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Les délégations trouveront en annexe, pour information, le texte sur lequel le Conseil "Transports, télécommunications et énergie" (Transports) a dégagé une orientation générale sur la proposition susmentionnée lors de sa session du 2 juin 2022.

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,

Whereas:

- (1) Over the past decades, air transport has played a crucial role in the Union's economy and in the everyday lives of Union citizens, as one of the best performing and most dynamic sectors of the Union economy. It has been a strong driver for economic growth, jobs, trade and tourism, as well as for connectivity and mobility for businesses and citizens alike, particularly within the Union aviation internal market. Growth in air transport services has significantly contributed to improving connectivity within the Union and with third countries, and has been a significant enabler of the Union economy.

¹ OJ C , , p. .

² OJ C , , p. .

- (2) From 2020, air transport has been one of the hardest hit sector by the COVID-19 crisis. With the perspective of an end to the pandemic in sight, it is expected that air traffic will gradually resume in the coming years and recover to its pre-crisis levels. At the same time, emissions from the sector have been increasing since 1990 and the trend of increasing emissions could return as we overcome the pandemic. Therefore, it is necessary to prepare for the future and make the necessary adjustments ensuring a well-functioning air transport market that contributes to achieving the Union's climate goals, with high levels of connectivity, safety and security.
- (3) The functioning of the Union air transport sector is determined by its cross-border nature across the Union, and by its global dimension. The aviation internal market is one of the most integrated sectors in the Union, governed by uniform rules on market access and operating conditions. The air transport external policy is governed by rules established at global level at the International Civil Aviation Organisation (ICAO), as well as by comprehensive multilateral or bilateral agreements between the Union or its Member States, and third countries.
- (4) The air transport market is subject to strong competition between economic actors across the Union, for which a level playing field is indispensable. The stability and prosperity of the air transport market and its economic actors relies on a clear and harmonised policy framework where aircraft operators, airports and other aviation actors can operate on the basis of equal opportunities. Where market distortions occur, they risk putting aircraft operators or airports at a disadvantage with internal or external competitors. In turn, this can result in a loss of competitiveness of the air transport industry, and a loss of air connectivity for citizens and businesses.

- (5) In particular, it is essential to ensure a level playing field across the Union air transport market regarding aviation fuel, which account for a substantial share of aircraft operators' costs while fostering the decarbonisation of air transport by the promotion of sustainable aviation fuels ('SAF'). Variations in fuel prices can affect aircraft operators' economic performance and negatively impact competition on the market. Where differences in aviation fuel prices exist between Union airports or between Union and non-Union airports, this can lead aircraft operators to adapt their refuelling strategies for economic reasons. Fuel tankering increases aircraft's fuel consumption and results in unnecessary greenhouse gas emissions. Fuel tankering by aircraft operators accordingly undermines the Union's efforts towards environmental protection. Some aircraft operators are able to use favourable aviation fuel prices at their home base as a competitive advantage towards other airlines operating similar routes. This can have detrimental effects on the competitiveness of the sector and be harmful to air connectivity. This Regulation should set up measures to prevent such practices in order to avoid unnecessary environmental damage as well as to restore and preserve the conditions for fair competition on the air transport market.
- (6) A key objective of the common transport policy is sustainable development. This requires an integrated approach aimed at ensuring both the effective functioning of Union transport systems and protection of the environment. Sustainable development of air transport requires the introduction of measures aimed at reducing the carbon emissions from aircraft flying from Union airports. Such measures should contribute to meeting the Union's climate objectives by 2030 and 2050.

- (7) The Communication on a Sustainable and Smart Mobility Strategy³ adopted by the Commission in December 2020 sets a course of action for the EU transport system to achieve its green and digital transformation and become more resilient. The decarbonisation of the air transport sector is a necessary and challenging process, especially in the short term. Technological advancements, pursued in European and national research and innovation aviation programmes have contributed to important emission reductions in the past decades. However, the global growth of air traffic has outpaced the sector's emissions reductions. Whereas new technologies are expected to help reducing short-haul aviation's reliance on fossil energy in the next decades, SAF offer the only solution for significant decarbonisation of all flight ranges, already in the short term. However, this potential is currently largely untapped.
- (8) SAF are liquid, drop-in fuels, fully fungible with conventional aviation fuel and compatible with existing aircraft engines. Several production pathways of SAF have been certified at global level for use in civil or military aviation. SAF are technologically ready to play an important role in reducing emissions from air transport already in the very short term. They are expected to account for a major part of the aviation fuel mix in the medium and long term. Further, with the support of appropriate international fuel standards, SAF might contribute to lowering the aromatic content of the final fuel used by an operator, thus helping to reduce other non-CO₂ emissions. Other alternatives to power aircraft, such as electricity or liquid hydrogen are expected to progressively contribute to the decarbonisation of air transport, beginning with short-haul flights.
- (9) The gradual introduction of SAF on the air transport market will represent an additional fuel cost for airlines, as such fuel technologies are currently more expensive to produce than conventional aviation fuel. This is expected to exacerbate the pre-existing issues of level playing field on the air transport market as regards aviation fuel, and to cause further distortions among aircraft operators and airports. This regulation should take measures to prevent that the introduction of SAF affects negatively the competitiveness of the aviation sector by defining harmonised requirements across the Union.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Sustainable and Smart Mobility Strategy – putting European transport on track for the future (COM/2020/789 final), 9.12.2020.

