Council of the European Union

Brussels, 8 October 2021
(OR. en)

11686/21

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

**LIMITE**

**TRANS 531**
**AVIATION 231**
**ENV 616**
**ENER 368**
**IND 236**
**COMPET 621**
**ECO 91**
**RECH 393**
**CODEC 1198**
**CLIMA 234**
**RELEX 749**



**WORKING DOCUMENT**

| | |
|---|---|
| From: | General Secretariat of the Council |
| To: | Delegations |
| No. Cion doc.: | COM (2021) 561 final |
| Subject: | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on ensuring a level playing field for sustainable air transport<br>• Presidency compromise |

In preparation to the informal videoconference of the members of the Aviation Working Party, delegations may find below the first Presidency compromise on the Commission Proposal in the subject above.

Changes to the Commission proposal are highlighted in **bold** for the additions and in ~~strikethrough~~ for the deletions.

**ANNEX**

2021/0205 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on ensuring a level playing field for sustainable air transport**

(Text with EEA relevance)



THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

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

[1] OJ C , , p. .
[2] OJ C , , p. .

significantly contributed to improving connectivity within the Union and with third countries, and has been a significant enabler of the Union economy.

(2) From 2020, air transport has been one of the hardest hit sectors 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. Variations in fuel prices can affect significantly 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 of 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 Strategy[3] 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, sustainable aviation fuels offer the only solution for significant decarbonisation of all flight ranges, already in the short term. However, this potential is currently largely untapped.

(8) Sustainable aviation fuels are liquid, drop-in fuels, fully fungible with conventional aviation fuel and compatible with existing aircraft engines. Several production pathways of sustainable aviation fuels have been certified at global level for use in civil or military aviation. Sustainable aviation fuels 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, sustainable aviation fuels might contribute to lowering the aromatic content of the final fuel used by an operator, thus helping to reduce other non-$CO_2$ 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.

---

[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.

(9) The gradual introduction of sustainable aviation fuels 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 sustainable aviation fuels affects negatively the competitiveness of the aviation sector by defining harmonised requirements across the Union.

(10) At global level, sustainable aviation fuels are regulated at ICAO. In particular, ICAO establishes detailed requirements on the sustainability, traceability and accounting of sustainable aviation fuels for use on flights covered by the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). While incentives are set in CORSIA and sustainable aviation fuels 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 sustainable aviation fuels 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 sustainable aviation fuels.

(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 Council[4]. In the past, such horizontal cross-sectoral regulatory frameworks have not proven effective to operate a transition from fossil fuels to sustainable aviation fuel 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 while a fully integrated European transport market, in comparison to other transport modes, such regulatory frameworks should be complemented with aviation-specific measures to effectively boost the deployment of sustainable aviation fuels. Further, national transpositions of Directive (EU) 2018/2001 risks creating significant fragmentation in the air transport market, where national rules on sustainable aviation fuels would set out widely differing targets. This would be expected to further exacerbate the issues of level playing field in air transport.

(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.

(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 sustainable aviation fuels can be introduced at EU airports without detrimental effects on the competitiveness of the EU aviation internal market.

---

[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).

(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 sustainable aviation fuels. 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 sustainable aviation fuels 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, 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. 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 sustainable aviation fuels 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 sustainable aviation fuels 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, sustainable aviation fuels produced from feedstock listed in Parts A and B of Annex IX of Directive (EU) 2018/2001, as well as synthetic aviation fuels should be eligible. In particular, sustainable aviation fuels 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 sustainable aviation fuels, as long as the renewable share is produced from feedstock listed in Part A or Part B of Annex IX of Directive (EU) 2018/2001 and determined in line with the methodology set out under Delegated Act [xxx].**

(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) A single, clear and robust sustainability framework is necessary to provide certainty for the aviation and fuels industries actors, on the eligibility of sustainable aviation fuels under this Regulation. To ensure consistency with other related EU policies, the eligibility of sustainable aviation fuels should be determined according to compliance with the sustainability criteria established in Article 29 of Directive 2018/2001[5].

(19) The present Regulation should aim to ensure that aircraft operators can compete on the basis of equal opportunities as regards the access to sustainable aviation fuels. To avoid any distortions on the air services market, all Union airports covered by this Regulation should be supplied with uniform minimum shares of sustainable aviation fuels. Whereas the market is free to supply and use larger quantities of sustainable fuel, this Regulation should ensure that the mandatory minimum shares of sustainable aviation fuels are the same across all the covered airports. It supersedes any requirements established directly or indirectly at national or regional level requiring aircraft operators or aviation fuel suppliers to uptake or supply sustainable aviation fuels with different targets than the ones prescribed under this Regulation. 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 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 sustainable aviation fuels 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. Other types of synthetic fuels, such as low carbon synthetic fuels achieving high greenhouse gas reductions, could be considered for inclusion in the scope of this Regulation in the course of future revisions, where such fuels become defined under the Renewable Energy Directive.

