Airlines International Representation in Europe

AIRE POSITION ON THE COMMISSION FEETS CONCEPT NOTE

AIRE values the work of DG CLIMA and welcomes the opportunity to provide insights on the concept note of the Commission Delegated Regulation Supplementing Directive 2003/87/EC of the European Parliament and of the Council on the Calculation of Price Difference Between Eligible Fuels and Fossil Kerosene and for the Allocation of Allowances for the Use of Eligible Fuels.

AIRE would like to highlight several comments regarding the concept document:

1. Confidentially of Fuel Prices.

It is crucial to note that most fuel contracts contain stringent confidentiality clauses that prevent airlines from disclosing specific fuel prices. Imposing a requirement for airlines to disclose such information under the FEETS mechanism could pose significant legal risks, including potential breaches of contract and subsequent legal action by fuel suppliers.

To mitigate these risks, AIRE strongly advocates that the responsibility for disclosing fuel price information should rest solely with the fuel suppliers. Furthermore, airlines must be explicitly exempt from any liability arising from legal actions initiated by suppliers as a result of such disclosures.

Recommendations

AIRE underscores that the requirement to disclose fuel price information presents a significant legal compliance challenge for airlines under the Regulation. Therefore, we recommend the following measures:

- Introduce appropriate legal safeguards to protect airlines from repercussions related Introduce appropriate legal safeguards to protect airlines from repercussions related to data disclosure. This could include signing **NDAs** to secure communication channels or,
- Empower competent **authorities to obtain price data directly from fuel suppliers**. This would help ensure compliance while minimizing the legal risks for airlines

2. Inaccuracy of Indexes and Regional Disparities.

Current reliance on indexes, particularly for Sustainable Aviation Fuel (SAF), presents significant challenges as these indexes are based on broad averages. This approach fails to account for substantial regional price differences, especially at smaller or more remote airports where SAF can be considerably more expensive than at major hubs.

To address these issues, AIRE recommends introducing a weighted average system to better reflect geographical disparities. Feedback from airlines indicates that sole reliance on these indexes is problematic, given that they are based on a limited number of transactions and may not accurately represent the market landscape. Instead, implementing a system where each airline submits its actual fuel prices confidentially to national civil aviation authorities could yield more precise data, thereby avoiding distortions caused by regional pricing variations.

Recommendations

- Instead of relying on indexes, a more accurate and legally sound approach would involve establishing a secure communication **channel between competent authorities and airlines**. This would allow airlines to share the actual prices they pay for Sustainable Aviation Fuel (SAF) directly with their respective national civil aviation authorities. The submission of this data should be included as part of each airline's annual CO2 emissions report. This approach helps avoid the issues associated with using averages from regional areas with higher prices, as SAF pricing is not uniform across different locations

- There is a need for secure communication channels with regulatory bodies, especially when fewer than three operators are reporting fuel prices. In such cases, a waiver of confidentiality could be an option, but this should be handled with extreme caution to protect sensitive pricing information.

3. Exclusion of National Support Schemes from FEETs mechanism.

We advocate for the exclusion of national support schemes from the calculation of allowances under the FEETS mechanism. Including national subsidies or other forms of state support would introduce unnecessary complexity, undermine financial benefits for airlines, and the primary objectives of the FEETS mechanism.

The primary aim of the FEETS mechanism is to incentivize the use of SAF and reward airlines for their environmental initiatives by lowering their carbon costs. If national support schemes are included in this mechanism, airlines risk losing out on these rewards or facing additional financial obligations. Excluding national subsidies ensures that airlines can fully benefit from the FEETS allowances, which are essential for promoting the transition to SAF and achieving broader sustainability goals.

In light of these considerations, we strongly recommend that national support schemes be excluded from the calculation of allowances under the FEETS mechanism. This approach will enable airlines to fully benefit from both the FEETS allowances and any national support they receive, without encountering unnecessary financial or administrative burdens. The exclusion of national schemes will also preserve the simplicity and integrity of the FEETS process, ensuring that airlines are appropriately rewarded for their environmental initiatives.

4. Opt-Out Check-Box for FEETS Allowances

We express concerns regarding the inclusion of an opt-out check-box in the reporting process for the FEETS mechanism. While this feature may be intended to offer flexibility, some airlines have raised concerns that it could introduce significant administrative complications and increase the risk of errors.

In practice, many airlines outsource their CO_2 emissions reporting to specialized third-party service providers who are responsible for compiling and submitting the annual emissions reports on their behalf. Allowing an airline to resign from receiving FEETS allowances simply by ticking a box introduces the risk that third-party providers might overlook this option or fail to understand its importance. This could result in unintended omissions, with airlines unknowingly opting out of allowances they are entitled to.

To mitigate this risk, it is crucial that the opt-out check-box is **properly positioned and clearly highlighted** to ensure it is not missed or accidentally bypassed during the reporting process. This would help avoid unintended non-compliance or underreporting, and ensure that the FEETS allowances are correctly allocated to the airlines.

Recommendations

The most effective and straightforward approach would be to automatically apply FEETS reductions as part of the existing CO_2 emissions reporting process. This ensures that all airlines receive the financial benefits of the FEETS mechanism upon submission of their annual reports. Automatic application minimizes the risk of human error or administrative oversight and guarantees consistent and fair treatment across all airlines.

