



**COMMUNICATION FROM THE COMMISSION**

**Interpretative guidelines on the application of the exemptions referred to in Article 5 of Regulation (EU) 2023/2405 of the European Parliament and of the Council on ensuring a level playing field for sustainable air transport (ReFuelEU Aviation)**

(C/2024/5997)

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## 1. INTRODUCTION

Regulation (EU) 2023/2405 of the European Parliament and of the Council of 18 October 2023 on ensuring a level playing field for sustainable air transport (the 'Regulation' or, 'RFEUA')<sup>(1)</sup> aims to ensure that European Union (EU) air transport meets the Union's climate targets for 2030 and 2050 and plays a key role in delivering on the European Climate Law<sup>(2)</sup>, while preserving level playing field on the internal market. The Regulation lays down harmonised rules on the supply and uptake of sustainable aviation fuels ('SAF') in the Union. Aviation fuel suppliers have to supply the aviation market with increasing minimum shares of sustainable aviation fuels and synthetic aviation fuels. Airport managing bodies have the obligation to facilitate access to SAF. Aircraft operators departing from Union airports must refuel with the aviation fuel necessary for their entire flight, avoiding the excessive emissions related to extra weight and minimizing the risks of carbon leakage caused by fuel tankering practices<sup>(3)</sup>.

The Regulation sets reporting and data collection obligations for aircraft operators and fuel suppliers, which have to be reported to competent authorities and to the European Union Aviation Safety Agency ('EASA'). It also provides the rules on the designation of competent authorities in the Member States, which will implement and enforce the Regulation and a requirement to provide for effective, proportionate, and dissuasive penalties in case of non-compliance.

As explained in recitals 5 and 28 of the Regulation, fuel tankering practices are unsustainable and should be avoided as they undermine the Union's efforts to reduce the environmental impact from transport. Those practices would be contrary to the aviation decarbonisation objectives as increased aircraft weight would increase fuel consumption and related emissions (both CO<sub>2</sub> and non-CO<sub>2</sub>) on a given flight. Thus, Article 5 RFEUA establishes a refuelling obligation for aircraft operators prior to departure at a given Union airport.

Fuel tankering practices could put at risk the level playing field. In this regard, Article 5 RFEUA applies to both EU and non-EU aircraft operators throughout the EU. Article 5 RFEUA ultimately aims to avoid the fragmentation of the EU air transport market, prevent distortions and unfair practices of cost avoidance as regards the refuelling of aircraft operators and promote the transition away from fossil fuels. The refuelling obligation in Article 5 is therefore a key component of RFEUA.

An aircraft operator may, exceptionally and when duly justified fall below the threshold established in Article 5(1) RFEUA where this is necessary for reasons of compliance with applicable fuel safety rules. In addition, and when duly justified, it can also request from the competent authority (or authorities) a temporary exemption from the refuelling obligation. Article 5(3) RFEUA lays down the conditions that must be met to request such exemption.

Article 5(11) RFEUA mandates the Commission to adopt guidelines on the application of the exemptions referred to in Article 5 RFEUA. These guidelines are to include the elements that an aircraft operator must provide to justify those exemptions.

These interpretative guidelines provide the Commission's interpretation on the application of the exemptions referred to in Article 5(2) and (3) RFEUA. They are intended to assist Member States' authorities in deciding whether requests for exemptions should be granted. They should also help to ensure a more consistent application and enforcement of the Regulation. In order to ensure a consistent application of the exemptions established under Article 5 RFEUA throughout the EU, questions of interpretation and application of the relevant legal framework may be discussed within the Commission expert group on sustainable aviation (E03118/2)<sup>(4)</sup>, with the support of EASA. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

<sup>(1)</sup> OJ L, 2023/2405, 31.10.2023, ELI: <http://data.europa.eu/eli/reg/2023/2405/oj>.

<sup>(2)</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

<sup>(3)</sup> Fuel tankering is a practice whereby an aircraft carries more fuel than required for its flight in order to reduce or avoid refuelling at the destination airport.

<sup>(4)</sup> Sub group on sustainable aviation (E03118/2): <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupId=104312&fromMeetings=true&meetingId=51877>.

## 2. SCOPE OF ARTICLE 5 RFEUA: A REFUELLING OBLIGATION FOR AIRCRAFT OPERATORS

Article 5(1) RFEUA requires aircraft operators to refuel at least 90 % of the yearly aviation fuel required at each departing Union airport from which they operate commercial air transport flights.

The objective of this provision is to ensure that the amount of aviation fuel uplifted prior to departure from a given Union airport is commensurate with the amount of aviation fuel necessary to operate the flights departing from that Union airport during the year.

To achieve the objective of Article 5 as regards the obligation to refuel at the departing Union airport, the relevant parties in the aviation sector, namely Union airport managing bodies, aircraft operators, fuel producers, aviation fuel suppliers and fuel handlers, should work together to ensure a smooth transition reducing operational difficulties to the minimum.

### 2.1. Who is subject to the Article 5(1) RFEUA obligation and which are the flights within its scope?

All aircraft operators within the scope of the RFEUA are legally required to comply with the obligation to refuel under Article 5(1) RFEUA when departing from a Union airport. Article 3(3) RFEUA defines an aircraft operator as a 'person that operated <sup>(5)</sup> at least 500 commercial passenger air transport flights, or 52 commercial all-cargo air transport flights departing from Union airports in the previous reporting period or, where it is not possible for that person to be identified, the owner of the aircraft'.

An aircraft operator is identified by the call sign used for air traffic control purposes as laid down in the operational flight plan (aircraft identification). The call sign shall be the following:

- a) where the operational flight plan contains the ICAO designator for the aircraft operating agency, then the unique aircraft operator shall be the aircraft operating agency that has been assigned that ICAO designator <sup>(6)</sup>;
- b) where the operational flight plan contains the nationality or common mark, and registration mark of the aircraft that is explicitly listed in an aircraft operator certificate (AOC), or equivalent, or in a document issued by a State and identifying the operator of the aircraft, then the unique aircraft operator shall be the legal or natural person that holds the AOC (or equivalent) or that is stated in the document;
- c) where the aircraft operator cannot be identified, the owner of the aircraft shall be the aircraft operator.

Article 5(1) RFEUA applies to aircraft engaged in civil aviation and carrying out commercial air transport flights, in line with the second subparagraph of Article 2(1). Article 3(4) defines a 'commercial air transport flight' as 'a flight operated for the purposes of transport of passengers, cargo or mail for remuneration or hire, including a business aviation flight operated for commercial purpose'.

Under wet lease agreements, an aircraft is operated by the lessor (owner of the aircraft), who essentially remains responsible for the state and maintenance of the aircraft, for the benefit of the lessee (the entity leasing an aircraft), who retains effective control of the flight. The presumption, therefore, is that the lessee is the aircraft operator of that flight and that the flight plan will contain the ICAO designator of the lessee.

Under a dry lease agreement an aircraft is operated by the lessee under its AOC and control of the aircraft effectively passes to the lessee. The presumption, therefore, is that the lessee is the aircraft operator and the ICAO designator of the lessee should appear in the flight plan.

<sup>(5)</sup> The concept of operating a flight should be understood in the economic sense. This means that the "person" mentioned in the definition of "aircraft operator" does not refer, for example, to the pilot flying the aircraft on behalf of a legal person.

<sup>(6)</sup> ICAO designators are contained in Doc 8585 — Designators for Aircraft Operating Agencies, Aeronautical Authorities and Services.

The Regulation does not apply to military aircraft and flights used only for operations for humanitarian, repatriation and returns (<sup>7</sup>), whether voluntary or enforced, including readmissions, search flights, rescue, disaster relief or medical purposes, as well as for customs, police and fire-fighting operations. State flights transporting third countries' Heads of State, Head of Government and Government ministers are also excluded. Training (when it is purely a non-commercial flight) and circular (departing and arriving at the same airport without an inter-mediate stop) flights are also excluded. The reason to exclude these flights is that they are operated in exceptional circumstances, which cannot always be planned in the same way as standard commercial air transport flights, and therefore, they might not always be able to fulfil obligations under this provision (see recital 17 of the RFEUA). In practice, excluded flights can be identified through EUROCONTROL's Central Route Charges Office (CRCO) exemption code and/or the flight identification field in the operational flight plan.

Maintenance, repositioning or ferry flights are included within the scope of Article 5(1) RFEUA as long as these are considered activities linked to the aircraft operator's commercial activities. For example, positioning and ferry flights related to search and rescue are excluded. Flights operated under a Public Service Obligation ('PSO flights') fall within the scope of RFEUA.

