that~~ Directive (EU) 2018/2001 and are certified in accordance with Article 30 of ~~this~~ **that** Directive;

3 Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009, p. 11).

4 **Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p. 36).**

- ‘batch’ means a quantity of sustainable aviation fuels that can be identified with a number and can be traced;
- ‘lifecycle emissions’ means carbon dioxide equivalent emissions of sustainable aviation fuels that take into account carbon dioxide equivalent emissions of energy production, transport, distribution and use on-board, including during combustion, calculated in accordance with Article 31 of Directive (EU) 2018/2001;
- ‘synthetic aviation fuels’ means fuels that are renewable fuels of non-biological origin, as defined in Article 2, second paragraph, point 36 of Directive (EU) 2018/2001, used in aviation;
- ‘conventional aviation fuels’ means fuels produced from fossil non-renewable sources of hydrocarbon fuels, used in aviation;
- ‘aviation fuel supplier’ means a fuel supplier as defined in Article 2, second paragraph, point 38 of Directive (EU) 2018/2001, supplying aviation fuel at a Union airport;
- ‘reporting year’ means a period of one year in which the reports referred to in Articles 7 and 9 are to be submitted starting 1 January and ending 31 December;
- ‘reporting period’ means a period from 1 January until 31 December of the year preceding the reporting year;
- ‘yearly aviation fuel required’ means the amount of aviation fuel ~~defined~~ **referred to as** ‘trip fuel’ and ‘taxi fuel’ ~~under in Annex IV to Commission Implementing Regulation 2021/1296~~ **965/2012⁵** that is necessary to operate the totality of commercial air transport flights operated by an aircraft operator, departing from a given Union airport, over the course of a reporting period;

5 Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

- ‘yearly non-tanked quantity’ means the difference between the yearly aviation fuel required and the actual fuel uplifted by an aircraft operator prior to flights departing from a given Union airport, over the course of a reporting period;
- ‘total yearly non-tanked quantity’ means the sum of the yearly non-tanked quantities by an aircraft operator at all Union airports over the course of a reporting period;
- ‘greenhouse gas scheme’ means a scheme granting benefits to aircraft operators for the use of sustainable aviation fuels.

Article 4

Share of sustainable aviation fuel available at Union airports

Aviation fuel suppliers shall ensure that all aviation fuel made available to aircraft operators at each Union airport contains a minimum share of sustainable aviation fuel, including a minimum share of synthetic aviation fuel in accordance with the values and dates of application set out in Annex I.

Fuel suppliers may demonstrate compliance with the obligation contained in paragraph 1 by using the mass balance system referred to in Article 30 of Directive (EU) 2018/2001.

Without prejudice to the application of Article 11(3) and (4), where an aviation fuel supplier fails to supply the minimum shares set out in Annex I for a given reporting period, it shall at least complement that shortfall in the subsequent reporting period.

Article 5

Refuelling obligation for aircraft operators

1. The yearly quantity of aviation fuel uplifted by a given aircraft operator at a given Union airport shall be at least 90% of the yearly aviation fuel required, ~~taking into account~~ **without prejudice to the quantity of fuel to be uplifted in order to comply with applicable fuel safety rules⁶.**

2. The Member State whose competent authority for a given Union airport is informed by an aircraft operator that that aircraft operator is affected, at that given Union airport:

- by structural market difficulties for its transactions with fuel suppliers Union airport in particular in term of prices, placing it at a significant competitive disadvantage compared to market conditions existing in other Union airports, or

6 The Presidency suggests to supplement recital 21 as follows: " [...] *This Regulation should therefore require aircraft operators to refuel at Union airports, and that the amount of fuel uplifted on aggregate from a given Union airport correspond to the amount of fuel necessary to operate the flights departing from that airport, ~~taking into account the necessary compliance with fuel safety rules~~ without prejudice to the fuel reserve to be uplifted in order to comply with applicable fuel safety rules, such as in particular XXXX [...]*".

- by conditions specific to the given Union airport creating serious and recurrent operational difficulties in refuelling aircrafts preventing them from performing turnovers within a reasonable time for a specific route [of less than X kilometers] and/or for a specific season, may request that the flights affected by such market or operational difficulties departing from that Union airport be exempted from the obligation laid down in paragraph 1 of this Article from the beginning of a scheduling period within the meaning of Article 2, point (d) of Regulation (EEC) No 95/93⁷. Such request shall be made at least nine months before the date of application of the envisaged exemption and shall be substantiated with evidence, justifying the difficulties encountered.

The Member State concerned shall submit its request to the Commission and inform the other Member States thereof.