---

[5] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L2001&from=fr

(20) It is essential to ensure that the minimum shares of sustainable aviation fuels 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 sustainable aviation fuels should become mandatory starting in 2025. Similarly, in order to provide legal certainty and predictability to the market and drive investments durably towards sustainable aviation fuels production capacity, the terms of this Regulation should be stable over a long period of time.

(21) With the introduction and ramp-up of sustainable aviation fuels at Union airports, practices of fuel tankering may be exacerbated as a consequence of aviation fuel costs increases. Tankering practices are unstainable 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 between airports. This Regulation should therefore require aircraft operators to refuel ~~prior to departure from a given~~ **at** Union airport**s, and that t**he amount of fuel uplifted ~~prior to departures~~ **on aggregate** from a given Union airport should ~~be commensurate with~~ **correspond to** the amount of fuel necessary to operate the flights departing from that airport, taking into account the necessary compliance with fuel safety rules. 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. As the Regulation does not define a maximum share of sustainable aviation fuels in all aviation fuels, airlines and fuel suppliers may pursue more ambitious environmental policies with higher sustainable aviation fuels uptake and supply in their overall network of operations, while avoiding fuel tankering.

(23) Aircraft operators should be required to report yearly to the Agency on their purchases of sustainable aviation fuel, as well as on the characteristics of this fuel. Information should be provided on the characteristics of the sustainable aviation fuels 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 Agency for monitoring and assessment of compliance. 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 sustainable aviation fuels. The Agency should report on a yearly basis to the Commission on the fulfilment by aircraft operators and aviation fuel suppliers of their respective obligations under this Regulation. This is important for the Commission to have clear visibility on the level of compliance to the Regulation.

(26) It is not possible without additional procedures to determine accurately whether aircraft operators have actually physically uplifted shares of sustainable aviation fuels in their tanks at a specific Union airports. Therefore, aircraft operators should be allowed to report their use of sustainable aviation fuels based on purchasing records. Aircraft operators should be entitled to receive from the aviation fuel supplier the information that is necessary to report the sustainable aviation fuel purchase.

(27) It is essential that aircraft operators can claim the use of sustainable aviation fuels under greenhouse gas schemes such as the EU Emissions Trading System or CORSIA, depending on the route of their flights. 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 sustainable aviation fuels once. Fuel suppliers should be requested to provide free of charge to aircraft operators any information pertaining to the properties of the sustainable aviation fuel 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 sustainable aviation fuel in the reporting year;

(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;

(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, the effectiveness of key features of the Regulation such as the minimum shares of sustainable aviation fuels, the level of fines or policy developments on sustainable aviation fuels uptake at international level. Such elements are key to provide a clear state of play of the sustainable aviation fuels market and should be taken into account when considering a revision of the Regulation.

(31) A transitional period of 5 years should be provided 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 sustainable aviation fuel may be used to compensate for lower shares of sustainable aviation fuels or for the reduced availability of conventional aviation fuel at other airports.

**(31bis) The Regulation should allow member states flexibility to treat airports located on EU territory, which do not fall under the definition of Union airports, to the same obligations as set out in this Regulation. This could be beneficial notably if an airport is located in the vicinity of a sustainable aviation fuel production or blending site, or to ensure healthy competition between airports of similar sizes located within close distance of each other.**

(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 sustainable aviation fuels, 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.

*Article 3*

**Definitions**

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

– ‘Union airport’ means an airport as defined in Article 2(~~2~~**1**) of Directive 2009/12/EC of the European Parliament and of the Council[6], where passenger traffic was higher than 1 million passengers or where the freight traffic was higher than 100000 tons in the reporting period, and is not situated in an outermost region, as listed in Article 349 of the Treaty on the Functioning of the European Union;

– ‘aircraft operator’ means a person that operated at least 729 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;

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

– ‘aviation fuel’ means the fuel manufactured for direct use by aircraft;

– ‘sustainable aviation fuels’ (‘SAF’) means drop-in aviation fuels that are either synthetic aviation fuels, advanced biofuels as defined in Article 2, second paragraph, point 34 of Directive (EU) 2018/2001, or biofuels produced from the feedstock listed in Part B of Annex IX to that Directive, which comply with the sustainability and greenhouse gas emissions criteria laid down in Article 29(2) to (7) of that Directive and are certified in accordance with Article 30 of this Directive;

– ‘batch’ means a quantity of sustainable aviation fuels that can be identified with a number and can be traced;