To ensure a level playing field, the RFEUA covers as much commercial air traffic as possible across the EU aviation market. All aircraft operators that operated at least 500 commercial passenger air transport flights or 52 commercial all-cargo air transport flights) are therefore subject to the obligation in Article 5(1) RFEUA. The RFEUA nevertheless allows aircraft operators to achieve a higher level of ambition by allowing them to opt in and be covered by its obligations in Article 2(3) RFEUA which lays down the legal basis and the procedure for this purpose. .

The Commission, with the assistance of EUROCONTROL and in cooperation with the Member States, prepares and publishes on its website an annually updated list of the aircraft operators that fall within the scope of the RFEUA, with their respective attribution to the responsible Member State (<sup>8</sup>)

## 2.2. What does the legal obligation in Article 5(1) RFEUA entail?

The 90 % refuelling threshold required in Article 5(1) RFEUA applies to 'yearly aviation fuel required'. Article 3(24) RFEUA defines it as the amount of aviation fuel referred to as 'trip fuel' and 'taxi fuel' in Annex IV to Commission Regulation (EU) No 965/2012 (<sup>9</sup>). The aircraft operator shall refuel at a given Union airport at least 90 % of the yearly fuel required (i.e. trip and taxiing for take-off) in order to operate all the departing flights covered by the RFEUA over the course of a reporting period (i.e. the period from 1 January until 31 December of the year preceding the reporting year) in that given Union airport.

The reporting obligations established in Article 8 and Annex II to RFEUA concern the yearly sum of fuel planned for all flights departing from a given Union airport and the yearly sum of fuel uplifted for those flights. Depending on the processes applied by the aircraft operator, the uplifted fuel can be proven using different sources (e.g. (i) fuel invoices from fuel provider, (ii) the difference between the amount of fuel at the time of arrival at a Union airport (block-on) and the amount of fuel at the time of departure from that Union airport (block-off) and (iii) information retrieved from, sources such as the aircraft journey log, technical log and the operational flight plan).

The obligation to refuel at the departing Union airport refers to 'aviation fuel'. Article 3(6) RFEUA defines aviation fuel as drop-in fuel manufactured for direct use by aircraft. In other words, the obligation to refuel concerns all available fuels for aviation, including conventional aviation fuels.

<sup>(7)</sup> In the meaning of the EU migration and asylum policy legislation.

<sup>(8)</sup> See the list of aircraft operators that fall within the scope of RFEUA at DG MOVE's website ([https://transport.ec.europa.eu/transport-modes/air/environment/refueu-aviation\\_en](https://transport.ec.europa.eu/transport-modes/air/environment/refueu-aviation_en)).

<sup>(9)</sup> For more detail, see point CAT.OP.MPA.181 Fuel/energy scheme – fuel/energy planning and inflight re-planning policy – aeroplanes.

An aircraft operator which fails to duly justify non-compliance with the requirement to refuel at least 90 % of the 'yearly aviation fuel required' under Articles 5(2) and (3) RFEUA is liable to a fine. This fine is to be imposed by Member States' authorities in line with Article 12(2) RFEUA. Such an aircraft operator may nevertheless be exempted from the fine if it can prove that its failure to comply with the Article 5 obligations was caused by exceptional and unforeseeable circumstances that were beyond its control and whose effects could not have been avoided even if all reasonable measures had been taken.

### 2.3. When and where does the aircraft operator have to refuel?

An aircraft operator within the scope of RFEUA will have to uplift fuel when departing from a Union airport (i.e. the Union airport of departure).

Article 3(1) RFEUA defines a 'Union Airport' as an airport as defined in Article 2 of Directive 2009/12/EC of the European Parliament and of the Council on airport charges. An airport is there defined 'as any land area specifically adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services, including the installations needed to assist commercial air services' <sup>(10)</sup>.

Union airports within the scope of RFEUA are the ones having passenger traffic higher than 800.000 passengers or freight traffic higher than 100 000 tonnes in the previous reporting period. This threshold has been established to avoid placing an undue burden on air transport operations at small airports.

Airports situated in an outermost region, as listed in Article 349 TFEU - i.e. Guadeloupe, French Guiana, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, Madeira and the Canary Islands - fall outside the scope of Article 5 RFEUA.

Member States can be more ambitious and decide that an airport located on their territory - and which does not reach the required threshold and or which is located in an outermost region -, is nevertheless covered by the RFEUA. An airport managing body can also choose to opt-in an airport under its management and for it to be treated as a Union airport and be subject to RFEUA, doing so by submitting a request to the respective competent authorities. In its request, the airport managing body must prove that the candidate airport meets the requirements laid down in Article 6(1) RFEUA. The legal basis and the procedure for this purpose can be found in Article 2(2) RFEUA.

The Commission, in cooperation with Member States, provides a list of Union airports within the scope of RFEUA. This list is updated on a yearly basis <sup>(11)</sup>.

### 2.4. Are third country aircraft operators obliged to refuel under Article 5(1) RFEUA?

As explained in Section 2.3, the obligation to refuel at least 90 % of the yearly aviation fuel required applies at the Union airport of departure. A third country aircraft operator is therefore subject to the obligation laid down in Article 5(1) RFEUA when departing from a Union airport, if it has operated 500 commercial passenger air transport flights or 52 commercial all-cargo flights from Union airports in the previous reporting period. In practice this means that a third country aircraft operator has to refuel 90 % of its yearly required aviation fuel for departures from Union airports at the Union airports from which they depart.

A third country aircraft operator that fails to comply with the Article 5 obligations is liable to a fine imposed by a competent authority of a Member State (see Article 12(2) RFEUA), unless such non-compliance is duly justified under Article 5(2) or (3) RFEUA or is caused by exceptional and unforeseeable circumstances pursuant to the third sentence of Article 12(2) RFEUA.

<sup>(10)</sup> Article 2(1) of Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (the Airport Charges Directive) (OJ L 70, 14.3.2009, p. 11).

<sup>(11)</sup> See the list of Union airports within the scope of RFEUA at DG MOVE's website ([https://transport.ec.europa.eu/transport-modes/air/environment/refueu-aviation\\_en](https://transport.ec.europa.eu/transport-modes/air/environment/refueu-aviation_en)).

## 2.5. What is the role of the Union airport managing body?

Union airport managing bodies falling within the scope of the Regulation have a key role in facilitating aircraft operators' compliance with the obligation to refuel. In this regard, the Union airport managing body should plan the human and infrastructure resources (e.g. sufficient and qualified staff, tank capacity and fuel supply, fuelling trucks, hydrant systems etc.) needed to facilitate aircraft operators' compliance with the Article 5(1) RFEUA obligation.

It should nevertheless be noted that certain airports, (e.g. those located in islands) may not have the required infrastructure and/or aviation fuel supply due to their geographical condition and may therefore be unable to facilitate the recurrent uplifting of aviation fuel at the airport to the same extent as other airports with more resources. Aircraft operators may therefore ask for temporary exemptions from their refuelling obligations for certain routes that connect with airports situated on islands without rail or road connections to a Union airport, under the specific circumstances laid down in Article 5(3) RFEUA.

## 3. EXEMPTIONS FROM THE REFUELLING OBLIGATION

Article 5(2) RFEUA allows the aircraft operator to fall below the threshold required by the refuelling obligation when duly justified for reasons of compliance with applicable fuel safety rules, this is with Commission Regulation (EU) No 965/2012<sup>(12)</sup>. In this regard, the commanders' decision on the final fuel uplift prior to departure from a Union airport must be respected without interference by the aircraft operator<sup>(13)</sup> (see details in Section 4). Exemptions justified under Article 5(2) RFEUA are reported *ex post* in the annual report to be submitted by the aircraft operator as established in Article 8 RFEUA.

Other exemptions from refuelling obligations set out in Article 5(1) RFEUA are limited to two situations defined in Article 5(3) (a) and (b) RFEUA and are subject to prior justified and detailed request to the competent authority. These exemptions are requested *ex ante*, see details in Sections 5 and 8. The first possibility for an exemption from Article 5(1) is limited to specific routes departing from Union airports and to specific situations, i.e., serious and recurrent operational difficulties in refuelling aircraft at a given Union airport preventing aircraft operators from performing turnaround flights within a reasonable time. The second possibility concerns structural fuel supply difficulties stemming from the geographic characteristics of a given Union airport, leading to significantly higher prices of aviation fuels and placing the aircraft operator concerned at a significant competitive disadvantage compared to market conditions existing in other Union airports with similar competitive characteristics.

