

*Annex to the European Citizens' Initiative*  
**Ending the kerosene tax exemption in Europe**



Our European Citizens' Initiative aims at starting to tax aviation fuel (kerosene) for domestic and intra-European flights. 'Aviation is a major source of CO<sub>2</sub> emissions, increasing its emissions by 21% within Europe in the last three years, and is predicted to continue to grow' (Transport & Environment, 2019)<sup>1</sup>. If Europe is to meet its climate targets, action is needed to be taken and tax policy has a key role to play. However, to date, all aviation fuel used in Europe has been tax exempt and cumbersome rules under the VAT Directive results in airline tickets are being exempt from this. These subsidies to the aviation sector create incentives for consumers to increasingly use the most carbon-intensive transport mode and less greener alternatives, and fail to incentivize the aviation sector to cut its emissions.

**I. Setting the scene**

*a) Increase in flights number in Europe*

'In 2016, the International Civil Aviation Organisation (ICAO) published an aviation demand growth forecast for the coming decades. The ICAO demand forecast considers 59 global route groups for which a forecast is made in terms of the growth in passenger km and cargo tone-km. The forecast for Intra EU flights (both domestic and international) shows an annual demand increase of 2.5% for passenger demand up to 2030. For EU departing flights with destinations outside the EU, the annual passenger demand growth varies between route group, with an average demand growth of 3.2% per year' (van Velzen, TAKS, 2018)<sup>2</sup>.

*b) Negative externalities of planes*

'Aviation is responsible for over 13% of EU transport CO<sub>2</sub> emissions and is expected to account for over 16% of the EU's liquid fossil fuel demand by 2030. EU aviation traffic is expected to grow at twice the rate of other, lower-carbon intensive transport modes between 2010 and 2030. Tax exemptions, subsidies to manufacturers, operators, airports and a failure to introduce effective climate measures have resulted in European aviation CO<sub>2</sub> emissions quadrupling as a share of EU-28 emissions - from 1,2% (1990) to 4,5% (2014). Aviation's climate growth is incompatible with the EU's 2030 targets, its decarbonisation objective and with the Paris agreement's 1,5° target. Any credible strategy for the EU must recognise this and put in place a set of effective measures' (Transport & Environment, 2017)<sup>3</sup>.

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<sup>1</sup> <https://www.transportenvironment.org/publications/taxing-aviation-fuel-europe>

<sup>2</sup> <https://www.transportenvironment.org/publications/un-aviation-climate-scheme-threatens-gaping-hole-eu-2030-targets>

<sup>3</sup> <https://www.transportenvironment.org/publications/decarbonisation-aviation-why-eu-and-icao-action-needed>

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'Non-CO2 effects of aviation have been acknowledged by scientists but ignored by policymakers. It is estimated that gases other than CO2 have at least as large a climate impact as CO2. The European Commission has so far failed to address aviation's non- CO2 effects despite undertaking to do so in 2008. This risks undermining the EU's climate policy. T&E recommends the Commission now acts on its 2008 promise and proposes a charge on NOx (nitrogen oxides) emissions and earmarks funds for research into other non- CO2 effects such as contrail and cirrus formation and their avoidance' (Transport & Environment, 2017)<sup>4</sup>.

## **II. International efforts trying to regulate the aviation sector**

### *a) The Chicago Convention on International Civil Aviation (1944)*

Historically, kerosene has been tax exempt in the aviation sector since the Chicago Convention on International Civil Aviation in 1944. Signed by a total of 52 States, the agreement and more specifically its article 15 has been the basis of objections from airline companies when Member States, individually tried to introduce a per-ticket tax (Faber & Huigen, 2018, CE Delft)<sup>5</sup>.

### *b) The ICAO Assembly, CORSIA and its lack of ambition (2016)*

As a result, since the aforementioned Convention, efforts of reaching an international agreement to use taxation as means of mitigation aviation emissions have been fruitless. However, in 2016, the ICAO Assembly agreed to implement a global market-based measure called Carbon Offset and Reduction Scheme for International Aviation (CORSIA). Resultantly, CORSIA aims to stabilize net emissions at 2020 levels referred to as carbon neutral growth 2020 (CNG2020) while also 'requires airlines to offset their emissions of international aviation above the baseline level and will start in 2021, from which year ICAO Member States can voluntarily participate' (van Velzen, TAKS, 2018)<sup>6</sup>.