- (10) At global level, SAF are regulated at ICAO. In particular, ICAO establishes detailed requirements on the sustainability, traceability and accounting of SAF for use on flights covered by the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). While incentives are set in CORSIA and SAF are considered an integral pillar of the work on the feasibility of a Long-Term Aspiration Goal for international aviation, there is currently no mandatory scheme on the use of SAF for international flights. Comprehensive multilateral or bilateral air transport agreements between the EU or its Member States, and third countries generally include provisions on environmental protection. However, for the time being, such provisions do not impose on contracting parties any binding requirements on the use of SAF.
- (11) At EU level, general rules on renewable energy for the transport sector are set out in Directive (EU) 2018/2001 of the European Parliament and of the Council⁴. In the past, such horizontal cross-sectoral regulatory frameworks have not proven effective to operate a transition from fossil fuels to SAF in air transport. Directive (EU) 2018/2001 and its predecessor set out overarching targets across all transport modes to be supplied with renewable fuels. As aviation is a small fuels market for which renewable fuels are more costly to produce, in comparison to other transport modes, such regulatory frameworks should be complemented with aviation-specific measures to effectively boost the deployment of SAF. Further, national transpositions of Directive (EU) 2018/2001 risks creating significant fragmentation in the air transport market, where national rules on SAF would set out widely differing targets. This would be expected to further exacerbate the issues of level playing field in air transport.

⁴ 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, p. 82).

- (12) Therefore, uniform rules need to be laid down for the aviation internal market to complement Directive (EU) 2018/2001 and to deliver on its overall objectives by addressing the specific needs and requirements arising from the EU aviation internal market. In particular, the present Regulation aims to avoid a fragmentation of the aviation market, prevent possible competitive distortions between economic actors, or unfair practices of cost avoidance as regards the refuelling of aircraft operators, while fostering the use of SAF. However, this Regulation should be without prejudice to the obligations laid down in Directive (EU) 2018/2001; Member States can claim the use of aviation fuels covered by this Regulation for achieving the objectives and targets laid down in that Directive subject to the conditions and within the limits of that Directive.
- (13) This regulation aims in the first instance to set out a framework restoring and preserving a level playing field on the air transport market as regards the use of aviation fuels. Such a framework should prevent divergent requirements across the Union that would exacerbate refuelling practices distorting competition between aircraft operators or putting some airports at competitive disadvantage with others. In a second instance, it aims to gear the EU aviation market with robust rules to ensure that gradually increasing shares of SAF can be introduced at Union airports without detrimental effects on the competitiveness of the EU aviation internal market.
- (14) It is essential to set harmonised rules across the EU internal market, applying directly and in a uniform way to aviation market actors on the one hand, and aviation fuels market actors on the other hand. The overarching framework set out by Directive (EU) 2018/2001 should be complemented with a *lex specialis* applying to air transport. It should include gradually increasing targets for the supply of SAF. Such targets should be carefully defined, taking into account the objectives of a well-functioning air transport market, the need to decarbonise the aviation sector and the current status of the SAF industry.