## 4. ARTICLE 5(2) RFEUA: FALLING BELOW THE 90 % FUEL UPLIFT REQUIREMENT AT THE UNION AIRPORT OF DEPARTURE FOR SAFETY REASONS

Article 5(2) RFEUA provides that an aircraft operator may fall below the threshold of 90 % of the 'yearly aviation fuel required' (i.e. trip and taxi fuel for take-off) at a departing Union airport, if this is necessary for reasons of compliance with applicable fuel safety rules. This provision considers the need to ensure compliance with, for example, Commission Regulation (EU) No 965/2012<sup>(14)</sup> and, more specifically, with the safety rules in its Annex IV: points CAT.OP.MPA.180, 181, 182 and 260, and when appropriate, with point CAT.OP.MPA.185 for in-flight fuel management and planning. EASA's Acceptable Means of Compliance (AMC) and Guidance Material (GM) for Annex IV Commercial air transport operations, part-CAT to Commission Regulation (EU) 965/2012 on air operations provide details on those provisions<sup>(15)</sup>.

<sup>(12)</sup> Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

<sup>(13)</sup> CAT.OP.MPA.181, (c)(8) 'discretionary fuel, if required by the commander', Annex IV, subpart B of Commission Regulation (EU) No 965/2012.

<sup>(14)</sup> Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

<sup>(15)</sup> <https://www.easa.europa.eu/en/document-library/acceptable-means-of-compliance-and-guidance-materials/group/part-cat---commercial-air-transport-operations#part-cat---commercial-air-transport-operations>.

Further details on the possible justifications for falling below the refuelling threshold for safety reasons (as well as the required supporting evidence) can be found in Sections 4.1 to 4.4.

#### 4.1. Falling below the fuel uplifting obligation. Implications on the annual reporting under Article 8 RFEUA <sup>(16)</sup>

Cases when an aircraft operator falls below the 90 % uplifting obligation of the 'yearly aviation fuel required' (trip and taxi out) at a departing Union airport must be duly justified to the competent authority or authorities responsible for the concerned Union airport where the aircraft operator does not meet the 90 % threshold and to EASA.

Specifically, the aircraft operator must justify why the amounts of aviation fuel fall below the 90 % threshold and not the aviation fuel amounts included in the 10 % buffer as Article 5(1) RFEUA provides. In other words, the aircraft operator must report the aggregated associated fuel quantities tanked (uplifted in previous flights) for reasons of compliance with the fuel safety rules that are preventing the aircraft operator from complying with the 90 % uplift requirement at a given Union airport. The aircraft operator must indicate which routes are impacted in its reporting under Article 8 RFEUA.

This information (including the justification) must be included in the report that the aircraft operator must submit to the competent authorities and to EASA under Article 8 RFEUA (i.e. the annual report), which has to be previously verified by an independent verifier as required by Article 8(3) RFEUA <sup>(17)</sup>.

The aircraft operator has to include as part of its justifications under Article 5(2) RFEUA the following:

- a justification of why it fell below the yearly threshold laid down in Article 5(1) RFEUA for reasons of compliance with applicable fuel safety rules;
- an indication of the routes impacted (i.e. the sequence of arriving and departing flight(s) at the Union airport), and fuel quantities associated with the fuel tanked for safety reasons.

The competent authority may accept the justification if the applicable requirements are met and if it is duly justified. The competent authority may consult EASA when assessing if a justification meets the applicable fuel safety rules.

*Example 1:* Aircraft operator **Y** flies from airport **A** to Union airport **B**. Aircraft operator **Y** is assigned to its designated directorate-general for civil aviation (**A-DGCA**). At the end of the reporting year, **Y** has to submit to EASA and to **A-DGCA** the yearly uplifted fuel volumes, the yearly aviation fuel required and the yearly non-uplifted fuel volumes <sup>(18)</sup>. **Y** will also have to notify, at the end of the reporting year, the non-tank quantities to the authority or authorities of the Union airport(s) if it does not meet the refuelling threshold for safety reasons.

In this example, aircraft operator **Y** falls below the 'yearly aviation fuel required' threshold in Union airport **B**, because some flights of the **A-B** route have been affected by predicted weather conditions that required uplifting more fuel for safety reasons in airport **A** (excess of fuel is always uplifted in the previous airport). Contrary to the forecast, however, the weather generally improved during the flights and the aircraft several times ended up landing in Union airport **B** with more fuel than had been expected and were therefore unable to uplift fuel in Union airport **B** for the subsequent flight, because it had enough fuel in the tank. While **Y** did not meet the requirement in Article 5(1) RFEUA for Union airport **B**, this was therefore justified for compliance with fuel safety reasons.

<sup>(16)</sup> Further details on how to report can be found in the manual for aircraft operators and verifiers (i.e. verification bodies) (Article 8 and Annex II RFEUA).

<sup>(17)</sup> Article 8(3) RFEUA states that "The report shall be verified by an independent verifier in accordance with the requirements set out in Articles 14 and 15 of Directive 2003/87/EC, and the implementing acts adopted on the basis thereof". In other words, the verification process and accredited verifiers for the purposes of RFEUA are governed by the EU ETS rules and particularly those established for the aviation sector.

<sup>(18)</sup> See Article 3 for definitions, Article 8 on reporting obligations for aircraft operators and Annex II for the reporting template of RFEUA.



*Example 2:* Aircraft operator **Y** flies from airport **C** to airport **D** and back to **C** (route **C-D-C**), all Union airports. Following from example 1, Aircraft operator **Y** is assigned to the competent authority of **A-DGCA**. At the end of the reporting year, **Y** has to submit to EASA and the competent authorities the yearly uplifted fuel volumes, the yearly aviation fuel required and the yearly non-uplifted fuel volumes <sup>(19)</sup>. **Y** will also have to notify, at the end of the reporting year, the non-tanked quantities to the authority or authorities of the Union airport(s) where it does not meet the refuelling threshold for fuel safety reasons.

In this example, aircraft operator **Y** falls below the 'yearly aviation fuel required' threshold in airport **D** because in accordance with point CAT.OP.MPA.181 letter (c)(4)(l) of Annex IV to Regulation (EU) No 965/2012 the flights from the **C-D** route require a destination alternate airport **E** which is far away from airport **D**. On the way back to **C** (route **D-C**), the destination alternate airport **F** is very close to airport **C**. The aircraft will always therefore land with more fuel than necessary in **D** to go back to **C**, preventing it from uplifting fuel at airport **D** for its subsequent flight back to **C** as **Y** had enough fuel in the tank. Aircraft operator **Y** therefore did not meet the requirement in Article 5(1) RFEUA for airport **D**, for reasons related to fuel safety.

For isolated aerodromes, the same may happen where point CAT.OP.MPA.181 letter (c)(4)(ii) and AMC7 <sup>(20)</sup> CAT.OP.MPA.182 require about 2 hours of additional fuel to operate in such isolated aerodromes. This can significantly reduce the need to refuel to return.

In a nutshell, the aircraft operator must, in order to comply with the requirements of Article 5(2) RFEUA, (i.e. the obligation to *duly justify*), provide the competent authorities and EASA with the safety reasons for tanking fuel in flights arriving at the Union airport that make the aircraft operator fall below the yearly fuel uplifting requirement. The amounts of fuel to be justified are limited to the difference between the 90 % of yearly aviation fuel required and the yearly actual aviation fuel uplifted per Union airport, in which the aircraft operator does not comply with the uplift requirement.

The aircraft operator should clearly indicate the relation between the volume of fuel uplifted and the safety reasons. The justification (the supporting document(s)) should correspond to the uplifted amounts and the reasons provided. Inability to prove correspondence between the uplifted volumes and the justifications may result in a breach of Article 5(1) RFEUA.

#### **4.2. Examples of events requiring the uplift of aviation fuel for compliance with fuel safety rules and of supporting documents (justifications)**

The following list of examples requiring the uplift of aviation fuel for safety reasons is non-exhaustive but it does include the most common events <sup>(21)</sup> justifying the need to uplift more fuel at the departing airport for fuel safety reasons, and consequently risking not meeting the refuelling threshold at the destination Union airport. The examples are accompanied by the documents that the aircraft operator would need to provide to the competent authorities in order to justify falling below the threshold in Article 5(1) RFEUA.

In every case, competent authorities must, in cooperation with EASA, ensure that the right balance is struck between safety and the RFEUA refuelling and reporting obligations. Ensuring safety is paramount, so authorities must exercise sound judgment at all times regarding the level of evidence needed to substantiate safety concerns. The need for additional fuel is often based on the expertise of the operator control centre's personnel or the pilots' experience.

<sup>(19)</sup> See Article 3 for definitions, Article 8 on reporting obligations for aircraft operators and Annex II for the reporting template of RFEUA.

<sup>(20)</sup> 'Acceptable Means of Compliance 7'.

<sup>(21)</sup> As reported by EASA and aircraft operators in their replies to the Commission questionnaire for the preparation of this document.

