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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on ensuring a level playing field for sustainable air transport – Progress report / Policy debate

The Presidency has foreseen a progress report and policy debate for the TTE Council of 9 December 2021 on the above proposal. In order to inform Ministers about the progress made to date and to steer an exchange of views on substantial issues, the Presidency has prepared a progress report (Annex I). In view of the Ministerial policy debate, a steering note may be found for delegations in Annex II.

The Coreper/Council will be invited to take note of the progress report set out in Annex I. The Council will be invited to address the points set out in Annex II.

I. INTRODUCTION

The Commission submitted the above proposal to the European Parliament and to the Council on 14 July 2021 as part of the ‘Fit for 55’ package¹ aimed at making the EU's climate, energy, land use, transport and taxation policies fit for achieving the EU target of a net domestic reduction of at least 55% in greenhouse gas emissions by 2030 compared to 1990.

The objective of the ‘Fit for 55’ package is to deliver on the targets agreed in the European Climate Law² so as to fundamentally transform the economy and society for a fairer, greener and more prosperous future. Reducing emissions in the next decade is crucial to Europe becoming the world's first climate-neutral continent by 2050 and making the European Green Deal a reality.

In order to reach the goal of putting the EU on a path to becoming climate neutral by 2050, a reduction of approximately 90% in transport emissions would be needed. The above proposal would play a significant role in this, since its main objective is to increase both the demand and supply of Sustainable Aviation Fuels, including Synthetic Aviation Fuels, all the while ensuring a level playing field across the EU air transport market. Notably, its main provisions focus on the following aspects:

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- ¹ The package consists of twelve Commission proposals in the field of energy, environment, taxation, trade and transport; additional proposals in the field of energy policy are still expected before the end of this year. Three legislative proposals are directly related to transport policies: the above proposal, ReFuel Maritime and Alternative Fuel Infrastructure Regulation (AFIR).
- ² Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’) (OJ L 243, 9.7.2021).

- (i) laying down requirements for the uplift of sustainable aviation fuel and synthetic aviation fuel starting from 2025 with a gradual increase until 2050;
- (ii) establishing a transitional period allowing fuel suppliers to reach the targets set in the annex as a weighted average across the Union;
- (iii) ensuring anti-tankering measures;
- (iii) laying down reporting obligations for fuel suppliers and aircraft operators.

The above proposal presents interlinkages with other proposals of the ‘Fit for 55’ package. In particular, the definition of sustainable aviation fuel and of synthetic aviation fuel referred to therein come from the Renewable Energy Directive (RED)³. The provision on the obligation of Union airports to provide the infrastructure is interlinked with AFIR⁴.

³ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018).

⁴ Proposal for a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council - COM(2021) 559 final.

II. WORK AT OTHER INSTITUTIONS

The European Parliament has designated the Committee on Transport and Tourism (TRAN) as the committee responsible⁵ for this proposal and Mr Søren GADE (DK, RENEW) is the rapporteur.

The European Economic and Social Committee adopted its opinion on 20 October 2021⁶. The Committee of the Regions did not adopt its opinion on the proposal yet.

The Spanish Parliament adopted an opinion⁷ on the application of the Principle of Subsidiarity on 27 October 2021 and the Czech Senate adopted a resolution⁸ on the proposal.

⁵ ITRE and ENVI parliamentary committees will act under associated committee procedure (rule 57 of the European Parliament's Rules of Procedure.

⁶ ST 13293/1/21 REV 1.

⁷ ST 13710/21

⁸ ST 14035/21

III. WORK WITHIN THE COUNCIL AND ITS PREPARATORY BODIES

During the Slovenian Presidency, a significant number of meetings at the level of the Aviation Working Party have dealt with the above proposal. To date, seven meetings have been dedicated to the presentation of the proposal, the analysis of its impact assessment, its thorough article-by-article examination, as well as the examination of three Presidency compromises.

Additionally, this proposal was addressed in the framework of a broader exchange of views on the three transport-related files of the 'Fit for 55' package which was held at the meeting of the Permanent Representatives Committee on 12 November 2021.

The Slovenian Presidency also prepared report ST 13977/21 aiming to provide an overall state of play and overview of progress made not only on this proposal but overall on the "Fit for 55" package. The report focuses on its horizontal aspects, such as interlinkages between proposals, and the main issues raised in discussions so far. This report has been distributed to all Council formations responsible for the different proposals of the package as a background document.

IV. WORK TOWARDS A COMPROMISE

The Presidency has prepared and discussed with the members of the Aviation Working Party three compromise texts⁹ that have addressed most of the issues of the proposal. However, work on the two main contentious issues listed below still requires further work.

The debate has proven the importance of the proposal for the Member States. While Member States supports its objectives, many have different approaches on how those objectives should be reached. Throughout the discussions during the Slovenian Presidency the following aspects were clarified and improved:

- 1) an opt-in clause for smaller airports that Member States would like to bring within the scope of the proposal has been introduced.
- 2) the scope of aircraft operators has been widened further and more aircraft operators now fall within the scope of the Regulation.
- 3) the definition of ‘yearly aviation fuel required’ and Article 5 have been clarified so as to ensure safety measures in the anti-tankering provisions.
- 4) the demonstration of compliance by fuel suppliers has been clarified.
- 5) the role of the national competent authority has been clarified, in particular vis-à-vis the European Union Aviation Safety Agency.
- 6) the terminology around fines was improved.
- 7) data collection and reporting obligations have been substantiated to ensure the monitoring of the effects of this Regulation on the competitiveness of Union operators and hubs.

⁹ ST 11686/21 + REV 1-2

V. CONCLUSIONS

Based on the work carried out so far, the Presidency draws the following conclusions:

1. The Member States largely support the objectives of the draft Regulation.
2. However, on two main points of contention, Member States hold different positions. These are:
 - the level and timing of the mandates introduced in this Regulation;
 - the definition of Sustainable Aviation Fuels which determines the scope of fuels to be allowed that fall under this Regulation.
3. Finally, a few remaining points still need further elaboration. These include:
 - the anti-tankering provisions on intra-EU flights;
 - the length, and the scope of the transitional period;
 - the destination of the fines collected by Member States in Article 11 on Enforcement;
 - streamlining of the tables in Annex II.

While the Presidency considers that it has worked extensively on the text and the less contentious of its points, there still remains further preparatory work to be done. The Presidency has also submitted proposals on the main points of contention in its last compromise text but more in-depth discussions are needed.

In the light of the above, the Permanent Representatives Committee and the Council are invited to take note of this progress report made on the work regarding the proposed Regulation on ensuring a level playing field for sustainable air transport.

The Member States are invited to share their views as regards the following aspects of the proposal:

- *the adequacy of the level of the blending mandates proposed by the Commission in achieving EU climate targets;*
- *whether the Commission's approach on which fuels should be eligible as Sustainable Aviation Fuels is sufficient to match the level of ambition for SAFs across the EU, while ensuring environmental integrity and competitiveness of EU operators.*