(15) The present Regulation should apply to aircraft engaged in civil aviation, carrying out commercial air transport flights. It should not apply to aircraft such as military aircraft and aircraft engaged in operations for humanitarian, repatriation and deportation, search, rescue, disaster relief or medical purposes, as well as customs, police and fire-fighting operations. Indeed, flights operated in such circumstances are of exceptional nature and as such cannot always be planned in the same way as regular flights. Due to the nature of their operations, they may not always be in a position to fulfil obligations under this Regulation, as it may represent unnecessary burden. In order to cater for a level playing field across the EU aviation single market, this regulation should cover the largest possible share of commercial air traffic operated from airports located on EU territory. At the same time, in order to safeguard air connectivity for the benefits of EU citizens, businesses and regions, it is important to avoid imposing undue burden on air transport operations at small airports. A threshold of yearly passenger air traffic and freight traffic should be defined, below which airports would not be covered by this Regulation. However, the scope of the Regulation should cover at least 95% of total traffic departing from airports in the Union. Moreover, Member States should be able to decide that an airport located on its territory that does not reach that threshold should be treated as a Union airport for the purposes of this Regulation and should therefore be subject to this Regulation. For the same reasons, a threshold should be defined to exempt aircraft operators accountable for a very low number of departures from airports located on EU territory.

- (16) Development and deployment of SAF with a high potential for sustainability, commercial maturity and a high potential for innovation and growth to meet future needs should be promoted. This should support creating innovative and competitive fuels markets and ensure sufficient supply of SAF for aviation in short and long term to contribute to Union transport decarbonisation ambitions, while strengthening Union’s efforts towards a high level of environmental protection. For this purpose, all biofuels which comply with the sustainability and greenhouse gas emissions criteria laid down in Directive (EU) 2018/2001 and are certified in accordance with that Directive, with the exception of biofuels produced from ‘food and feed crops’, renewable fuels of non-biological origin and recycled carbon aviation fuels complying with the greenhouse gas emissions savings threshold referred to in that Directive should be eligible. In that respect, to ensure consistency with other related EU policies, the eligibility of biofuels, renewable fuels of non biological origin and recycled carbon fuels should be based on the sustainability criteria and thresholds established in Directive 2018/2001.

In particular, SAF produced from feedstock listed in Part B of Annex IX of Directive (EU) 2018/2001 are essential, as currently the most commercially mature technology to decarbonise air transport already in the short term. The renewable share of fuels produced through co-processing should be eligible under the definition of SAF, as long as the renewable share is produced from feedstock listed in Directive (EU) 2018/2001 with the exception of biofuels produced from ‘food and feed crops’ as defined in Article 2, second paragraph, point 40 of that Directive, and determined in line with the methodology set out under Delegated Act [XXX].

Synthetic low-carbon fuels for aviation achieving similar high greenhouse gas reductions as renewable fuels on non-biological origin should also be included in the scope of this Regulation.

- (16a) Given their use for cosmetics and animal feed, biofuels other than advanced biofuels as defined in Article 2, second paragraph, point 34 of Directive (EU) 2018/2001 and other than biofuels produced from the feedstock listed in Part B of Annex IX to that Directive supplied across Union airports by each fuel supplier should account for a maximum of 3 % for the purposes of complying with the minimum shares of SAF to be supplied at each Union airports under this Regulation.

(17) For sustainability reasons, feed and food crop-based fuels should not be eligible. In particular, indirect land-use change occurs when the cultivation of crops for biofuels displaces traditional production of crops for food and feed purposes. Such additional demand increases the pressure on land and can lead to the extension of agricultural land into areas with high-carbon stock, such as forests, wetlands and peatland, causing additional greenhouse gas emissions and loss of biodiversity concerns. Research has shown that the scale of the effect depends on a variety of factors, including the type of feedstock used for fuel production, the level of additional demand for feedstock triggered by the use of biofuels and the extent to which land with high-carbon stock is protected worldwide. The highest risks of indirect land-use change have been identified for biofuels, fuels produced from feedstock for which a significant expansion of the production area into land with high-carbon stock is observed. Accordingly, feed and food crop-based fuels should not be promoted. This approach is in line Union policy and in particular with Directive (EU) 2018/2001 which limits and sets a cap on the use of such biofuels in road and rail transport, considering their lower environmental benefits, lower performance in terms of greenhouse reduction potential and broader sustainability concerns. In addition to the greenhouse gas emissions linked to indirect land-use change – which is capable of negating some or all greenhouse gas emissions savings of individual biofuels – indirect land-use change poses risks also to biodiversity. This risk is particularly serious in connection with a potentially large expansion of production determined by a significant increase in demand. The aviation sector has currently insignificant levels of demand for food and feed crops-based biofuels, since over 99% of currently used aviation fuels are of fossil origin. It is therefore appropriate to avoid the creation of a potentially large demand of food and feed crops-based biofuels by promoting their use under this Regulation. The non-eligibility of crop-based biofuels under this Regulation also minimises any risk to slow down the decarbonisation of road transport, which could otherwise result from a shift of crop-based biofuels from the road to the aviation sector. It is essential to minimise such a shift, as road transport currently remains by far the most polluting transport sector.