- Cases of aviation fuel shortage (including minimum purchase amounts imposed by the fuel supplier at Union airports with a geographic condition such as islands) or aviation fuel contamination at the destination airport, justified by the respective notice to airmen or notice to air missions (NOTAM) and/or by a communication from the fuel supplier (if available), or by any other reports within the management system in point ORO.GEN.200 'management system' <sup>(22)</sup> of Annex IV to Commission Regulation (EU) No 965/2012 (pilot reports, other operators' reports, authority reports, or information provided by airline associations).
  
- Adverse weather conditions (or forecasts of adverse weather conditions), often (and particularly during winter operations), justify the need for additional fuel (see points CAT.OP.MPA.181 letter (b), CAT.OP.MPA.245 letter (a)(1) and also CAT.OP.MPA.245 letter (b)(c), and CAT.OP.MPA.255 letter (b), CAT.OP.MPA.265 letter (a) of Annex IV to Commission Regulation (EU) No 965/2012 <sup>(23)</sup>). This also applies to other weather conditions (e.g. as hot weather) that may require extra fuel for APU <sup>(24)</sup> usage as a result of exceptionally cold or hot weather conditions, limited visibility, etc. Justification must be based on actual weather reports (e.g., METAR <sup>(25)</sup> and ATIS <sup>(26)</sup>), forecast weather reports (e.g., TAF <sup>(27)</sup>), including remote probabilities of adverse weather like PROB30 % <sup>(28)</sup>, SIGMET <sup>(29)</sup>, en-route weather charts, any other sufficiently detailed reports or any combination thereof. Enhanced weather information systems, like EWINS <sup>(30)</sup> or similar tools, may also be presented. These tools can indicate the reliability of weather forecasts, prompting operators to increase fuel intake when historical data suggests that adverse weather (e.g., fog) is likely at the destination airport, even if the official forecast does not predict such adverse weather.
  
- Social actions (including protests or strikes at the destination airport) justified by, for example, a communication from the airport and/or a NOTAM (see point CAT.OP.MPA.175 letter (b)(4)(5) and EASA AMC1.CAT.OP.MPA.175 letter (b) and point CAT.OP.MPA.181 letters (b) and (c)(7) of Annex IV to Commission Regulation (EU) No 965/2012). Depending on the circumstances, the threat of social actions or strikes may also justify the need to increase the fuel intake.
  
- Air traffic control (ATC) delays at the destination airport, justified by a NOTAM or by a communication from the Air Traffic Manager (ATM) provider (where available) prior to take-off (points CAT.OP.MPA.181 letter (b)(6) and letter (c)(7) to Annex IV to Commission Regulation (EU) No 965/2012). Other reports or data, such as historical data from the aircraft operator (including reports from the pilot) can also indicate potential delays at the destination airport.
  
- Probability of ATC re-routings, justified by a NOTAM or a communication from the ATM provider, or by any other relevant reports or data (point CAT.OP.MPA.181 letter (b)(5)(6) and letter (c)(7) of Annex IV to Commission Regulation (EU) No 965/2012). This includes historical data from the operator or other operators, and pilot reports, indicating potential re-routings along the route.
  
- Security concerns, such as those related to war conflicts, justified by a communication from the airport, by a communication from the fuel supplier, and/or by a NOTAM.

<sup>(22)</sup> See Annex III on organisation requirements for air operations in Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

<sup>(23)</sup> See Annex IV on commercial air transport operations in Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

<sup>(24)</sup> Auxiliary power unit.

<sup>(25)</sup> Meteorological aerodrome report.

<sup>(26)</sup> Automatic terminal information service.

<sup>(27)</sup> Terminal area forecast.

<sup>(28)</sup> Probability of 30 %.

<sup>(29)</sup> Significant meteorological information.

<sup>(30)</sup> Enhanced weather information system.

- Natural disasters (e.g. earthquakes, volcano eruptions and floods), justified by an airport communication and/or by a NOTAM, or by any other relevant reports (point CAT.OP.MPA.181 letter (b) and letter (c)(7) of Annex IV to Commission Regulation (EU) No 965/2012).

In addition to the abovementioned documents, the aircraft operator must submit the operational flight plan signed by the commander, including digital signature or digital approval of the flight plan. This document must indicate the uplifted block fuel (at the previous flight) and its individual components.

Other documents that the aircraft operator may need to provide, where relevant, to the competent authority to justify falling below the threshold set out in Article 5(1) RFEUA for reasons of compliance with fuel safety rules include:

- journey log information;
- METAR, TAF, SIGMET, en-route weather charts, or ANSP <sup>(31)</sup> communications on weather restrictions;
- NOTAM;
- ATM and ATC communications (where available);
- aeronautical information publications (AIPs);
- communications from the fuel supplier, the groundhandler or the airport managing body;
- operational flight plan;
- any other information that the aircraft operator may consider relevant and useful to justify the fuel amounts reported as uplifted for safety reasons.

Aircraft operators must provide independent verifiers with all the relevant supporting documents to facilitate the verification process of the annual report as required by Article 8 RFEUA (and particularly Article 8 (3)).

#### 4.3. How long should the aircraft operator keep the justifying documents?

The Regulation imposes on aircraft operators the burden of proof to justify to the competent authorities and EASA their compliance with the requirements under Article 5(1) and (2) RFEUA. Aircraft operators, therefore, need to assess for how long it is advisable to keep the relevant justifying documents, taking into consideration aspects such as the possibility of administrative or court procedures. Aircraft operators should ideally keep the justifying documents for a minimum of 4 years (i.e. reporting year + 3 years of data retention). This period may vary between Member States as national rules on enforcement applicable to the sector may prescribe different timelines. Member States should consider the data retention recommendation provided in this section, when laying down the rules on penalties applicable to infringements of this Regulation laid down by Article 12(1) RFEUA.

#### 4.4. Considerations concerning the choice of alternate airport and discretionary fuel

Aircraft operators have freedom, within the limits set in point CAT.OP.MPA 192 of Annex IV to Commission Regulation (EU) No 965/2012 <sup>(32)</sup> to choose an alternate airport. It may often be more rational to choose an alternate airport further away from other possible and closer alternatives for economic reasons, such as having a contract with the airport handlers for aircraft maintenance and/or having the conditions to provide a better service to the passengers in the case of landing at the alternate airport (i.e. commercial alternate). However, the choice of alternate airport cannot be used as a means to hide economic fuel tankering practices.

<sup>(31)</sup> Air navigation service provider.

<sup>(32)</sup> See Annex IV on commercial air transport operations in Commission Regulation (EU) No965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

Similarly, the aircraft operator must not instruct the pilot to uplift more aviation fuel in a specific airport for economic reasons and load it as discretionary fuel. Discretionary fuel must, as the words indicate, be uplifted at the sole discretion of the commander and without interference from the aircraft operator <sup>(33)</sup>.

The same principle will apply to practices hiding fuel tankering in other fuel categories, for example, when such categories are loaded in quantities that are clearly higher than the quantities necessary for the objectives of each of those types of fuel (e.g. increased taxi fuel, increased trip fuel by planning an unrealistic lower cruise level and unrealistic take-off mass).

Practices using alternate fuel, discretionary fuel, and other fuel categories to hide economic fuel tankering would represent a contravention of the relevant provisions of RFEUA. Such practices, when based on a consistent body of evidence that satisfy both an objective and a subjective factor, are liable to be punished by the relevant national authorities <sup>(34)</sup>.

## 5. ARTICLE 5(3) RFEUA: TEMPORARY EXEMPTIONS TO THE OBLIGATION TO REFUEL

Article 5(3) RFEUA establishes the requirements for the aircraft operator to request a temporary exemption in advance:

'Exceptionally, an aircraft operator may, when duly justified, request from the competent authority or authorities referred to in Article 11(6) a temporary exemption from the obligation laid down in paragraph 1 of this Article for the flights on a specific existing or new route of less than 850 kilometres, or 1 200 kilometres for routes connecting with airports situated on islands without rail or road connections, departing from a Union airport. That distance shall be measured by the great circle route method.

Such request shall be made at least 3 months before the envisaged date of application of the exemption, supported by a detailed and adequate justification. Such exemption should be limited to the following situations:

- (a) serious and recurrent operational difficulties in refuelling aircraft at the given Union airport preventing aircraft operators from performing turnarounds within a reasonable time; or
- (b) structural aviation fuel supply difficulties stemming from the geographic characteristics of a given Union airport, leading to significantly higher prices of aviation fuels compared to prices applied on average to similar types of aviation fuels in other Union airports due in particular to specific fuel transport constraints or to limited availability of fuels at that Union airport and placing the aircraft operator concerned at a significant competitive disadvantage compared to market conditions existing in other Union airports with similar competitive characteristics'.

