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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Aviation
N° prev. doc.:	11686/21
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on ensuring a level playing field for sustainable air transport - Comments by Member States

Delegations will find, attached, comments by THE NETHERLANDS on the above mentioned proposal.

Comments of the Netherlands

to the proposal for a Regulation of the European Parliament and of the Council on ensuring a level playing field for sustainable air transport – Presidency compromise (doc ST 11686/21)

General remarks:

The Netherlands supports the proposal made by the Commission for a SAF blending mandate for aviation in the EU. However, the Netherlands does have some comments with regards to the Commission proposal and the Presidency compromise text (doc. ST 11686/21). These comments as well as textual suggestions are laid down below.

Ambition:

- While the Netherlands welcomes an EU blending mandate, we see room for higher ambition at EU level. The Commission states in its impact assessment that a blending mandate up to 8% in 2030 would be feasible.
- Given the feasibility of such a target, the Netherlands believes that the blending mandate should be set at 8%.
- A higher mandate in the first years would contribute to the investment security, thereby attracting more investments in SAF production capacity. For the years after, the mandate should be set as high as possible given the availability of feedstock and possibility for scale up in production capacity.
- The Netherlands also supports the sub mandate for RFNBO's. With regards to RFNBO's the Netherlands believes that the targets in 2030 could be set higher. Furthermore, to create a better incentive for investments, a sub mandate could be introduced as early as 2025.

Enforcement and sanctions

- With regards to enforcement of the regulation, the role of national competent authorities should be further clarified. Under article 5, aircraft operators have an obligation of uplifting 90% of their fuel requirement at any given Union airport. It remains unclear however, based on which data this 90% can be calculated and verified.
- Furthermore, the regulation is unclear on who will enforce the requirement in article 5. Will the Agency ask competent authorities to enforce this uplift requirement, or are competent authorities free to choose themselves when to enforce this requirement via fines?
- Based on the proposal, the competent authority does not have the ability to force aircraft operators or fuel suppliers to provide the reports required for enforcement of this regulation. Therefore, the Netherlands would like to see that competent authorities are given the ability to fine any party that does not meet the reporting requirements of article 7 and article 9.
- With regards to fines, the regulation should provide clearer guidelines as to how to calculate those fines. Competent authorities would be aided if EASA would provide yearly fuel price averages for conventional aviation fuels, sustainable aviation fuels and for RFNBO's.

Additionally, the Netherlands would like to see the recent EASA report on non-CO₂ emissions better reflected in the proposed regulation. This report advised to reduce contrails by reducing the aromatics content of kerosene. The Netherlands would like to know how the Commission proposes to reduce the aromatics content of kerosene. We would like to see some form of monitoring of the aromatics content be introduced, to ensure that possible benefits from SAF use with regards to aromatics content are sustained.

Economic impact

While fully respecting the prerogative of the Presidency in setting the agenda of the Council working parties, we would like to suggest to dedicate a meeting of the WP AVIA to discussing the economic impact of this proposal, as well as of the cumulative economic impact and the effect on competitiveness of all relevant Fit for 55 proposals on the aviation sector.

Detailed remarks

Article 3:

Proposal to amend as follows (in **bold**):

- '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; **and fuels that are fuels of non-biological origin, as defined in Article 2, point 35 of Directive (EU) 2018/2001.**

Rationale:

- Synthetic fuels conform the REDII include both RFNBO's and Recycled Carbon Fuels (RCF). Yet the synthetic fuels definition chosen by the Commission for this proposal limits the definition of synthetic fuels to include RFNBO's only. The Netherlands would also like to see Recycled Carbon Fuels (RCF's) added to this definition, conform Article 2, point 35 of Directive (EU) 2018/2001. Recent research conducted by E4Tech¹ shows that this feedstock can have a significant carbon reduction potential. However, due to the fossil origin of RCF's these fuels should only be allowed temporarily, until greener alternatives become more readily available.
- The REDII already allows for the use of RCF for the production of SAF. Later this year a new delegated act on RCF is to be expected. In case RCF meet the criteria of this delegated act, they should also be allowed to contribute to the ReFuelEU initiative. RCF should fall only under the general SAF mandate, and they should not be part of the sub mandate. The sub mandate should be limited to RFNBO's only.
- The inclusion of RCF to the ReFuelEU initiative should be temporary until more sustainable alternatives become readily available, but due to the limited feedstock base that the aviation sector currently has at its disposal, we believe that RCF's should be allowed to play a role in the short to medium term.

(Article 4)/Annex 1:

Proposal to amend as follows (in **bold**):

- (a) From 1 January 2025, a minimum share of 2% of SAF; **of which a minimum share of X% of RFNBO;**
- (b) From 1 January 2030, a minimum share of **8%** of SAF, of which a minimum share of **1,5%** of RFNBO;

Rationale:

- Based on the information given in the Impact Assessment, more ambitious targets should be possible, both for the overall SAF mandate as for the sub mandates for RFNBO's. Targets should be set as high as possible based on the availability of feedstock and production capacity. For RFNBO's the sub target should start in 2025 and be increased for 2030.
- The Netherlands would like to see further information as to why the proposed growth path was chosen.

¹ [Onderzoek Decarbonisation potential of synthetic kerosene | Tweede Kamer der Staten-Generaal](#)

Article 7:

- The Netherlands welcomes the addition of national competent authorities as suggested by the presidency.
- Annex II provides no room for aircraft operators to supply a proof of sustainability as required under Article 7 (e). The Netherlands would like to see a clear provision in Annex II through which aircraft operators can meet their Article 7 (e) requirement.

Article 9:

Proposal to amend as follows (in **bold**):

The Agency **and competent authority** shall have access to the Union database 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.

Rationale:

- The Union database should be accessible for national competent authorities, conform Article 28 (4) of the Directive (EU) 2018/2001.

Article 11:

- The current text does not give national authorities the competence to enforce the reporting requirement of aircraft operators and fuel suppliers. We propose parties that do not meet their reporting requirement can be fined by national authorities.

Article 12:

Proposal to amend as follows (in **bold**):

The Agency shall publish **within 3 months of the end of the year** ~~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:

[...]

(c) The state of the market, including price information, and trends in sustainable aviation fuel production and use in the Union. The state of market shall include information on the evolution of the price gap between sustainable aviation fuels and fossil fuels; **and the average price of conventional aviation fuels, sustainable aviation fuels and RFNBO's.**

Rationale:

- The Agency should provide data on the average fuel prices in the EU. This data should include 3 categories: conventional aviation fuels, sustainable aviation fuels and RFNBO's. These data will provide competent authorities with further information of the average price of fuels, which may help them set fines as laid out under Article 11.
- National competent authorities are partly dependent on the yearly reports by the Agency in order to hand out fines. Therefore, the Agency should publish their yearly reports within a reasonable amount of time.

[...].

Article 14:

Proposal to amend as follows (in **bold**):

By 1 January 2028 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 administrative fines. The report shall include information, where available, 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 shall also reflect on the role of RCF in the proposal and if these types of fuels should be phased out of the regulation in lieu of greener SAF alternatives.** The report may 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.

Rationale:

- To ensure that a phase out of RCF is possible, this article would have to be adjusted to the ability to not only extending the scope of the mandate, but also be given the ability to limit the scope with regards to RCF.