– ‘lifecycle emissions’ means carbon dioxide equivalent emissions of sustainable aviation fuels that take into account carbon dioxide equivalent emissions of energy production, transport, distribution and use on-board, including during combustion, calculated in accordance with Article 31 of Directive (EU) 2018/2001;

– ‘synthetic aviation fuels’ means fuels that are renewable fuels of non-biological origin, as defined in Article 2, second paragraph, point 36 of Directive (EU) 2018/2001, used in aviation;

– ‘conventional aviation fuels’ means fuels produced from fossil non-renewable sources of hydrocarbon fuels, used in aviation;

– ‘aviation fuel supplier’ means a fuel supplier as defined in Article 2, second paragraph, point 38 of Directive (EU) 2018/2001, supplying aviation fuel at a Union airport;

– ‘reporting year’ means a period of one year in which the reports referred to in Articles 7 and 9 are to be submitted starting 1 January and ending 31 December;

– ‘reporting period’ means a period from 1 January until 31 December of the year preceding the reporting year;

– ‘yearly aviation fuel required’ means the amount of aviation fuel **defined as ‘trip fuel’ and ‘taxi fuel’ under Commission Implementing Regulation 2021/1296 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 sustainable aviation fuels.

*Article 4*

**Share of sustainable aviation fuel available at Union airports**

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

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

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

*Article 5*

**Refuelling obligation for aircraft operators**

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.

*Article 7*

**Reporting Obligations for Aircraft Operators**

By 31 March of each reporting year, aircraft operators shall report the following information to the **competent authorites and the** Agency:

(a) The total amount of aviation fuel uplifted at each Union airport, expressed in tonnes;

(b) The yearly aviation fuel required, per Union airport, expressed in tonnes;

(c) The yearly non-tanked quantity, per Union airport. If the yearly non-tanked quantity is negative or if it is lower than 10% of the yearly aviation fuel required, the reported yearly non-tanked quantity shall be reported as 0;

(d) The total amount of sustainable aviation fuel purchased from aviation fuel suppliers, for the purpose of operating their **commercial air transport** flights departing from Union airports, expressed in tonnes.

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

The report shall be presented in accordance with the 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 Council[7], and in Commission Implementing Regulation (EU) 2018/2067[8]

[7] Directive 2003/87/CE du Parlement européen et du Conseil du 13 octobre 2003 établissant un système d'échange de quotas d'émission de gaz à effet de serre dans la Communauté

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

*Article 8*

**Aircraft operator claiming of use of sustainable aviation fuels**

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

(a) A declaration of greenhouse gas schemes they participate in and in which the use of sustainable aviation fuels may be reported;

(b) A declaration that they have not reported identical batches of sustainable aviation fuels under more than one scheme.

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

*Article 9*

**Reporting obligations for fuel suppliers**

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

(a) The volume of aviation fuel supplied at each Union airport;

(b) The volume of sustainable aviation fuel supplied at each Union airport, and for each type of sustainable aviation fuel, as detailed in point c);

(c) The **conversion technology, the nature and origin of the feedstock used for production and the** lifecycle emissions~~, origin of feedstock and conversion process~~ of each sustainable aviation fuel type supplied at Union airports.

The Agency 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.

*Article 10*

**Competent authority**

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

(2) The Agency shall send the data received pursuant to Articles 7 and 9 to the competent authorities of the Member States. The Agency shall also send to the competent authorities data aggregated for the aircraft operators and aviation fuels suppliers for which the authorities are competent pursuant to paragraphs 3, 4 and 5.

(3) The competent authorities in respect of an aircraft operator shall be determined pursuant to Commission Regulation (EC) No 748/2009[9].

(4) The competent authorities in respect of Union airports shall be determined on the basis of the respective territorial jurisdiction.

(5) The competent authorities in respect of aviation fuel suppliers shall be determined pursuant to their Member State of establishment.

[9] 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

*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 an 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 sustainable aviation fuels is liable to an fine. That fine shall be at least twice as high as the multiplication of the difference between the yearly average price of conventional aviation fuel and sustainable aviation fuel per tonne and of the quantity of aviation fuels not complying with the minimum share referred to in Article 4 and Annex I;

(4) Member States shall ensure that any aviation fuel supplier failing to comply with the obligations laid down in Article 4 relative to the minimum share of synthetic aviation fuels is liable to an fine. That fine shall be at least twice as high as the multiplication of the difference between the yearly average price of synthetic aviation fuel and conventional aviation fuel per tonne and of the quantity of the aviation fuel not complying with the minimum share referred to in Article 4 and Annex I;

(5) In the decision imposing the fines referred to in paragraphs 3 and 4, the competent authority shall explain the methodology applied for the determination of the price of aviation fuel, sustainable aviation fuel and synthetic aviation fuel on the Union market, based on verifiable and objective criteria;

(6) Member States shall ensure that any aviation fuel supplier which has accumulated a shortfall from the obligation laid down in Article 4 relative to the minimum share of

sustainable aviation fuels or of synthetic fuels in a given reporting period, shall supply the market in the subsequent reporting period with a quantity of that respective fuel equal to that shortfall, additional to their reporting period obligation. Fulfilling this obligation shall not exonerate the fuel supplier from the obligation to pay the penalties laid out in paragraphs 3 and 4 of this Article;

(7) Member States shall have the necessary legal and administrative framework in place at national level to ensure the fulfilment of the obligations and the collection of the fines. Member States shall transfer the amount collected through those fines as contribution to the InvestEU Green Transition Investment Facility, as a top-up to the EU guarantee.