As regards specific routes, an aircraft operator may be temporarily exempted from the obligation to refuel at the departing Union airport if it can demonstrate serious and recurrent operational difficulties in refuelling aircraft at that Union airport, that prevent it from performing turnaround flights within a reasonable time and that might have an impact on connectivity, especially of peripheral regions. An exemption could also apply in case of structural fuel supply difficulties leading to significantly higher fuel prices than the prices applied on average to similar types of fuels in other Union airports. The significantly higher fuel prices at the Union airport in question should not, however, be primarily the result of the higher use of SAF at that Union airport.

The exemption can only be granted by the competent authority if the requirements provided in Article 5(3)(a) or (b) are met and if the request is duly justified.

### 5.1. First condition: distance requirement

Before requesting a temporary exemption under Article 5(3) RFEUA, the aircraft operator must ensure that the route to which an exemption would apply meets the distance requirements provided in that Article. Article 5(3) provides two options:

1. The aircraft operator may request an exemption for an existing or new route of less than 850 km departing from a Union airport; or

<sup>(33)</sup> CAT.OP.MPA.181 (c)(8) 'discretionary fuel, if required by the commander', Annex IV, subpart B of Commission Regulation (EU) No965/2012.

<sup>(34)</sup> See, for example, the judgment of the Court of Justice of 6 February 2018, *Altun and others*, C-359/16, ECLI:EU:C:2018:63, paragraphs 48 to 52.

2. The aircraft operator may request an exemption for an existing or new route of less than 1 200 km when this route connects airports situated on islands without rail or road connections. The route has to depart from a Union airport, and it can concern either routes between mainland and an island, or routes between the islands without a connection to the mainland.

To submit its request the aircraft operator must indicate at least the (i) International Civil Aviation Organization (ICAO) airport codes of the concerned route, the (ii) departing Union airport, and (iii) the distance in kilometres calculated using Vincenty's method.

The competent authority will verify whether the departing airport is a Union airport within the meaning of the RFEUA and whether the requested route falls within the distance requirements set in Article 5(3) RFEUA. The distance calculation is based on Vincenty's method of calculating the distance between two points on the surface of a spheroid, using the World Geodetic System (WGS84) <sup>(35)</sup>. ICAO Doc 7910 (Location Indicators) should be used as the basis for the aerodrome latitudes and longitudes <sup>(36)</sup>.

## 5.2. Second condition: the requirements in Article 5(3)(a) and (b)

If the distance requirement in Article 5(3) RFEUA is met, the second step for the aircraft operator will be to assess whether the route for which the aircraft operator is requesting the exemption meets the second set of requirements under Article 5(3)(a) or (b) RFEUA.

Any request for an exemption needs to be supported by a detailed and adequate justification and accompanied by the relevant documents supporting the justification.

The competent authority will assess each request following a case-by-case analysis. It will also thoroughly consider the specific characteristics of the concerned Union airport under its jurisdiction and where the aircraft operator requests to be exempted from the obligation to uplift fuel. During the assessment of the request, the competent authority may approach the concerned Union airport to ask for information relating to the exemption request submitted by the aircraft operator. For example, the competent authority may ask the airport to provide historic data on turnaround times and operations or fuel availability where relevant, in order to inform its decision on the granting/rejection of the requested exemption.

### 5.2.1. Article 5(3)(a) RFEUA – serious and recurrent operational difficulties and unreasonable turnaround times

#### 5.2.1.1. What are serious and recurrent operational difficulties?

Firstly, the aircraft operator must demonstrate that the Union airport for which it is requesting an exemption to refuel suffers serious and recurrent operational difficulties. A one-off event such as a strike at the airport cannot be considered as a serious and recurrent operational difficulty that justifies the granting of an exemption to refuel at that Union airport. The impact of strikes on the uplifting of fuel should be reported under Article 5(2) RFEUA, in case they require additional uplifting of fuel at the departing airport for fuel safety reasons.

Secondly, it must be demonstrated that the operational difficulty occurring at the concerned Union airport has a negative impact on the aircraft operator. The operational difficulty, can for example, negatively impact the flight schedule of the concerned aircraft in its subsequent operations in a significant and non-negligible way. In this regard, the aircraft operator could be at risk of being penalised by the slot coordinator/facilitator or loose flight operations during the day, which could potentially impact EU connectivity.

An operational difficulty must therefore be (i) a repeated event, or a systematic occurrence, linked to the concerned Union airport, (ii) result in an unreasonable turnaround time (explained in point 5.2.1.2) (iii) have a negative economic impact on the aircraft operator.

The following occurrences, which do not constitute an exhaustive list, may be considered as potential operational difficulties that can justify the exemption if a negative impact on the aircraft operator is demonstrated:

<sup>(35)</sup> See reference to ICAO CERT tool and calculation with the Vincenty's method at <https://www.icao.int/environmental-protection/CORSIA/Pages/CERT.aspx>.

<sup>(36)</sup> See Reference to ICAO data service as reference to Aerodrome Location Indicators <https://www.icao.int/Aviation-API-Data-Service/Pages/default.aspx>.

- Limited ramp space and/or congested ramp space at the airport may impact the turnaround times, particularly in congested airports at peak season (e.g. on island airports or small airports close to ski resorts).
- Lack of sufficient staff at the airport servicing turnaround operations and/or lack of sufficient equipment, such as sufficient hydrant systems or fuel trucks. Indeed, lack of sufficient resources/equipment at the airport may impact the refuelling waiting times, and therefore, the final turnaround time of the aircraft. To justify this request for an exemption, the fuel handler at the airport must have stated that it does not have enough resources and/or equipment to service the aircraft without unreasonable delay.
- Local rules preventing the embarking and disembarking of passengers while refuelling the aircraft and/or local fire rules requiring the presence of a fire truck to refuel the aircraft while embarking and disembarking passengers. Such local rules may impact the turnaround operation of aircraft operators at congested airports or airports with high seasonality. Aircraft operators should demonstrate in these cases that the existing scenarios impact the turnaround times of the aircraft in a significant and non-negligible way, particularly where tight flight schedules exist or where the availability of fire trucks is limited.

#### 5.2.1.2. *What is an unreasonable turnaround time?*

Once the operational difficulty has been identified, the aircraft operator has to assess whether this operational difficulty impedes refuelling the aircraft, while respecting a reasonable turnaround time. Turnaround time is understood as the time interval between an aircraft's arrival at an airport (aircraft complete stop/breaks on) and its departure on the next flight (aircraft doors closed for departure). Generally speaking, the time needed to execute the fuel uplift is almost always less than the time needed to disembark and unload, and then embark, load and service the aircraft.

The EU regulatory framework (i.e. requirements in point CAT.OP.MPA.200 of Annex IV to Regulation (EU) 965/2012 and the accompanying AMC6<sup>(37)</sup>) allow fuelling with passengers disembarking, but this practice is not widespread among European operators, as it was not explicitly allowed until 2022. Before this, fuelling was only available during boarding. Justifications of insufficient turnaround time solely based on the impossibility to tank during disembarking must therefore not be accepted unless all the requirements in Article 5(3) (a) RFEUA are met.

Turnaround times range for a long-haul flight typically range from 60 to 150 minutes, while turnaround times for short-haul flights, range from 25 to 80 minutes, assuming that the aircraft operator is allowed to refuel with passengers boarding, on board, or disembarking<sup>(38)</sup>.

Given these typical turnaround times, if a serious and recurrent operational difficulty prevents refuelling within a reasonable time, an aircraft operator may request an exemption under Article 5(3)(a) RFEUA. However, an exemption request claiming that the turnaround time increased, for example, from 25 to 30 minutes due to the new refuelling obligation could not be accepted unless the delay is proven to be significant and its negative economic impact on subsequent flights is demonstrated to be so great that the new turnaround times could not be considered reasonable. In other words, the exemption request cannot be based solely on an intention to maintain the same turnaround time as before the introduction of Article 5(1) RFEUA.

The following list can be used as a reference by the competent authority and the aircraft operator to determine whether the obligation to refuel in combination with the operational difficulty results in an excessive turnaround time, which differs from reasonable timings, and could therefore have a significant negative impact on the aircraft operator's operations. The following list is non-exhaustive.

- Information from the aircraft manual indicating maximum fuel capacity.

<sup>(37)</sup> Acceptable Means of Compliance 6 (<https://www.easa.europa.eu/en/document-library/acceptable-means-of-compliance-and-guidance-materials/group/part-cat---commercial-air-transport-operations#part-cat---commercial-air-transport-operations>).

<sup>(38)</sup> In line with the timings provided in Table 18.2 of the EUROCONTROL Standard Inputs for Economic Analyses, release 10.0.3, published on 18 April, 2023.