- (18) [...]
- (19) The present Regulation should aim to ensure that aircraft operators can compete on the basis of equal opportunities as regards the access to SAF. To avoid distortions on the air services market, Union airports covered by this Regulation should be supplied with uniform minimum shares of SAF. In order to create a clear and predictable legal framework and in doing so encourage the market development and deployment of the most sustainable and innovative with growth potential to meet future needs fuel technologies, this Regulation should set out gradually increasing minimum shares of SAF, including of synthetic aviation fuels over time. Setting out a dedicated sub-obligation on synthetic aviation fuels is necessary in view of the significant decarbonisation potential of such fuels, and in view of their current estimated production costs. When produced from renewable electricity and carbon captured directly from the air, synthetic aviation fuels can achieve as high as 100% emissions savings compared to conventional aviation fuel. They also have notable advantages compared to other types of SAF with regards to resource efficiency (in particular for water needs) of the production process. However, synthetic aviation fuels' production costs are currently estimated at 3 to 6 times higher than the market price of conventional aviation fuel. Therefore, this Regulation should establish a dedicated sub-obligation for this technology. Fuel suppliers should have the option to achieve the minimum shares laid down by this Regulation using synthetic low-carbon fuels for aviation derived from low-carbon hydrogen achieving similar high greenhouse gas reductions as renewable fuels of non-biological origin.
- (20) It is essential to ensure that the minimum shares of SAF can be successfully supplied to the aviation market without supply shortages. For this purpose, sufficient lead-time should be planned to allow the renewable fuels industry to develop production capacity accordingly. The supply of SAF should become mandatory starting in 2025. Similarly, in order to provide legal certainty and predictability to the market and drive investments durably towards SAF production capacity, the terms of this Regulation should be stable over a long period of time.

(20a) As the Regulation does not define a maximum share of SAF in all aviation fuels, airlines and fuel suppliers may pursue more ambitious environmental policies with higher SAF uptake and supply in their overall network of operations. Accordingly, the market should remain free to supply and use larger quantities of SAF than the ones needed for the application of the minimum shares laid down in this Regulation. Moreover, in order to enhance further the decarbonisation of the aviation sector and in view of the significant decarbonisation potential of synthetic aviation fuels, Member States should be able to apply during a limited period of time and up to specific ceilings higher minimum shares of such fuels as the ones laid down in this Regulation at one or several Union airport located on their territory where the minimum share of SAF, including synthetic aviation fuels, set out in this Regulation has been reached during the previous reporting period in average across Union airports or at any time before the 1 January 2027. Member States should also have the option of not applying such ceilings in the case of small airports, where the annual passenger non-domestic traffic is less than 2 million passengers, as such further option would not adversely affect the internal aviation market. However, where the distribution of synthetic aviation fuels across all Union airports cannot be ensured due to a structural lack of production or supply of such fuels in the Union, the Commission should adopt a decision requiring the Member States to suspend the application of such higher national minimum shares. The provisions of this Regulation should not prevent Member States from implementing dedicated measures other than the ones laid down in this Regulation aiming at facilitating the use of SAF on domestic flights.

- (21) With the introduction and ramp-up of SAF at Union airports, practices of fuel tankering may be exacerbated as a consequence of aviation fuel costs increases. Tankering practices are unsustainable and should be avoided as they undermine the Union's efforts to reduce environmental impacts from transport. Those would be contrary to the aviation decarbonisation objectives as increased aircraft weight would increase fuel consumption and related emissions on a given flight. Tankering practices also put at risk the level playing field in the Union between aircraft operators, and also between airports. This Regulation should therefore require aircraft operators to refuel prior to departure from a given Union airport. The amount of fuel uplifted prior to departures from a given Union airport should be commensurate with the amount of fuel necessary to operate the flights departing from that airport, without prejudice to the fuel reserve to be uplifted in order to comply with applicable fuel safety rules, such as in particular Commission Regulation (EU) No. 965/2012⁵. The requirement ensures that equal conditions for operations in the Union applying equally to Union and foreign operators, while ensuring high level of environmental protection.
- (21a) However, this Regulation should provide for the possibility to exempt for a limited period of time aircraft operators from the obligation to refuel prior to departure on specific routes of less than 1200 kilometres departing from Union airports in case those operators can demonstrate serious and recurrent operational difficulties in refuelling aircrafts at a given Union airport preventing them from performing turnaround flights within a reasonable time, which might have an impact on connectivity especially of peripheral regions, or structural fuel supply difficulties leading to significantly higher prices of fuels compared to prices applied on average to similar types of fuels in other Union airports. The significantly higher prices at the given airport in question should not primarily be the result of the higher use of SAF at that airport.

