

EU 'FIT FOR 55'

## Proposal to Boost the Uptake of Sustainable Aviation Fuels

The European Union (EU) is in the process of “greening” its entire rulebook. This will affect various economic sectors along the entire value chain, including a wide range of goods and services – domestic and imported – sold in the EU. It may also set a precedent for other countries’ climate actions.

The European Commission’s ‘Fit for 55’ package encompasses a wide range of proposals aimed at reducing EU greenhouse gas (GHG) emissions by 55% by 2030 and achieving climate neutrality by 2050.

Sidley’s dedicated team is closely following the unfolding green initiatives to help clients maximize the opportunities and overcome the challenges the EU’s regulatory changes present.

This Note concerns the proposal for a regulation on sustainable fuels for aircraft ([the proposed ReFuelEU Regulation](#)), which imposes a “sustainable aviation fuel” (SAF) blending mandate for all flights taking off from a European Union (EU) airport, regardless of the destination. The aim is to create a harmonized regime across the EU that applies directly to aircraft operators and aviation fuel suppliers.

Aircraft operators and aviation fuel suppliers should prepare themselves for the mandatory supply and use of SAFs at EU airports as from 2025, and the potentially significant financial and administrative burdens it imposes. The proposed ReFuelEU Regulation introduces severe fines for non-compliance – at least twice the yearly average price of aviation fuel per ton multiplied by the total yearly quantity of non-SAFs tanked.

The proposal is subject to discussion, change, and approval by the European Parliament and the Council of the EU. Affected industries and countries should consider providing input in the legislative process and start preparing for the potential impact of the proposal. Affected industries should, in particular, consider how the proposed regulatory action works together with various industry-led initiatives to reduce emissions in the aviation sector.

**KEY TAKEAWAY:** The ReFuelEU Regulation requires aviation fuel suppliers to EU airports to provide customers with an increasing percentage of sustainable aviation fuel, including synthetic low carbon fuels.

## **Objective and Complementarity with Other Proposals**

The European Commission (Commission) notes that, unlike road transport, zero emission aircraft are not yet available on the market, and expects that they will not be widely used before 2035. The Commission, therefore, aims to decarbonise aviation fuels. SAFs have the potential to deliver significant emission reductions, but their use is still negligible. By imposing SAF blending requirements, the Commission seeks to stimulate the use and further development of SAFs, in particular of synthetic aviation fuels (as they have a higher decarbonization potential than biofuel-based SAFs).

The Commission considers that this proposal complements other 'Fit for 55' proposals. In particular, the proposed revision of the [EU Emissions Trading System](#) (ETS) will phase out free allowances in the aviation sector. Aircraft operators do not need to surrender allowances under the ETS when reporting the use of SAFs. While the revised [Renewable Energy Directive](#) (REDII) sets increased targets for the use of renewable energy for overarching sectors, the ReFuelEU Regulation is needed to boost the uptake of SAFs due to the specificities of the aviation sector. The proposed revision of the [Energy Taxation Directive](#) sets minimum taxation for energy products and electricity used for intra-EU flights (other than business and pleasure flights), with SAFs and electricity subject to a minimum rate of zero for 10 years. The Commission, finally, expects limited interaction with the [Alternative Fuels Infrastructure Regulation](#), because SAFs are fungible with conventional jet fuel, implying limited needs for additional infrastructure.

## **Scope**

The proposed ReFuelEU Regulation applies to commercial air transport flights operated from EU airports. It does not apply to military aircraft or to aircraft engaged in humanitarian, customs, police, or fire-fighting operations. EU airports with traffic exceeding one million passengers in the reporting period, or 100,000 tons of freight traffic, would be covered. Small airports would thus fall outside its scope.

If adopted, the proposed regulation would apply from January 1, 2023, except for (i) the obligations on mandatory minimum shares of SAFs and refueling, which would apply from 2025; and (ii) reporting obligations, which would apply from 2024 and cover the reporting period of 2023.

## **Key Obligations: Mandatory Minimum SAF Shares**

To enhance the contribution of the aviation sector to achieving the EU's climate targets, the proposed ReFuelEU Regulation requires jet fuel providers to blend an increasing share of SAF into their fuel supply at EU airports as from 2025.

- The proposal defines SAF as drop-in aviation fuels that are either (i) synthetic aviation fuels;<sup>1</sup> or (ii) (advanced) biofuels that meet sustainability and GHG emissions criteria.<sup>2</sup>
- The proposal requires the uniform imposition of mandatory minimum shares of SAFs across all covered EU airports. It would gradually increase the shares of SAFs from 2% in 2025, to 5% in 2030, 20% in 2035, 32% in 2040, and 63% in 2050.<sup>3</sup>
- To promote synthetic aviation fuels, the ReFuelEU Regulation also requires, from 2030, to increase gradually the share of synthetic aviation fuels relative to biofuels to meet the minimum SAF shares.<sup>4</sup>
- The obligations would fall on aviation fuel suppliers; all aircraft would automatically use sustainable fuel without the need to impose parallel obligations on airlines. Covered airports would have to provide the infrastructure for the delivery, storage, and uplifting of such fuels.<sup>5</sup>

- To avoid refueling practices considered as unsustainable, aircraft operators would have to refuel before departure.<sup>6</sup>

### **Procedural Obligations**

- Aircraft operators would have to report yearly to the EU Aviation Safety Agency on their purchases of SAFs. They would also have to report on their actual aviation fuel uplift per EU airport, so as to prove that no refueling practices were performed to avoid the obligation to use SAFs, as well as on the characteristics of the SAF (e.g. nature, origin, and lifecycle emissions).
- Aviation fuel suppliers would have to report on their supply of aviation fuel, including SAFs.<sup>7</sup>

### **Penalties**

- The proposal introduces “effective, proportionate and dissuasive” penalties for non-compliance on aviation fuel suppliers and aircraft operators.<sup>8</sup> Penalties would be proportionate to the environmental damage and to the prejudice to the level-playing field of the internal market caused by the non-compliance.
- When imposing administrative fines, the national authorities would take account of the evolution of the price of aviation fuel and sustainable aviation fuel in the reporting year.
  - Any aircraft operator that fails to comply with the refueling obligation would be liable to an administrative fine at least twice as high as the multiplication of (i) the yearly average price of aviation fuel per ton and (ii) the total yearly non-tanker quantity.
  - Any aviation fuel supplier that fails to comply with the mandatory minimum shares of SAFs would be subject to an administrative fine at least twice as high as the multiplication of (i) the difference between the yearly average price of conventional aviation fuel and sustainable aviation fuel per ton and (ii) the quantity.<sup>9</sup> The penalties would be complemented by the obligation to supply the market with the shortfall of meeting the quota in the subsequent year.<sup>10</sup>

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<sup>1</sup> Synthetic aviation fuels are renewable fuels of non-biological origin as defined in Article 3 of the proposed ReFuelEU Regulation.

<sup>2</sup> 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.

<sup>3</sup> See Article 4 and Annex I of the proposed ReFuelEU Regulation.

<sup>4</sup> *Ibid.*

<sup>5</sup> See Article 6 of the proposed ReFuelEU Regulation.

<sup>6</sup> See Article 11 of the proposed ReFuelEU Regulation.

<sup>7</sup> See Articles 7 and 9 of the proposed ReFuelEU Regulation.

<sup>8</sup> See Article 11 of the proposed ReFuelEU Regulation.

<sup>9</sup> See Article 11 of the proposed ReFuelEU Regulation.

<sup>10</sup> See Article 4 of the proposed ReFuelEU Regulation.