- The airport's relevant historic data concerning turnaround operations and/or the turnaround time ranges presented in Table 18.2 of the EUROCONTROL Standard Inputs for Economic Analyses, release 10.0.3, published on 18 April 2023 <sup>(39)</sup>.
- The aircraft operator's historic data regarding turnaround operations at the concerned airport. If the aircraft operator refuelled normally in the past, there should not be an impediment unless there is a substantial change in circumstances.
- The excessive turnaround time risks impacting the slot schedule at the airport, with the result that the aircraft operator risks being penalised by the coordinator/facilitator at the concerned airport.
- The turnaround time impacts the aircraft operator's operations on the subsequent flights, with a risk of it being penalised by the slot coordinator/facilitator at subsequent airports.

In conclusion, and in line with the examples provided above, the aircraft operator must prove in its request for an exemption under Article 5(3)(a): (i) the existence of a serious and recurrent event leading to the operational difficulty, (ii) that the turnaround time is unreasonable; (iii) and a serious and consequent negative impact to connectivity or economic impact on the aircraft operator. In the absence of a negative impact to connectivity or on the aircraft operator, there would be no grounds for requesting an exemption from the obligation to refuel at the concerned airport.

#### 5.2.2. **Article 5(3), (b) – Structural fuel supply difficulties stemming from geographic characteristics**

Requests for exemptions under Article 5(3)(b) need to meet four cumulative requirements for the competent authority to be able to grant a temporary exemption. (i) there must be structural fuel supply difficulties at the Union airport (ii) they must be due to the geographic characteristics of the Union airport, (iii) they must result in significantly higher fuel prices on average than at other Union airports: and (iv) they must lead to a significant competitive disadvantage for the aircraft operator (when compared with market conditions in other Union airports with similar competitive characteristics).

##### 5.2.2.1. *What are structural fuel supply difficulties at a Union airport due to the geographic condition of the airport?*

The first two requirements capture Union airports where fuel supply is a structural difficulty due to the geographic characteristics of the territory, where the Union airport is located. Union airports in remote areas such as islands, remote peripheral Europe or mountainous regions can often be subject to such structural fuel supply difficulties. These supply difficulties can be caused by factors such as limited or inexistent fuel production capacity in the concerned area; insufficient road or pipeline connections or, (in the case of islands), the need to supply the fuel by sea.

Another element to consider is limited fuel storage capacity at the Union airport. Fuel storage may be limited at Union airports which do not have pipeline supply, due to their geographic characteristics.

Article 5(3)(b) RFEUA therefore recognises that the geographic characteristics of a Union airport can result in structural fuel supply difficulties, including limited availability of aviation fuel at a Union airport.

##### 5.2.2.2. *How does a fuel supply and geographic condition result in significantly higher fuel prices than average fuel prices in other Union airports?*

Structural fuel supply difficulties stemming from the geographic characteristics of a given Union airport (as explained in point 5.2.2.1), may result, in the third condition of, significantly higher fuel prices than the prices applied on average to similar types of fuels in other Union airports.

In addition, high seasonality at Union airports with a fuel supply difficulty and a geographic condition, could increase demand for aviation fuel, resulting in significantly higher prices than the prices applied on average to similar types of fuels in other Union airports.

<sup>(39)</sup> See the document in the following link: <https://ansperformance.eu/economics/cba/standard-inputs/>.

Other Union airports may be largely supplied, by pipeline, for example, and thus avoid additional transportation costs such as the costs associated with fuel supply to an airport on an island. In other Union airports, transportation costs could be reduced if there is more than one fuel supplier present at the Union airport or if the airport is near to a fuel refinery. These elements are conducive for a more competitive pricing of aviation fuel than at Union airports with a geographic condition as described in point 5.2.2.1.

It is explained in point 5.2.2.4, which elements need to be proven in order to demonstrate significantly higher prices in similar aviation fuels.

5.2.2.3. *What are significant competitive disadvantages for the aircraft operator, compared with market conditions existing in other Union airports with similar characteristics?*

After first demonstrating that the airport suffers from structural fuel supply difficulties (...) due to the location of the airport, resulting in significantly higher fuel prices (...), the aircraft operator must demonstrate the fourth requirement, namely refuelling at that Union airport would place it at a significant competitive disadvantage compared to market conditions existing in other Union airports with similar competitive characteristics.

An aircraft operator would face a significant competitive disadvantage if required to refuel as mandated by Article 5(1) RFEUA in the following scenarios:

- Aviation fuel prices at the Union airport for which an exemption is requested are significantly higher due to its geographic characteristics and fuel supply difficulties. The aircraft operator would therefore struggle to compete effectively for business with other aircraft operators serving other Union airports within the same catchment area and considered as substitutes from the passenger demand perspective. This could occur if for example the Union airport (and therefore the requesting aircraft operator) serves tourist/holiday traffic that could be diverted to another Union airport serving a similar consumer demand in the same catchment area. The assessment needs to be performed on a case-by-case basis but such substitutability can be expected between some of the smallest islands that rely predominantly on tourist traffic and have little other captive demand otherwise or, for example, between an island and the coastline on the mainland that are in the same catchment area.
- A competitive disadvantage needs to be more than just sufficient; it needs to be *significant*. Certain variations in pricing and the competitive positions of aircraft operators are to be expected (including variations in costs) but this would not automatically justify an exemption. A significant competitive disadvantage requires more than just a small difference in competitive conditions. Any application of Article 5(3)(b) will in any case need to be done on a case-by-case basis, considering the route and whether there are two Union airports located in the same catchment area.

*Example 3:* aircraft operator **Y** requests a temporary exemption, under Article 5(3) (b) RFEUA, from the obligation to refuel when departing from Union airport **A** (located on an island) to Union airport **B** (located on the mainland). The route is **B-A-B**. Airport **A** is predominantly a leisure destination and has structural fuel supply difficulties, due to its geographic characteristics, that significantly increase fuel prices. **Y** will need to prove in its request for an exemption that the conditions in airport **A** puts it at a significant competitive disadvantage compared with aircraft operators flying from the same mainland airport in **B** to Union airport **N**. **N** would in this example be a Union airport located in the catchment area of **A** and offering leisure destination similar to **A**.

- The aircraft operator's competitive disadvantage at the Union airport for which it requests an exemption could be significant when compared with other Union airports with similar competitive characteristics (e.g., size, location within the Member State or neighbouring Member State(s), business model, and traffic mix). This disadvantage could be rooted in factors such as higher operating costs (including airport and handling charges), capacity constraints (such as limited ramp capacity and infrastructure facilities), and/or poor airport accessibility.

*Example 4:* aircraft operator **Y** requests an exemption under Article 5(3)(b) at Union airport **A**, which is at a significant competitive disadvantage compared with Union airport **B**, due to significantly higher prices in aviation fuels, higher operating costs, poor accessibility, and less attractive passenger facilities. The fact that airlines and passengers are more likely to prefer Union airport **B** will impact Union airport **A**'s ability to attract and retain traffic.



In the context of a request for an exemption under Article 5(3)(b), the aircraft operator will therefore have to prove that the significantly higher price of aviation fuel at the Union airport, which is due to the airport's geographic characteristics and related fuel supply difficulties, puts it at a significant competitive disadvantage as regards other aircraft operators that operate at Union airport destinations which may be substitutes. In other words, the requesting aircraft operator must demonstrate that, without an exemption from the Article 5(1) RFEUA obligation, it will lose significant passenger traffic to another aircraft operator that is offering a similar alternative destination.

It should be borne in mind that these examples show circumstances in which an exemption could potentially be granted, however, for an exemption to be accepted, all the requirements in Article 5(3)(b) have to be met. This means that an aircraft operator cannot have an exemption request accepted simply by claiming that it can obtain a more competitive fuel price in airport A, which is closer to a refinery, than in airport B, which is in a mountainous region. All the requirements in Article 5(3)(b) have to be proven one by one.

#### 5.2.2.4. *How can the aircraft operator justify its request for an exemption?*

Firstly, the aircraft operator has to prove that the Union airport for which the exemption is requested suffers from a structural aviation fuel supply difficulty.

Secondly, the aircraft operator has to prove that the supply difficulty is due to its geographic characteristics. The geographic condition may be self-evident for some islands (e.g. small islands without rail or road connections to the mainland) but it would still be necessary to prove that the following requirements are met: (i) structural fuel supply difficulty and (ii) geographic condition. An exemption request concerning remote or mountainous regions should be explained in detail (for example, why and how the geographic characteristics of the airport cause the fuel supply constraints). A description of the exact fuel supply difficulties should also be included in the request for the exemption. In other words, merely proving a geographic condition will not be sufficient for the exemption request to be accepted. The supply difficulty also has to be demonstrated.