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, p1)

- (22) The Managing body of a Union airport covered by this Regulation should take the necessary measures to facilitate the access to SAF, so as not to constitute an obstacle with respect to the uptake of such fuel. If necessary, the competent authorities of the Member State where the airport is located, should be able to require the Managing body of a Union airport to provide information on the seamless distribution and refuelling of aircraft operators with SAF. The role of the competent authorities should allow the Managing body of Union airports and airlines to have a common focal point, in the event where technical clarification is necessary on the availability of fuel infrastructure.
- (23) Aircraft operators should be required to report yearly to the competent authorities and to the European Union Aviation Safety Agency (the ‘Agency’) on their purchases of SAF, as well as on the characteristics of this fuel. Information should be provided on the characteristics of the SAF purchased such as inter alia nature and origin of the feedstock, conversion pathway and lifecycle emissions.
- (24) Aircraft operators should also be required to report yearly on their actual aviation fuel uplift per Union airport, so as to prove that no fuel tankering was performed. Reports should be verified by independent verifiers and transmitted to the competent authorities and to the Agency for monitoring and assessment of compliance. Independent verifiers should determine the accuracy of the yearly aviation fuel required reported by the operators using a tool approved by the Commission.
- (25) Aviation fuel suppliers should be required to report yearly in the Union database referred to in Article 28 of Directive (EU) 2018/2001, on their supply of aviation fuel, including SAF.
- (25a) Member States should designate a competent authority or authorities responsible for enforcing the application of this Regulation upon aircraft operators, Union airports and fuel suppliers. This Regulation should define the rules for the attribution of aircraft operators, Union airports and fuel suppliers to competent authorities. The Agency should send to the competent authorities data aggregated for the aircraft operators and aviation fuels suppliers for which these authorities are competent. To the extent possible, the level of aggregation should allow for comparison with other data sources by the competent authorities.

- (25b) The Agency should draw a technical report on a yearly basis and forward it to the Council and the European Parliament. This is important in particular to have clear visibility on the level of compliance to the Regulation, the use of SAF in the Union and the third countries, the state of market including information on the evolution of the price gap between SAF and fossil fuels and the composition of aviation fuel.
- (26) It is not possible without additional procedures to determine accurately whether aircraft operators have actually physically uplifted shares of SAF in their tanks at a specific Union airports. Therefore, aircraft operators should be allowed to report their use of SAF based on purchasing records. Aircraft operators should be entitled to receive from the aviation fuel supplier the information that is necessary to report the SAF purchase. Fuel suppliers may demonstrate compliance with this Regulation by using the mass balance system referred to in Article 30 of Directive (EU) 2018/2001.
- (27) It is essential that aircraft operators can claim the use of SAF under greenhouse gas schemes such as the EU Emissions Trading System or CORSIA, at their own discretion. However, it is essential that this regulation should not lead to a double counting of emissions reductions. Aircraft operators should only be allowed to claim benefits for the use of an identical batch of SAF once. Fuel suppliers should be requested to provide free of charge to aircraft operators any information pertaining to the properties of the SAF sold to that aircraft operator and that is relevant for reporting purposes by the aircraft operator under this Regulation or greenhouse gas schemes.
- (28) In order to ensure a level playing field of the aviation internal market and the adherence to the climate ambitions of the Union, this Regulation should introduce effective, proportionate and dissuasive penalties on aviation fuel suppliers and aircraft operators in case of non-compliance. The level of the penalties needs to be proportionate to the environmental damage and to the prejudice to the level-playing field of the internal market inflicted by the non-compliance. When imposing fines, the authorities should take into account the evolution of the price of aviation fuel and SAF in the reporting year.