The Commission shall assess that request and, in light of the justification provided, it may ask for complementary information. The Commission may, by means of an implementing act adopted in accordance with the examination procedure referred to in Article 13a(2), decide to reject that request. The decision of the Commission shall be published in the Official Journal of the European Union. If the Commission fails to adopt such decision at least four months before the date of application of the envisaged exemption, the Member State concerned may apply that exemption.⁸

Article 6

Obligations of Union airports to ~~provide the infrastructure~~ facilitate the access to sustainable aviation fuels

The Managing body of Union airports shall take necessary measures to facilitate the access of aircraft operators to aviation fuels containing shares of sustainable aviation fuels in accordance with ~~Annex I this Regulation and, shall provide the infrastructure necessary for the delivery, storage and unloading of such fuels.~~

7 Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports.

8 A recital explaining the rationale of paragraph 2 will be added.

Where aircraft operators report difficulties to the competent authority where the airport is located ~~and to the European Union Aviation Safety Agency ('the Agency')~~ in accessing aviation fuels containing sustainable aviation fuels at a given Union airport ~~for lack of adequate airport infrastructure~~, the competent authority, shall request the **Managing body of that** Union airport to provide the information necessary to prove compliance with paragraph 1. The **Managing body of the** Union airport concerned shall provide the information without undue delay. The competent authority shall transmit this information to the ~~European Union Aviation Safety Agency ('the Agency')~~ **for the purpose of establishing the technical report referred to in Article 12.**

Upon request from the competent authority, **the Managing body of** Union airports shall take the necessary measures to identify and address the lack of adequate ~~airport infrastructure~~ **access of aircraft operators to aviation fuels containing shares of sustainable aviation fuels in accordance with this Regulation** ~~sustainable aviation fuels to aircraft operators in 5 years after the entry into force of the Regulation or after the year when they exceed one of the thresholds in the first subparagraph of Article 3(1).~~

Article 7

Reporting Obligations for Aircraft Operators

By 31 March of each reporting year, aircraft operators shall report the following information **with respect to a given reporting period** to the competent authorities and the Agency:

- (a) The total amount of aviation fuel uplifted at each Union airport, expressed in tonnes;
- (b) The yearly aviation fuel required, per Union airport, expressed in tonnes;
- (c) The yearly non-tanked quantity, per Union airport. If the yearly non-tanked quantity is negative or if it is lower than 10% of the yearly aviation fuel required, the reported yearly non-tanked quantity shall be reported as 0;
- (d) The total amount of sustainable aviation fuel purchased from aviation fuel suppliers, for the purpose of operating their commercial air transport flights departing from Union airports, expressed in tonnes;

- (e) For each purchase of sustainable aviation fuel, the name of the aviation fuel supplier, the amount purchased expressed in tonnes, the conversion technology, the characteristics and origin of the feedstock used for production, and the lifecycle emissions of the sustainable aviation fuel. Where one purchase includes sustainable aviation fuels with differing characteristics, the report shall provide this information for each type of sustainable aviation fuel.

The report shall be presented in accordance with the templates laid down in Annex II.

The report shall be verified by an independent verifier in compliance with the requirements set out in Articles 14 and 15 of Directive 2003/87/EC of the European Parliament and of the Council⁹, and in ~~Commission Implementing Regulation (EU) 2018/2067¹⁰~~ **the implementing acts adopted on the basis thereof.**

Article 8

Aircraft operator claiming of use of sustainable aviation fuels

Aircraft operators shall not claim benefits for the use of an identical batch of sustainable aviation fuels under more than one greenhouse gas scheme. Together with the report referred to in Article 7, aircraft operators shall provide the competent authorities and the Agency with:

- (a) A declaration of greenhouse gas schemes they participate in and in which the use of sustainable aviation fuels may be reported;
- (b) A declaration that they have not reported identical batches of sustainable aviation fuels under more than one scheme.

9 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

10 Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 334, 31.12.2018, p. 94).

For the purpose of reporting sustainable aviation fuels use under the provisions of Article 7 of this Regulation, or under a greenhouse gas scheme, aviation fuel suppliers shall provide aircraft operators with the relevant information free of charge.

Article 9

Reporting obligations for fuel suppliers

By 31 March of each reporting year, aviation fuel suppliers shall report in the Union Database referred to in Article 28 of Directive (EU) 2018/2001, the following information relative to the reporting period:

- (a) The volume of aviation fuel supplied at each Union airport;
- (b) The volume of sustainable aviation fuel supplied at each Union airport, and for each type of sustainable aviation fuel, as detailed in point c);
- (c) The conversion technology, the nature and origin of the feedstock used for production and the lifecycle emissions of each sustainable aviation fuel type supplied at Union airports.

The Agency **and the competent authorities** shall have access to the Union database. **The Agency** ~~and~~ shall use the information contained in the Union database, once the information has been verified at Member State level pursuant to Article 28 of Directive (EU) 2018/2001.