*Article 12*

**Data collection and publication**

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

(a) The amount of sustainable aviation fuel purchased by aircraft operators at Union level in aggregate, for use on **commercial air transport** flights departing from a Union airport, and by Union airport;

(b) The amount of sustainable aviation fuel and of synthetic aviation fuel supplied at Union level in aggregate and by Union airport **and an analysis of the capacity of suppliers in each Member state to meet the planned incorporation trajectory**;

(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**;

(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 sustainable aviation fuels purchased by aircraft operators for use on **commercial air transport** flights departing from Union airports.

*Article 13*

**Transitional period**

By way of derogation from Article 4, from 1 January 2025 until 31 December 2029, for each reporting period, an aviation fuel supplier may supply the minimum share of sustainable aviation fuel defined in Annex I as a weighted average over all the aviation fuel it supplied across Union airports for that reporting period.

***Article 13 bis***

**Opt-in for airports**

**An airport situated on Union territory can be treated as a Union airport under this Regulation if the Member State where that airport is located, as per Article 10, informs accordingly the Commission.**

*Article 14*

**Reports and Review**

By 1 January 2026 and every five years thereafter, the Commission services shall present a report to the European Parliament and the Council, on the evolution of the aviation fuels market and its impact on the aviation internal market of the Union, including regarding the possible extension of the scope of this Regulation to other energy sources, and other types of synthetic fuels defined under the Renewable Energy Directive, the possible revision of the minimum shares in Article 4 and Annex I, and the level of fines. The report shall include 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-$CO_2$ 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 sustainable aviation fuels uptake at ICAO level.

*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* | *For the Council* |
| *The President* | *The President* |

**ANNEX 2**



## I (volume shares)

(a) From 1 January 2025, a minimum share of 2% of SAF;

(b) From 1 January 2030, a minimum share of 5% 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

## 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) |
|---|---|---|---|---|---|
| | | | | | |

Council of the European Union
General Secretariat



**Brussels, 25 October 2021**

**WK 12447/2021 ADD 6**

**LIMITE**

| | |
|---|---|
| **AVIATION** | **IND** |
| **TRANS** | **COMPET** |
| **ENV** | **ECO** |
| **ENER** | **RECH** |
| | **CODEC** |

WORKING PAPER

*This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.*

**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 **DENMARK** on the above mentioned proposal.

**DENMARK**



Article 10 (5) – regarding state of establishment

Article 10 (5) states that the competent authorities in respect of aviation fuel suppliers shall be determined pursuant to their Member State of establishment.

- What is meant by "Member State of establishment", i.e. where a fuel supplier supplies aviation fuel or where a fuel supplier is headquartered?

Article 13 –regarding the transitional period

We would like to clarify the implications of the transitional period in the proposal article 13.

The impact assessment states (p. 31) :

"A system of SAF transactions for accounting purposes is established to allow fuel suppliers to meet their obligation in a more cost-effective way. This system is only in place during the transition period, i.e. between 2025 and 2035 since beyond 2035 all fuel suppliers are required to distribute only SAF-blended jet fuel at all airports. Hence, during this period there is no possibility for suppliers to supply fossil jet fuel. Such a system could be set out under the present initiative"

In section 5.4.4 a system for trading SAF credits is further discussed (p. 36):

"Legal provisions establishing such a system could be set up under the present initiative…. This system represents flexibility for the fuel industry to meet supply targets… Indeed, in the case of POs A1 and A2 and in the case of POs C1 and C2 beyond 2035, suppliers are required to supply only SAF-blended jet fuel at all airports. In this case, it is not desirable to allow SAF transactions, since this would jeopardise the physical supply of minimum shares of SAF to all EU airports."

- Is it correctly understood that this system implies a SAF credit trading system that expires after 31/12/29? Moreover, does this system allow for SAF credits to be traded between fuel suppliers?
- Does this imply that fuel suppliers need not to supply SAF to meet the blending requirement at the national-level, but merely at the EU-level until 31/12/29?
- Is it correctly understood that a SAF credit trading system is not accepted after the transitional period?