- (28b) The transition from fossil fuels to SAF will play a considerable role in facilitating decarbonisation. However, considering the current lack of a EU market of SAF, the high level of competition between aircraft operators and the important price differential between fossil kerosene and SAF, this transition should be supported through incentives that reflect the environmental benefit of SAF and make them more competitive for aircraft operators. Using revenues generated from the fines, or the equivalent in financial value of those revenues, to support research and innovation projects in the field of SAF, the production of SAF or mechanisms allowing to bridge the price differences between SAF and conventional aviation fuels would contribute to that objective.
- (29) The penalties for the suppliers who fail to meet the targets set in this Regulation should be complemented by the obligation to supply the market with the shortfall of meeting the quota in the subsequent year.
- (29a) A transitional period of 10 years should be provided for the purposes of complying with the SAF minimum share requirements laid down in this Regulation to allow for a reasonable amount of time for aviation fuel suppliers, Union airports and aircraft operators to make the necessary technological and logistical investments. During this phase, aviation fuel containing higher shares of SAF in certain airports may be used to compensate for lower shares of SAF or for the reduced availability of conventional aviation fuel at other airports.
- (30) This Regulation should include provisions for periodic reports to the European Parliament and the Council on the evolution of the aviation and fuels markets and the impact of this Regulation on the aviation internal market of the Union, on connectivity for islands and remote territories and on the competitiveness of European air carriers and airport hubs vis-à-vis their competitors in neighbouring countries, the effectiveness of key features of the Regulation such as the minimum shares of SAF, the level of fines or policy developments on SAF uptake at international level. Such elements are key to provide a clear state of play of the SAF market and should be taken into account when considering a revision of the Regulation.

In those reports, the Commission should consider options for amendments, where appropriate, including mechanisms to support the production and use of SAF as well as mechanisms allowing to bridge the price differences between SAF and conventional aviation fuels in order to limit the adverse impacts of this Regulation on air connectivity and competition and to mitigate carbon leakage.

The requirement laid down by this Regulation to ensure that a minimum share of SAF is made available at each Union airport could incentivise aircraft operators operating connecting flights departing from Union airports with a final destination outside the Union to transit via non-EU hub airports which are not subject to that requirement rather than via EU hubs. This could lead to distortions of competition at the expense of Union airports and operators using such airports and to a risk of carbon leakage. In the absence of a mandatory scheme on the use of SAF for international flights at ICAO level or in comprehensive multilateral or bilateral air transport agreements between the EU and/or its Member States and third countries with a similar level of ambition in comparison with the requirements outlined in this Regulation and the objectives of the Paris Agreement or of mechanisms developed at international level to prevent the risk of carbon leakage and of distortion of competition, the Commission should in particular consider the development of targeted mechanisms aiming at preventing those effects.

(31) [...].

(31a) In order to ensure uniform conditions for the implementation of Article 4(3) and 5(2), implementing powers should be conferred on the Commission with respect to the application of higher minimum shares of synthetic aviation fuel by Member States and to the exemptions of the obligation to refuel prior departure that may be granted to aircraft operators.

(32) Since the objective of this Regulation, namely to maintain a level playing field on the Union air transport market while increasing the use of SAF, cannot be sufficiently achieved by the Member States due to the cross-border nature of aviation, but can rather, by reason of the characteristics of the market and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

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 for the purposes of this Regulation. The Member State concerned shall notify its decision to the Commission and the European Union Aviation Safety Agency (the 'Agency') a year 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 airports concerned 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 Council⁶, where passenger traffic was higher than 1 million passengers or where the freight traffic was higher than 100000 tons in the reporting period, and that 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/EC⁷ 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;

⁶ Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges

⁷ 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).

- ‘sustainable aviation fuels’ (‘SAF’) means drop-in aviation fuels that are either: (a) biofuels which comply with the sustainability and greenhouse gas emissions savings criteria laid down in Article 29 of Directive (EU) 2018/2001 and are certified in accordance with Article 30 of that Directive, with the exception of biofuels produced from ‘food and feed crops’ as defined in Article 2, second paragraph, point 40 of that Directive, (b) synthetic aviation fuels or (c) recycled carbon aviation fuels defined in Article 2, second paragraph, point 35 of Directive (EU) 2018/2001 which comply with the greenhouse gas emissions savings threshold referred to in Article 25(2), second subparagraph of that directive;
- ‘batch’ means a quantity of SAF that can be identified with a number and can be traced;
- ‘lifecycle emissions’ means carbon dioxide equivalent emissions of SAF 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 drop-in aviation fuels that are renewable fuels of non-biological origin, as defined in Article 2, second paragraph, point 36 of Directive (EU) 2018/2001, which comply with the greenhouse gas emissions savings threshold referred to in Article 25(2), first subparagraph of that directive;
- ‘synthetic low-carbon fuels for aviation’ means synthetic drop-in aviation fuels derived from low-carbon hydrogen whose life-cycle GHG emissions savings from their use are at least 70%;
- ‘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 referred to as ‘trip fuel’ and ‘taxi fuel’ in Annex IV to Commission Regulation 965/2012⁸ 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;
- ‘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 SAF.