Article 10

Competent authority

- (1) Member States shall designate the competent authority or authorities responsible for enforcing the application of this Regulation and for imposing the fines for aircraft operators, Union airports and fuel suppliers. Member States shall inform the Commission thereof.

- (2) ~~The Agency shall send the data received pursuant to Articles 7 and 9 to the competent authorities of the Member States.~~ The Agency shall also send to the competent authorities data aggregated for the aircraft operators and aviation fuels suppliers for which the authorities are competent pursuant to paragraphs 3, 4 and 5.
- (3) **The Member State whose competent authority(ies) referred to in paragraph 1 of this Article is responsible for a given** ~~competent authorities in respect of an aircraft operator~~ shall be determined pursuant to Commission Regulation (EC) No 748/2009¹¹.
- (4) **Member State whose competent authority(ies) referred to in paragraph 1 of this Article is responsible for a given** ~~The competent authorities in respect of Union airports~~ shall be determined on the basis of the respective territorial jurisdiction.
- (5) **Member State whose competent authority(ies) referred to in paragraph 1 of this Article is responsible for a given** ~~The competent authorities in respect of aviation fuel suppliers shall be determined pursuant to their Member State of establishment, being considered as such the competent authorities of the Member State in which the aviation fuel supplier has its registered office.~~

For aviation fuel suppliers which do not have a registered office in a Member State, ~~the Member State of establishment~~ ~~competent authorities shall be the authorities of~~ ~~considered to be the Member State~~ **concerned** ~~is~~ **shall be the one** in which the aviation fuel supplier supplied the most aviation fuel in 2023 or in the first year of providing aviation fuel in the EU market, whichever the ~~earliest~~ **latest**. **Such an a** ~~Aviation fuel suppliers~~ **supplier** ~~which do not have the registered office within the Union may present a reasoned request to their~~ **its** ~~respective competent authorities~~ **authority** to be reattributed to ~~the competent authorities of another Member State, in case they have~~ **it has** supplied the most of ~~their~~ **its** aviation fuel in ~~that~~ **the** latter Member State over the two years preceding the request. The decision of reattribution shall be made within three months following the request, and shall be subject to the agreement of the competent authorities of the Member State of reattribution and of the Commission.

11 Commission Regulation (EC) No 748/2009 of 5 August 2009 on the list of aircraft operators which performed an aviation activity listed in Annex I to Directive 2003/87/EC (OJ L 219, 22.08.2009, p. 1).

Article 11

Enforcement

- (1) Member States shall lay down the rules on penalties applicable to infringements of the provisions adopted pursuant to this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by 31 December 2023 at the latest and shall notify it without delay of any subsequent amendment affecting them.
- (2) Member States shall ensure that any aircraft operator failing to comply with the obligations laid down in Article 5 is liable to a fine. That fine shall be at least twice as high as the multiplication of the yearly average price of aviation fuel per tonne and of the total yearly non-tanker quantity.
- (3) Member States shall ensure that any aviation fuel supplier failing to comply with the obligations laid down in Article 4 relative to the minimum share of sustainable aviation fuels is liable to a fine. That fine shall be at least twice as high as the multiplication of the difference between the yearly average price of conventional aviation fuel and sustainable aviation fuel per tonne and of the quantity of aviation fuels not complying with the minimum share referred to in Article 4 and Annex I.
- (4) Member States shall ensure that any aviation fuel supplier failing to comply with the obligations laid down in Article 4 relative to the minimum share of synthetic aviation fuels is liable to a fine. That fine shall be at least twice as high as the multiplication of the difference between the yearly average price of synthetic aviation fuel and conventional aviation fuel per tonne and of the quantity of the aviation fuel not complying with the minimum share referred to in Article 4 and Annex I.
- (5) In the decision imposing the fines referred to in paragraphs 3 and 4, the competent authority shall explain the methodology applied for the determination of the price of aviation fuel, sustainable aviation fuel and synthetic aviation fuel on the Union market, based on verifiable and objective criteria, **including the latest available technical report referred to in Article 12.**

- (6) Member States shall ensure that any aviation fuel supplier which has accumulated a shortfall from the obligation laid down in Article 4 relative to the minimum share of sustainable aviation fuels or of synthetic fuels in a given reporting period, shall supply the market in the subsequent reporting period with a quantity of that respective fuel equal to that shortfall, additional to their reporting period obligation. Fulfilling this obligation shall not exonerate the fuel supplier from the obligation to pay the penalties laid out in paragraphs 3 and 4 of this Article.
- (7) Member States shall have the necessary legal and administrative framework in place at national level to ensure the fulfilment of the obligations and the collection of the fines. Member States shall transfer the amount collected through those fines as contribution to the InvestEU Green Transition Investment Facility, as a top-up to the EU guarantee¹²