5. Additional considerations

One of the primary concerns regarding the **first-come, first-served** system for allowance distribution is its potential to disproportionately affect smaller airlines or those with more complex reporting needs. The question arises as to whether the priority is determined by the **order in which an operator's report reaches the Competent Authority (CA)** or the **order in which the CA submits the report to the European Commission (EC)**. Either way, this is a criterion that the operator cannot directly control, creating a significant disadvantage for smaller operators or those facing delays beyond their control.

A system that allocates allowances based on who submits their reports first is inherently flawed, as it does not account for operational complexities, size, or the actual efforts airlines have made to adopt **Sustainable Aviation Fuels (SAF)**. Larger airlines, with greater resources and faster administrative processes, may "consume" all the available allowances simply because they can submit their reports quicker, leaving smaller operators without access, even if they have made significant strides in using SAF.

For instance, a small operator using **50% SAF** could miss out on allowances if they submit later due to logistical constraints, while a larger airline using a lower percentage of SAF but submitting earlier would benefit, even though they have made less effort towards sustainability. This system is not reflective of the **true environmental contributions** airlines are making.

A more equitable approach would be to establish a **uniform submission deadline** (e.g., 31 March), ensuring that all airlines who submit their reports on time are considered equally for allowances. Allowances could then be distributed based on **predetermined criteria**, such as the percentage of SAF usage, operational size, or geographical considerations. This would ensure that the process rewards actual sustainability efforts rather than speed of submission. Such a system would also encourage airlines to prioritize **accurate, thoughtful reporting** rather than rushing to meet a deadline, ensuring better-quality data.

The expected availability of the **EASA Technical Report** by the **third quarter** of each year raises concerns regarding the timeline. Given that actual prices must be reported to the EC by **28**

February each year, this timeline may not allow sufficient time for accurate price determination and reporting. Any delay in the availability of the EASA report could impact the accuracy of SAF pricing, which in turn could affect subsequent allowance allocations. Timeliness is essential to ensure that the price data reflects the market conditions accurately.

Another concern is the potential for **gaps in reporting**, particularly regarding the actual prices paid by airlines for SAF. If fewer than three airlines report their prices, confidentiality must be waived, meaning their individual prices could be publicly disclosed. This raises serious concerns about **competitive disadvantages**, as pricing data is highly sensitive. Airlines may hesitate to submit accurate information out of fear that it could affect their market position or reveal strategic pricing. As a result, **underreporting** or **incomplete data** could skew price calculations, leading to unfair allocation of allowances and distorting the mechanism's intent.

6. Financial Incentives and Deduction of Allowance Price & ETD Tax

The current practice of deducting both the **allowance price** and the **ETD tax** from the price difference between **Jet fuel** and **SAF** significantly diminishes the financial incentives for airlines to adopt SAF. This approach may discourage airlines from transitioning to SAF, thereby undermining the core objectives of the **ReFuelEU Aviation regulation** and the **FEETS mechanism**. The policy was designed to bridge the price gap between Jet fuel and SAF and to incentivize the latter's use, but **excessive deductions** contradict this goal.

While the policy seeks to avoid **double relief** for the same volume of SAF, the regulation clearly states that airlines should be reimbursed based on the price difference between SAF and Jet fuel. The current deduction structure reduces the value of this reimbursement, lowering the amount airlines expect to receive and potentially leading to a **regulatory inconsistency**.

The **double relief principle** is understandable, but the combined effect of multiple deductions risks reducing the attractiveness of SAF adoption, which conflicts with the EU's broader **sustainability goals**. Airlines are advocating for a balanced approach where the percentage of reimbursement accurately reflects the true cost difference between Jet fuel and SAF, without excessive or unnecessary deductions.

In this context, some airlines, emphasize the need for clarity in the allocation formulas. They propose a conditional formula that differentiates between **ETS-incentivized fuel uplift** and **non-incentivized fuel consumption**. Their suggestion includes two distinct calculations for price differences:

- **Including ETS**: Price difference = Price of FEETS - (Fossil kerosene price + ETS price + Minimum EU-level tax on fossil kerosene)

- **Excluding ETS**: Price difference = Price of FEETS - (Fossil kerosene price + Minimum EU-level tax on fossil kerosene.

This structured approach to calculating price differences can help ensure that financial incentives remain intact while promoting fairness in the allocation of allowances. By adopting this dual calculation method, the mechanism can better support airlines in their transition to sustainable fuels, ultimately contributing to the EU's climate objectives.

Conclusion

The airlines acknowledge the intent behind the policy but argue that the current deduction structure weakens the financial support provided by the EU ETS allowances. A more straightforward calculation of the price difference between SAF and Jet fuel is needed—one that ensures fair reimbursement and aligns with the EU's goals of promoting SAF adoption and reducing emissions in aviation.

AIRE appreciates the commitment of DG CLIMA and acknowledges the effort involved. However, we urge a thorough reassessment of the proposed measures to ensure their feasibility, effectiveness and alignment with the operational realities of the aviation industry. Addressing these concerns prior to implementation is critical to setting the right rules for the fair allocation of allowances and to support the path towards mitigating the emission effects of aviation. AIRE remains committed to ongoing dialogue and collaboration in achieving these goals.