Article 4

Share of SAF available at Union airports

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

This obligation shall be deemed to be met where the shares mentioned in the first sub-paragraph are reached using synthetic low-carbon fuels for aviation.

⁸ 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).

2. For each reporting period, biofuels other than advanced biofuels as defined in Article 2, second paragraph, point 34 of Directive (EU) 2018/2001 and other than biofuels produced from the feedstock listed in Part B of Annex IX to that Directive, supplied across Union airports by each fuel supplier shall account for a maximum of 3% for the purposes of complying with the minimum shares referred to in paragraph 1 and Annex I.

3. Where it follows from the technical report referred to in Article 12 that the minimum share of SAF, including synthetic aviation fuel, as set out in Annex I has been reached during the previous reporting period in average across Union airports, or at any time before 1 January 2027, a Member State may, for the purposes of paragraph 1, apply a higher minimum share of synthetic aviation fuel as than the one set out in Annex I at one or several Union airports located on its territory, for the following reporting periods and until 31 December 2034. The Member State concerned shall notify the other Member States and the Commission of the measure adopted. The Commission shall publish this notification in the *Official Journal of the European Union*.

When, further to the adoption by the Member State concerned of a measure pursuant to the first subparagraph of this paragraph, the minimum share of SAF, including synthetic aviation fuel, set out in Annex I cannot be reached during two consecutive reporting periods in average across all Union airports due to a structural lack of production or supply of such fuels in the Union, the Commission shall, in accordance with the examination procedure referred to in Article 13a(2), adopt a decision requesting the Member State to suspend the application of that measure.

4. The higher minimum share applied by the Member State concerned pursuant to the first subparagraph of paragraph 3 shall not exceed 1% for the period until 31 December 2029, and shall not exceed the minimum share set out for synthetic aviation fuels in Annex I of more than 3% for the period from 1 January 2030 until 31 December 2034. These ceilings shall not apply in Union airports where the annual non-domestic passenger traffic is less than 2 million passengers.

5. Fuel suppliers may demonstrate compliance with the obligation contained in paragraph 1 and with any measure adopted by Member States pursuant to the first subparagraph of paragraph 3 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, without prejudice to the quantity of fuel to be uplifted in order to comply with applicable fuel safety rules.
2. An aircraft operator may request the competent authority referred to in Article 10(4) that the flights on a specific existing or new route of less than 1200 kilometres departing from a Union airport be exempted from the obligation laid down in paragraph 1 of this Article. That distance shall be measured by the great circle route method.

Such request shall be made at least three months before the date of application of the envisaged exemption. That request shall provide adequate justification based on serious and recurrent operational difficulties in refuelling aircrafts at a given Union airport preventing them from performing turnarounds within a reasonable time or on structural fuel supply difficulties stemming from the geographic characteristics of a given Union airport, leading to significantly higher prices of fuels compared to prices applied on average to similar types of fuels in other Union airports due in particular to specific fuel transport constraints or to limited availability of fuels at that airport.

The competent authority shall assess that request and, in light of the justification provided, it may ask for complementary information.

The competent authority shall take a decision on that request at least one month at the latest before the date of application of the envisaged exemption. The exemption granted shall have a limited period of validity, not exceeding one year, after which it shall be reviewed upon request of the aircraft operator.

The failure to adopt a decision pursuant to the fourth subparagraph of this paragraph within the time limit laid down therein shall be deemed as an implicit decision of authorisation to apply the requested exemption for a period of one year, after which it shall be reviewed upon request of the aircraft operator.

The competent authority shall notify the list of exemptions authorised to the Commission, which shall publish it in the *Official Journal of the European Union*, and update that list at least once a year.

Following a written complaint submitted by a Member State, an aircraft operator, the managing body of the Union airport concerned, a fuel supplier or on its own initiative, the Commission may, after assessing the justification provided for the exemption granted in the light of the criteria set out in the second subparagraph of this paragraph, by means of an implementing act adopted in accordance with Article 13a(2), request the competent authority to adopt a decision repealing that exemption from the beginning of the next scheduling period within the meaning of Article 2, point (d) of Regulation (EEC) No 95/93. When this scheduling period starts less than two months after the publication of the implementing act, the decision repealing the exemption shall start applying from the beginning of the following scheduling period.