Article 12

Data collection and publication

The Agency shall publish every year a technical report on the basis of the yearly reports referred to in Articles 7 and 9 and forward it to the Council and the European Parliament. That report shall contain at least the following information:

- (a) The amount of sustainable aviation fuel purchased by aircraft operators at Union level in aggregate, for use on commercial air transport flights departing from a Union airport, and by Union airport;
- (b) The amount of sustainable aviation fuel and of synthetic aviation fuel supplied at Union level in aggregate and by Union airport and an analysis of the capacity of suppliers in each Member state to meet the planned incorporation trajectory;

12 Article 11(7) of the Commission proposal is under consideration by the CLS.

- (b bis) The amount of sustainable aviation fuel supplied in the ~~neighbouring third~~ countries ~~of the Union~~ with which an ~~European~~ Air Services Agreement has been concluded **by the Union, or the Union and its Member States, and to the extent possible in other third countries** ;
- (c) The state of the market, including price information, and trends in sustainable aviation fuel production and use in the Union **and the third countries with which an Air Services Agreement has been concluded by the Union, or the Union and its Member States, and to the extent possible in other third countries.** The state of market shall include information on the evolution of the price gap between sustainable aviation fuels and fossil fuels;
- (d) The status of compliance of airports regarding obligations set out in Article 6;
- (e) The compliance status of each aircraft operator and aviation fuel supplier having an obligation under this Regulation in the reporting period, and for cases of non-compliance, the status of enforcement;
- (f) The origin and the characteristics of all sustainable aviation fuels purchased by aircraft operators for use on commercial air transport flights departing from Union airports.

The Agency shall consult the Committee referred to in Article 13a(1) when drawing up that report.

Article 13

Transitional period

By way of derogation from Article 4, from 1 January 2025 until 31 December 2034, for each reporting period, an aviation fuel supplier may supply the minimum share of sustainable aviation fuel defined in Annex I as a weighted average over all the aviation fuel it supplied across Union airports for that reporting period.

Article 13a

Committee procedure

1. **The Commission shall be assisted by the RefuelEU Aviation Committee, hereinafter referred to as “the Committee”. The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.**
2. **Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.**

Article 14

Reports and Review

By 1 January 2027 and every five years thereafter, the Commission services shall present a report to the European Parliament and the Council, on the evolution of the aviation fuels market and its impact on the aviation internal market of the Union, including regarding the possible extension of the scope of this Regulation to other energy sources, and other types of synthetic fuels defined under the Renewable Energy Directive, the possible revision of the minimum shares in Article 4 and Annex I, and the level of fines. The report shall include a detailed assessment of the impact of this regulation on the competitiveness of European air carriers and airport hubs vis-à-vis their competitors in neighbouring countries and, where available, information on development of a potential policy framework for uptake of sustainable aviation fuels at ICAO level. The report shall also inform on technological advancements in the area of research and innovation in the aviation industry which are relevant to sustainable aviation fuels, including with regards to the reduction of non-CO₂ emissions.

The report ~~may~~**shall** consider if this Regulation should be amended and, options for amendments, where appropriate, in line with a potential policy framework on sustainable aviation fuels uptake at ICAO level.

[Among those options, the Commission services shall consider the inclusion of mechanisms to support the production and use of SAF, including the collection and use of funds, and all other mechanisms allowing to avoid a shift in traffic towards airport hubs in thirds countries and to mitigate carbon leakages.]

Article 15

Entry into force

This Regulation shall enter into force on the day twentieth following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2023.

However, Article 4 and 5 shall apply from 1 January 2025 and Articles 7 and Article 9 shall apply from 1 April 2024 for the reporting period of the year 2023.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Annex I - Volume shares

- (a) From 1 January 2025, a minimum share of 2% of SAF;
- (b) From 1 January 2030, a minimum share of 6% of SAF, of which a minimum share of 1% of synthetic aviation fuels;
- (c) From 1 January 2035, a minimum share of 20% of SAF, of which a minimum share of 5% of synthetic aviation fuels;
- (d) From 1 January 2040, a minimum share of 32% of SAF, of which a minimum share of 8% of synthetic aviation fuels;
- (e) From 1 January 2045, a minimum volume share of 38% of SAF, of which a minimum share of 11% of synthetic aviation fuels.
- (f) From 1 January 2050, a minimum volume share of 63% of SAF, of which a minimum share of 28% of synthetic aviation fuels.

Annex II – Template for aircraft operator reporting

Union airport	ICAO code of Union airport	Yearly aviation fuel required (tonnes)	Actual aviation fuel uplifted (tonnes)	Yearly non-tanked quantity (tonnes)	Total yearly non-tanked quantity (tonnes)

Template for aircraft operator reporting on purchases of SAF

Fuel Supplier	Amount purchased (tonnes)	Conversion technology	Characteristics	Origin of feedstock	Lifecycle emissions