



Council of the
European Union

Brussels, 24 October 2022
(OR. en)

13911/22

**Interinstitutional File:
2021/0205(COD)**

LIMITE

**AVIATION 261
TRANS 662
ENV 1057
ENER 530
IND 429
ECO 96
RECH 560
CODEC 1579
COMPET 823
CLIMA 538
RELEX 1404**

WORKING DOCUMENT

From: General Secretariat of the Council
To: Delegations

Subject: Proposal for a Regulation of the European Parliament and of the Council
on ensuring a level playing field for sustainable air transport

- Presidency non paper

In preparation to the Aviation Working Party of 27 October 2022, delegations will find in Annex a Presidency non-paper on the Proposal for Regulation of the European Parliament and of the Council on ensuring a level playing field for sustainable air transport – “RefuelEU Aviation”.

Following the General Approach adopted in June 2022, the Presidency has embarked on negotiations with the European Parliament.

So far, the Presidency has had two trilogues (8 September and 13 October) and four technical meetings. It has also updated its mandate once in COREPER (12 October).

During these meetings, the positions of the Parliament and the Council have become closer as both legislators are negotiating in good faith and with the intention to achieve political agreement on the file as soon as possible and possibly by the end of the year.

Currently, the positions of the two institutions have been aligned on many editorial and technical issues. Moreover, considerable progress has been achieved on numerous political issues such as the scope of airports and airlines, as well as the SAF flexibility mechanisms and the Union Labelling System. The Presidency now wishes to achieve further progress on the remaining political points, starting from the Anti-Tankering provisions, the Enforcement of the Regulation, and the National Mandates.

Therefore, the Presidency is putting forth some questions to seek guidance from the Member States in its negotiations.

Anti-Tankering provisions

In its proposal, the Commission has simply introduced the requirement that aircraft operators must uptake at least 90% of the yearly aviation fuel required at every airport it uses. The European Parliament has not modified this provision except for a consideration over “safety rules”, and a “force majeure” exemption on the imposition of penalties. On the other hand, the Council, in its General Approach, has introduced targeted exemptions to this requirement. Indeed for flights of less than 1200km departing from a specific Union airport, where an operator faces serious and recurrent operational difficulties in refuelling which prevents it from performing quick turnarounds or where specific geographic characteristics of the airport create structural fuel supply difficulties leading to significantly high prices of fuels, it can request to the competent authority responsible of the airport for an exemption from the 90% obligation. These exemptions were prepared in a way to ensure that a level playing field is ensured. Checks and balances have been introduced and the Commission, following a complaint, or on its own initiative can request the Competent authority to withdraw the exemption.

The European Parliament, when discussing with the Presidency, has showed concern on this exemption opening a loophole in the Regulation that would lead to a misuse of the exemption provision. Therefore, in order to ensure that such loophole is not created, it must be ensured that the conditions that would allow for such exemption to be allowed would be as clear and strict as possible.

Questions to the delegations:

Would you consider the possibility of reducing the scope of eligible flights by reducing the distance of flights allowed to apply for the exemption?

Would you consider the possibility of ensuring more clarity in the conditions allowing for an exemption? Would you consider that these conditions are established through guidelines established by the Commission, in order to improve the level playing field?

Would you alternatively consider that the authority allowing the exemption is the Commission through Comitology?

Allocation of the penalties

During the second trilogue, the Presidency has negotiated in a way to ensure the role of the Competent Authorities and the Member States is in line with the position adopted in the General Approach. During technical meetings compromises are currently being discussed and prepared to ensure that Member States can enforce the Regulation properly, while also considering proposals from the European Parliament on the exemptions for the aircraft operators, a new provision for enforcement on a Union airport managing body and on fuel suppliers that provide misleading information.

However, on the matter of fines the discussion is still in the early stages, particularly due to the fact that the Commission, the European Parliament and the Council have come up with different solutions to the use of the revenues generated from fines. Whereas the Council Legal Service has already expressed its negative opinion¹ on the proposed fund by the Commission, it has, however, confirmed that there would be no legal difficulties if these revenues would be assigned to the Innovation Fund established by Article 10a(8) of the ETS Directive. The European Parliament, on the other hand, has created a specific fund to collect these revenues, called Sustainable Aviation Fund to be managed centrally by a Union body. The Council's position is to ensure that the revenues are kept by the Member States and are earmarked to support Research and Innovation in field of SAF.

Questions to the delegations:

Would you consider either the proposal of the European Parliament to establish a new fund or to direct these funds to the Innovation Fund?

Would you accept a more stringent wording on the compulsory use of the revenues for the development of SAF, if it helps convince the European Parliament to accept that these revenues are kept by the Member States?

¹ ST 8727/22

Level of ambition until 2035

The Council and Parliament positions on the overall level of SAF are similar until 2035. Regarding synthetic fuels, the Parliament has proposed targets of 0,04% and 2% respectively for 2025 and 2030, while the Council has 0,7% for 2030 and national mandates up to 1% until 2030 and 3% on top of 0,7% until 2035.

The national mandates were not a part of the Commission's original proposal, nor a part of the European Parliament's report. Both the Commission and the European Parliament consider the introduction of national mandates as a threat to the level playing field of the Regulation as well as a threat to the environmental integrity of the Proposal. The Presidency has insisted and highlighted that the national mandates are only meant to build upon the Union minimum shares and to allow Member States that have set their national targets as higher than the minimum shares established in this Proposal. The Presidency has also explained that these national mandates have considerable limitations, both in time (expire in 2034), in scope (can apply only for synthetic aviation fuels) and in quantities (1% by 2029 and 3% by 2034). Moreover, the Presidency explained that checks and balances have been introduced to ensure that SAF remains available and is distributed across the Union.

Question to the delegations:

Would you consider limiting the national mandates until 2030, and raising the 2030 target for synthetic fuels more in line with the European Parliament's proposal?