Article 6

Obligations of Union airports to facilitate the access to SAF

The Managing body of Union airports shall take necessary measures to facilitate the access of aircraft operators to aviation fuels containing shares of SAF in accordance with this Regulation.

Where aircraft operators report difficulties to the competent authority of the Member State where the airport is located in accessing aviation fuels containing SAF at a given Union airport, 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 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 access of aircraft operators to aviation fuels containing shares of SAF in accordance with this Regulation.

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 SAF 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 SAF, 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 SAF. Where one purchase includes SAF with differing characteristics, the report shall provide this information for each type of SAF.

The report shall be presented in accordance with the template 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 the implementing acts adopted on the basis thereof

Article 8

Aircraft operator claiming of use of SAF

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

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

For the purpose of reporting SAF 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.

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).

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 SAF supplied at each Union airport, and for each type of SAF, 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 SAF type supplied at Union airports.
- (d) The yearly average concentration of total aromatic hydrocarbons, naphthalenes and sulphur in aviation fuel supplied at each Union airport.

The Agency and the competent authorities shall have access to the Union database. The Agency 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 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 aircraft operator shall be determined pursuant to Commission Regulation (EC) No 748/2009¹⁰.
- (4) The Member State whose competent authority(ies) referred to in paragraph 1 of this Article is responsible for a given Union airports shall be determined on the basis of the respective territorial jurisdiction.
- (5) The Member State whose competent authority(ies) referred to in paragraph 1 of this Article is responsible for a given aviation fuel suppliers shall be 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 concerned 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 latest. Such an aviation fuel supplier may present a reasoned request to its competent authority to be reattributed to another Member State, in case it has supplied the most of its aviation fuel in that latter Member State over the two years preceding the request. The decision of reattribution shall be made within nine months following the request, shall be subject to the agreement of the competent authorities of the Member State of reattribution and of the Commission and shall enter into force at the beginning of the reporting period following the date of that decision.

¹⁰ 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-tanked 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 SAF 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 SAF 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, SAF 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 SAF 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.
- (8) Member States should ensure that the revenues generated from fines, or the equivalent in financial value of those revenues, are used to support research and innovation projects in the field of SAF, the production of SAF or mechanisms allowing to bridge the price differences between SAF and conventional aviation fuels.

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 SAF 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 SAF 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;

- (b bis) The amount of SAF supplied in 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;
- (c) The state of the market, including price information, and trends in SAF 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 SAF 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;
- (f) The origin and the characteristics of all SAF purchased by aircraft operators for use on flights departing from Union airports.
- (g) The yearly average concentration of total aromatic hydrocarbons, naphthalenes and sulphur in aviation fuel supplied at Union level in aggregate and by Union airport.

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(1), from 1 January 2025 until 31 December 2034, for each reporting period, an aviation fuel supplier may supply the minimum share of SAF 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, in particular to electricity and hydrogen, the possible revision of the minimum shares in Article 4 and Annex I, and the level of fines. The report shall take into account policy developments in other countries, including in the context of multilateral and bilateral agreements with the Union, and shall include a detailed assessment of the impact of this regulation on connectivity for islands and remote territories, on the competitiveness of European air carriers and airport hubs vis-à-vis their competitors in neighbouring countries, on carbon leakage and, where available, information on development of a potential policy framework for uptake of SAF 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 SAF, including with regards to the reduction of non-CO₂ emissions.

The report may consider if this Regulation should be amended and, options for amendments, where appropriate, in line with a potential policy framework on SAF 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 other mechanisms allowing to bridge the price differences between SAF and conventional aviation fuels. Such mechanisms should aim to limit the adverse impacts of this Regulation on air connectivity, to avoid a shift in traffic towards airport hubs in thirds countries and to mitigate carbon leakages.

In particular, in the absence of a mandatory scheme at international level on the use of SAF for international flights with a similar level of ambition in comparison with the requirements laid down in this Regulation or of mechanisms developed at international level allowing to prevent the risk of carbon leakage and the distortion of competition for international aviation by 31 December 2026, the Commission shall consider targeted mechanisms aiming at preventing those effects, including, if appropriate, the extension to international aviation of Regulation (EU) ... ¹¹ , as well as other types of measures taking into account the final destination outside the territory of the Union.

The Commission shall consult the Committee referred to in Article 13a(1) when drawing up that report, at least 6 months before its adoption.

¹¹ REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL [...] establishing a carbon border adjustment mechanism

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 1st January 2023.

However, Article 4 and 5 shall apply from 1 January 2025 and Articles 7 and Article 9 shall apply from 1st 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 0.7% 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
