The impact of the European Commission's Fit for 55 legislative package on Aviation

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The devastating impact of the COVID-19 pandemic on the aviation industry will reset the trajectory of the sector for many years to come. With the COVID-19 pandemic, sustainability is emerging from the ashes as the building blocks on which the entire sector will be rebuilt, from investors, operators, manufacturers and the vast supply chain that supports the sector. This sustainability refocus is admirably being led by industry initiatives and supported by government incentivisation. The EU's Fit for 55 legislative proposals will form a key part of achieving the European Union's aspirations for the decarbonisation of the sector.

On 14 July 2021, the European Commission launched its Fit for 55 legislative package to make the EU's climate, energy, land use, transport and taxation policies "*fit for reducing net greenhouse gas emissions by at least 55% by 2030*" (compared to 1990 levels).

The proposals, which cover aviation fuel, taxation and the Emissions Trading Scheme (ETS) (to name but a few) will be cautiously welcomed by many as a set of ambitious but necessary tools to combat climate change, but are likely to have substantive financial and administrative effects on an already reeling industry.

Fuel

Through a series of interconnected proposals for revised and new regulation, the Commission is looking to incentivise the aviation industry to transition to clean fuel sources.

One of the key ways they are looking to do this is through imposing a fuel tax for aircraft operators. Currently, pursuant to the Council's 2003 Energy Taxation Directive, Member States are permitted to exempt from tax aviation fuel used for commercial uses. As part of the proposals, the Energy Taxation Directive would be revised to remove this exemption in favour of new minimum tax rates.

Fit for 55 proposes an eventual minimum taxation rate for aviation fuel (of EUR10.75/GJ EU-wide). The revised tax rules would exempt cargo-only flights and apply lower taxation rates for non-commercial flights. Conversely, zero-emissions fuels, green hydrogen and sustainable aviation fuels (SAF) would benefit from a zero minimum tax rate.

To support this initiative, the Commission's proposal for a regulation on ensuring a level playing field for sustainable air transport (the ReFuelEU Aviation Initiative) places obligations on airports, fuel suppliers and operators to increase the uptake of SAF. EU Airports would be required to take steps to provide the necessary infrastructure for the supply and uptake of SAF, and fuel suppliers must ensure that all fuel at each EU airport contains an increasing minimum blend of SAF properties.

Through that same initiative, air operators active in the EU would be obliged to uplift SAF blended fuel when departing from EU airports, and to uplift at least 90% of their yearly aviation fuel at EU airports. This appears to be aimed at preventing so-called fuel tankering practices at airports outside of the geographic scope of the regulation (i.e. where operators adapt their refuelling strategies at different airports for economic / price sensitivity reasons or to circumvent environmental protections).

To confirm compliance with these new proposals, a report must be provided by air operators to EASA yearly regarding actual SAF purchases per EU airport and the characteristics of the SAF (e.g. nature and origin, conversion pathway and lifecycle emissions).

Taken together, these new fuelling obligations are likely to require a number of key financial and infrastructure changes for EU air operators (perhaps particularly for operators who operate a substantive number of routes to and from countries outside the EEA), fuel suppliers and airports.

In comparison, while the UK’s Renewable Transport Fuel Obligation provides incentives for low-carbon aviation fuels, the UK is yet to mandate specific levels for the uptake of sustainable fuels. The UK Government has, however, recently announced several consultations in 2021, including the Transport Decarbonisation Plan, Jet Zero and an inquiry by the Environmental Audit Committee, that will look at how the aviation sector can best achieve net zero emissions by 2050, which will be considered in a separate article to follow.

Emissions Trading Scheme

Another avenue being explored by the European Commission, for encouraging the reduction of carbon emissions, is through a revision to the ETS.

The European ETS has been the cornerstone of the EU’s policy on climate change for many years.

The policy applies a cap on the total amount of certain greenhouse gases that can be emitted by an operator. Within the cap, operators are provided with a free allowance for a certain amount of emissions and can buy or trade additional allowances as needed. Where an air operator exceeds its greenhouse gas emission allowances, they are subject to a heavy fine.

Currently, air operators are provided with a free allowance of 0.6422 allowances per 1,000 tonne-kilometre travelled.

By way of its legislative proposals, the Commission is looking to simultaneously lower the emission cap and phase out free emission allowances for aviation.

The Commission will also propose to implement the ICAO Carbon Offsetting and Reduction Scheme for International Civil Aviation (CORSIA) for flights to and from countries outside the EEA. CORSIA requires operators to offset their emissions by supporting projects that work to remove the equivalent level of emissions elsewhere (i.e. through the protection or development of rainforests). Pursuant to the new Commission proposals, operators must reliably account for credits between the two schemes to avoid double-counting and must make a declaration as such to EASA each year.

Operators accordingly should be prepared for a substantial increase to their current ETS cost, if /when these proposals come to fruition.

On 1 January 2021, the UK’s own ETS came into effect, following the UK formally exiting the EU. Similar to the EU ETS, the UK scheme operates on a cap and trade principle. The UK ETS applies to domestic flights as well as those departing the UK for an EEA state or Gibraltar.

Whether the UK will further adapt the UK ETS to be aligned with the proposed revised EU ETS scheme remains to be seen. Prior to formally exiting the EU, the UK’s stated objective was to maintain continuity with the EU ETS, therefore, it would be surprising if significant differences in the scope and coverage of the two schemes were to emerge.

There will be a preliminary review of the UK ETS before 2025, with any necessary changes to be implemented by 2026. The UK Government is additionally consulting on detailed proposals for implementing CORSIA offsetting in the UK and how this will interact with the UK ETS scheme.

Conclusion

The Fit for 55 proposals will now need to be considered and negotiated by the Council and European Parliament. Given the politically sensitive nature of some of the measures (in particular, the taxation revisions) and the apparent lack of regard to the extraordinarily complicated nature of the aerospace manufacturing supply chain, this is likely to take months. For example, revising the Energy Taxation Directive will require unanimous support from the 27 EU Member States to be implemented.

While it is not yet known whether the proposals will be accepted in their current format, it is in any event, certain that substantive changes to the sector in this space are imminent. To mitigate any future business interruption caused by these developments, starting to put in place the necessary infrastructure, equipment and operational changes now is likely to be the preferred way forward for many in the industry.

If you have any queries regarding these new changes, please do contact Tony Payne or Sophie Brophy.

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