Thirdly, the aircraft operator has to prove, the significant average fuel price difference for similar aviation fuel types between other Union airports and the Union airport for which it is requesting an exemption from the obligation to refuel. The aircraft operator has to provide the competent authority with any relevant documents it may have in its possession in order to demonstrate the significantly higher fuel prices (e.g. price quotations from the fuel supplier(s) at the different Union airports and average prices provided by specialised platforms). The following elements could be used to support the assessment:

- The price comparison between similar aviation fuels. This means, for example, that comparing the prices of kerosene fuel and SAF would not be a valid way of proving the significant difference in prices. Kerosene prices have to be compared with kerosene prices and SAF blends have to be compared with the prices of similar SAF blends.
- The price comparison between similar airports, including without limitation, in terms of their size, location (i.e. within the Member State or neighbouring Member State(s)), business model and traffic mix. The airports selected for the price comparison will provide the average aviation fuel market prices available at these Union airports for the purposes of comparison with the significantly higher prices of the Union airport where the exemption is requested.
- The significant aviation fuel price difference comparison may be supported by the aircraft operators' costs analysis and/or profit margin analysis.
- The significant aviation fuel price difference comparison may be supported by a supply and demand analysis that impact the prices (i.e. supply constraints and demand changes such as seasonal changes).

Fourthly, the aircraft operator has to prove the significant competitive disadvantage regarding other aircraft operators flying to other Union airports with similar competitive characteristics. The aircraft operator will therefore have to justify its request by identifying another competing Union airport destination(s), demonstrating how that Union airport competes with the Union airport for which the exemption is requested, and prove either a loss of passengers to that other Union airport, or a foreseeable and non-hypothetical risk of such a loss of passengers (in both cases demonstrated as 'significant').

It is recommended that authorities assessing Article 5(3)(b) RFEUA requests should liaise with their national competition authorities before deciding whether to grant or reject a request. This cooperation should specifically cover the assessment on the requirements on significantly higher fuel prices if compared to average fuel prices in other Union airports and significant competitive disadvantage compared to market conditions existing in other Union airports with similar competitive characteristics.

## 6. THE COMPETENT AUTHORITY FOR THE PURPOSES OF ARTICLE 5 RFEUA

### 6.1. The role of authorities for the purposes of Article 5(2) and (3) RFEUA

Article 5(2) RFEUA allows an aircraft operator not to meet the requirement to refuel established in Article 5(1) RFEUA if this is duly justified for reasons of compliance with applicable fuel safety rules. Such circumstances must be duly justified to the competent authority or authorities referred to in Article 11(6) RFEUA and to EASA, together with an indication of the affected routes <sup>(40)</sup>.

Article 11(6) RFEUA states that 'the responsible Member State, whose competent authority or authorities, designated (in accordance with Article 11(1) RFEUA), are responsible for a given Union airport managing body, shall be determined on the basis of the respective territorial jurisdiction of the Union airport'.

For the purposes of Article 5(2) RFEUA, the aircraft operator therefore has to notify and justify the fuel safety reasons why it does not meet the refuelling obligation laid down in Article 5(1) (i.e. the 90 % of the 'yearly required fuel' trip and taxi out) and also indicate which routes are affected to the authority referred to in Article 11(6) RFEUA. This is an authority that is responsible for a given Union airport managing body, which is in turn determined on the basis of respective territorial jurisdiction of the airport.

Article 5(3) RFEUA provides that exemptions from the obligation to refuel established in Article 5(1) may under certain circumstances be requested in advance from the competent authority or authorities referred to in Article 11(6) RFEUA. For the purposes of Article 5(3), the aircraft operator therefore has to request possible exemptions <sup>(41)</sup> to be granted or rejected under that provision from the authority responsible for a Union airport where the aircraft operator claims it cannot refuel.

In conclusion, the competent authority receiving the retrospective justifications on the non-refuelled amounts for safety reasons and the advance requests for exemptions from the obligation to refuel is the competent authority of the airport where the non-refuelling takes place. This authority may be different from the authority competent to impose fines on the aircraft operator.

### 6.2. Who is the competent authority for the enforcement of the obligation to refuel and for the imposition of fines?

Article 11(1) RFEUA states that '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, on the Union airport managing bodies, and on aviation fuel suppliers (...)'.

To facilitate cooperation between competent authorities as well as to increase transparency and easier access for interested parties, the Commission publishes on its website a list of designated national competent authorities in charge of implementing and enforcing the RFEUA <sup>(42)</sup>.

<sup>(40)</sup> The aircraft operator must also include that information in the report referred to in Article 8 RFEUA (i.e. the annual report), with the associated fuel quantities reported separately. This report is to be submitted to the authority designated under Article 11(5) RFEUA. The report (including the quantities uplifted for safety reasons) must be submitted by 31 March of each reporting year (reported retrospectively).

<sup>(41)</sup> Exemption requests on a route under Article 5(3) RFEUA must be submitted to the competent authority at least 3 months before the envisaged date of application of the exemption (requested in advance).

<sup>(42)</sup> See list of designated competent authorities under RFEUA at DG MOVE website ([https://transport.ec.europa.eu/transport-modes/air/environment/refueeu-aviation\\_en](https://transport.ec.europa.eu/transport-modes/air/environment/refueeu-aviation_en)).

Article 11(5) RFEUA states that the designated authority or authorities (see Article 11(1) RFEUA) responsible for a given aircraft operator is/are determined in accordance with Commission Regulation (EC) No 748/2009<sup>(43)</sup>. Where an aircraft operator has not been attributed to a Member State in Commission Regulation (EC) No 748/2009, the rules laid down in Article 18a of Directive 2003/87/EC<sup>(44)</sup> will be followed in order to determine the authority to which the aircraft operator is to be assigned<sup>(45)</sup>. These rules contain the provisions governing the assignment of each aircraft operator to its administering Member State. The purpose of this assignment is to reduce the administrative burden on aircraft operators and the Member States responsible for the enforcement of RFEUA.

The competent authority or authorities responsible for the imposition of fines on aircraft operators (see Article 12(2) RFEUA) for failure to comply with the requirements established in Article 5 RFEUA is/are the authority or authorities designated by the Member States in accordance with Article 11(1) and (5) RFEUA. This means that only the appointed authority or authorities should impose fines on the aircraft operators which have been assigned to them, in accordance with Commission Regulation (EC) No 748/2009 or the rules contained in Article 18a of Directive 2003/87/EC. These will be the same authority or authorities that will receive the reports submitted by their assigned aircraft operators (in compliance with Article 8(1) RFEUA) and therefore the ones that will have direct access to the full content of the annual report on whether the thresholds laid down in Article 5(1) were met.

Such a designated authority or authorities is/are responsible for the imposition and collection of the fines on their assigned aircraft operators even if the thresholds established in Article 5 RFEUA were not met in Union airports located outside their respective Member State. Indeed, such non-compliance is not linked to any specific Union airport but rather to an EU-wide obligation to ensure that their yearly uplifting of aviation fuels meets the thresholds of Article 5(1) RFEUA. Such designated authority or authorities will have the necessary information on fuel tanked for fuel safety reasons because this is part of the reporting obligations of aircraft operators under Article 8(1)(d) and Annex II RFEUA.

*Example 5: designation of the competent authority or authorities*

Member State **A** designates its directorate general for civil aviation ('**A-DGCA**') as its competent authority in accordance with Article 11(1) RFEUA. Aircraft operator '**Y**' is assigned under Commission Regulation (EC) No 748/2009 to Member State **A**. In this example, **A-DGCA** will be the competent authority responsible for the enforcement and imposition of fines under the RFEUA on aircraft operator '**Y**' in the event that this aircraft operator fails to comply with its obligations under Article 5 RFEUA.

*Example 6: who is the competent authority under Article 5(2) RFEUA and what are the implications under Article 8 RFEUA?*

Aircraft operator **Y** operates a route between Member States **A** and **B** and operates a route from Member State **B** to a third country. According to the rules of Article 11(5) RFEUA, **Y** is assigned to the competent authorities in Member State **A** (**A-DGCA**). **Y** prepares its yearly reporting obligations under Article 8 RFEUA (by following Annex II of the Regulation) and the information to be provided under Article 5(2). In this example, the aircraft operator has the following obligations:

- (1) From Member State **A** to Member State **B**: In this example, **Y** meets the 90 % requirement to refuel (see Article 5(1) RFEUA) at the Union airport of departure in Member State **A**. **Y** must report **A-DGCA** because it is assigned to Member State **A**. It must also report to EASA, in order to comply with the obligations established in Article 8(1) RFEUA.
- (2) From Member State **B** to a third country: after an assessment of its yearly refuelling obligations, **Y** realises that it falls below the 90 % threshold established in Article 5(1) RFEUA at the Union airport of departure in Member State **B**. However, it is **Y**'s view that falling below the threshold is justified for fuel safety reasons in accordance with Article 5(2) RFEUA.

<sup>(43)</sup> 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 on or after 1 January 2006 specifying the administering Member State for each aircraft operator (OJ L 219, 22.8.2009, p. 1).

<sup>(44)</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275 25.10.2003, p. 32).

<sup>(45)</sup> The list of aircraft operators falling within the scope of RFEUA published in DG MOVE's website indicates the authority to which each aircraft operator is assigned to.

In this example, **Y** would have a **double obligation**: (i) it must duly justify to the competent authority in Member State **B** (where the failure to meet the refuelling requirement occurs) why it does not meet that refuelling requirement; and (ii) report the non-tanked quantities and relevant justifications to **A-DGCA** and EASA, under Article 8(1) RFEUA.

→ Following on from this example, **A-DGCA** is the competent authority assigned to **Y**. As explained, it is therefore the recipient of the reporting obligations under Article 8(1) RFEUA submitted by this aircraft operator. **A-DGCA** is also the competent authority for the imposition of fines on **Y** for failure to comply with Article 5(1) RFEUA if **A-DGCA** finds that there has been a breach at the Union airport of departure in Member State **B** after assessing the report and consulting the competent authority of **B** (where relevant).

*Example 7: who is the competent authority under Article 5(3) RFEUA?*

Aircraft operator **Y** departs from a Union airport located in the capital of Member State **B**, flies to a Union airport located on an island in Member State **C**, and then returns to the capital in Member State **B** (route **B-C-B**). In this example, **Y** determines that it needs to request an exemption under Article 5(3)(a) RFEUA for the **C-B** route, because fuel supply is not guaranteed in Member State **C** during peak season, and this results in unreasonable turnaround times. The aircraft operator has assessed the requirements needed under Article 5(3)(a) and understands that these are met. **Y** must request the exemption from the competent authority in Member State **C** (i.e., the competent authority of the Member State of the Union airport where the aircraft operator does not intend to refuel).

When requesting an exemption under Article 5(3)(a) or (b) RFEUA **for triangular flights** the request must be made to the competent authority of the airport where the aircraft operator cannot refuel.

*Example 8: competent authorities in case of triangular flights*

In route **A-B-C-D-A**, the aircraft operator **Y** cannot refuel in Union airports **B** and **D** for reasons justified under Article 5(3)(a) or (b). The aircraft operator **Y** should request an (i) exemption from the competent authority of Union airport **B** for the **B-C** route, and (ii) another exemption from the competent authority of Union airport **D** for the **D-A** route.

## 7. COOPERATION BETWEEN AUTHORITIES

Article 11(3) RFEUA states that ‘The Commission, the Agency (EASA) and the competent authorities of the Member States shall cooperate and exchange all relevant information to ensure effective implementation and compliance with this Regulation’.

Article 11(3) RFEUA requires the Member States’ competent authorities to cooperate and exchange all information relevant to ensuring effective implementation and compliance with the Regulation. This includes possible exemptions that may have been granted under Article 5(3) RFEUA. The competent authorities, in order to ensure a consistent application of Article 5 RFEUA, must similarly cooperate and exchange information with EASA and the Commission. Such cooperation is required from the responsibilities of the competent authorities, but the Commission and EASA can facilitate it.

The designated authority or authorities must have the necessary legal and administrative framework in place at national level to ensure the collection of the fines, pursuant to Article 12(9) RFEUA.

The information received under Article 5(2) RFEUA by the competent authority as per Article 11(6) RFEUA will be used if cooperation between authorities is needed in the context of, for example, reviewing an annual report or deciding on the imposition of a fine. The responsible authority for the imposition of fines may ask for the view of the authority where the refuelling threshold in Article 5(1) RFEUA was not met for compliance with fuel safety rules.

## 8. ON THE PROCESS TO REQUEST AN EXEMPTION UNDER ARTICLE 5(3)(A) OR (B) RFEUA AND THE ROLE OF THE COMMISSION

### 8.1. Duration and renewal of the exemption

Article 5(5) RFEUA states that the exemption(s) granted by the competent authority have a limited period of validity that cannot exceed 1 year. The competent authority should therefore specify, in the decision by which it grants an exemption, in accordance with Article 5(3)(a) or (b) RFEUA, the exact duration of the exemption. This duration may coincide with the duration of the factor at the airport that impedes the uplift of fuel, but it cannot exceed the 1 year limit.

The competent authority may, upon the aircraft operator's request, review the exemption before it expires. Any requests for renewal should be submitted at least 3 months before the expiration date of the exemption.

#### *Example 9: Duration of exemption*

Aircraft operator Y may need an exemption at a small, congested Union airport located on an island, during the summer scheduling period because, this is the busiest period of the year. However, an exemption on this island may not be needed during the winter scheduling period. The competent authority will assess whether the requirements in Article 5(3) RFEUA are met and will grant the exemption for the duration of the identified problems justifying the exemptions, and in any case not longer than 1 year.

### 8.2. When should the request be submitted to the competent authority?

The aircraft operator must submit its request to the competent authority at least 3 months before the envisaged date of application of the exemption (Article 5(3) RFEUA). Exemptions can be requested at different times during the year. The exemption can only be granted by the competent authority if the requirements provided in Article 5(3)(a) or (b) are met and if the request is duly justified. The competent authority is required to take a decision on the request without undue delay, and at the latest 1 month before the date of application of the envisaged exemption, pursuant to Article 5(5) RFEUA.

### 8.3. The competent authority can ask for additional information

Article 5(4) RFEUA states that the competent authority can, when assessing requests for exemptions under Article 5(3)(a) or (b) RFEUA, ask for additional information from the aircraft operator in addition to the justifications already provided by the aircraft operator. The competent authority determines which information it needs in order to be able to assess the exemption request.

If the competent authority asks for additional information, the deadline for it to take a decision is suspended until complete information is provided by the aircraft operator.

### 8.4. The decision of the competent authority (Article 5(6) RFEUA)

The competent authority must take a decision to accept or reject a first request for an exemption submitted by an aircraft operator under Article 5(3)(a) or (b) RFEUA. The aircraft operator cannot consider a failure to adopt a decision within the deadlines established in Article 5(5) RFEUA as a decision authorising the requested exemption.

Failure to adopt a decision on requests for renewal by at the latest 1 month before the expiry of the previously granted exemption will be considered as a decision to authorise the continuing application the exemption requested for renewal. This will be the case if the aircraft operator has supported its request for renewal with a detailed and adequate justification at least 3 months before the expiry of the exemption.

### 8.5. When does the national decision start to apply?

Article 5(7) RFEUA provides that the aircraft operator has the right to appeal against a decision from the competent authority that rejects a request for an exemption. In case of appeal, in line with Member States' procedural autonomy the relevant national procedures will apply and will determine whether the appealed national decision should be suspended or not.

### 8.6. Role of the Commission

#### 8.6.1. Publication of the list of exemptions

Competent authorities must notify the list of authorised and rejected exemptions to the Commission. The list will be accompanied by the justification and assessment for accepting or rejecting the exemption request (Article 5(8) RFEUA). This exercise can be done by blocks of categories (e.g. failure to prove one of the requirements, failure to meet the deadlines).

In accordance with Article 5(8) the Commission must publish the list of authorised exemptions and update that list at least once a year.

#### 8.6.2. On complaints concerning granted exemptions

In accordance with Article 5(9) and (10) and Article 16(2) RFEUA, the Commission can adopt implementing acts, that request the competent authority or authorities to adopt a decision repealing a given exemption from the beginning of the next scheduling period.

In cases where the scheduling period starts less than 2 months after the publication of the decision by the competent authority repealing the exemption, the decision repealing that exemption will only apply from the beginning of the following scheduling season<sup>(46)</sup>.

The Commission can decide to act on its own initiative or following the assessment of a written complaint on a granted exemption submitted by:

- a Member State,
- an aircraft operator,
- the managing body of the concerned Union airport,
- an aviation fuel supplier

In order to facilitate the Commission's assessment of the matter and to decide whether an implementing act has to be adopted in order to request the repeal of the granted exemption, the Commission can request all the necessary information from the Member States and aircraft operators. Article 5(10) RFEUA requires Member States and aircraft operators to provide the information without undue delay and Member States must facilitate the provision of information by aircraft operators.

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<sup>(46)</sup> Article 2(d) of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993, p. 1), 'scheduling period' shall mean either the summer or winter season as used in the schedules of air carriers.