Nevertheless, there have been multiple criticisms from Member States that CORSIA lacks ambition and does not incentivize airlines to pollute less as it has been described as a 'weak nudge for in-sector carbon reductions' (Pavlenko, ICCT, 2018).<sup>7</sup> It appears not to be enough to

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<sup>4</sup> <https://www.transportenvironment.org/publications/non-co2-impacts-aviation-must-be-tackled>

<sup>5</sup> <https://www.ce.nl/en/publications/2208/a-study-on-aviation-ticket-taxes>

<sup>6</sup> <https://www.transportenvironment.org/publications/un-aviation-climate-scheme-threatens-gaping-hole-eu-2030-targets>

<sup>7</sup> <https://www.theicct.org/blog/staff/corsia-carbon-offsets-and-alternative-fuel>

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solely rely on in order to reduce the aviation sector GHG emissions. More specifically, 'Transport & Environment has obtained letters from six EU countries informing the UN aviation agency ICAO that they may pull out of a global carbon offsetting scheme for aircraft emissions if its environmental safeguards are weakened any further. In separate letters, France, the Netherlands, Belgium, Austria, Finland, Norway and Portugal state that if sustainability rules governing the use of offsets and alternative fuels are watered down any more in negotiations, they will reconsider their participation. T&E has also seen documents that suggest six other EU countries have similarly told ICAO that they will pull out of the scheme, known as CORSIA' (Transport and Environment, 2018)<sup>8</sup>.

**III. The European strategy and the introduction of the aviation sector emissions in the EU Emissions Trading System (ETS) in 2012**

*a) Presentation of the EU ETS and the aviation sector*

'Since 2012, CO<sub>2</sub> emissions from aviation have been included in the EU emissions trading system (EU ETS). Under the EU ETS, all airlines operating in Europe, European and non-European alike, are required to monitor, report and verify their emissions, and to surrender allowances against those emissions. They receive tradable allowances covering a certain level of emissions from their flights per year.

The system has so far contributed to reducing the carbon footprint of the aviation sector by more than 17 million tons per year, with compliance covering over 99.5% of emissions. The legislation, adopted in 2008, was designed to apply to emissions from flights from, to and within the European Economic Area (EEA) – the 28 EU Member States, plus Iceland, Liechtenstein and Norway. The European Court of Justice has confirmed that this approach is compatible with international law.

The EU, however, decided to limit the scope of the EU ETS to flights within the EEA until 2016 to support the development of a global measure by the International Civil Aviation Organization (ICAO)' (European Commission, 2019)<sup>9</sup>.

*b) Critics of ETS as a means to reduce aviation sector emissions*

'This ETS system can be largely improved: over-allocation of often free allowances while the aviation sector presents no risk of carbon leakage justifying those generous quotas, unlike others

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<sup>8</sup> [https://www.transportenvironment.org/publications/european-countries-say-they-may-pull-out-weakened-aviation-co2-scheme?fbclid=IwAR3crp8-3QbuXH\\_TjoVx0CxxV0TmGFyDbwXRF4mAA4SutEhSVbbUL2s-sWo](https://www.transportenvironment.org/publications/european-countries-say-they-may-pull-out-weakened-aviation-co2-scheme?fbclid=IwAR3crp8-3QbuXH_TjoVx0CxxV0TmGFyDbwXRF4mAA4SutEhSVbbUL2s-sWo)

<sup>9</sup> [https://ec.europa.eu/clima/policies/transport/aviation\\_en](https://ec.europa.eu/clima/policies/transport/aviation_en)

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which must buy them to not exceed their objectives, causing too weak emissions reduction paths' (Fink, Réseau Action Climat – France, 2017)<sup>10</sup>.

Indeed, according to Transport and Environment, 'for so long as the ETS for fixed installations in Europe suffers from a gross over-allocation of permits, then the 'scarcity factor' due to a declining cap does not function by progressively raising permit prices. At present airlines have effectively unlimited access to cheap ETS credits, the cost of which hardly impacts on growth in any way. So aviation traffic and emissions keep growing uninhibited and will continue to do so until the permit surplus problem is resolved. That's why other measures such as kerosene taxes and VAT on airline tickets are urgently needed' (Transport & Environment, 2019)<sup>11</sup>.

In addition to benefit from a lack of aviation fuel taxes in all EU Member States, the plane tickets are maintained artificially low because of the EU's exemption of airline tickets from VAT while the EU allows airlines to deduct input VAT<sup>12</sup>.

Unlike elsewhere in the world, no European country has a kerosene tax. 'There are several places around the world (e.g. in the US, Brazil, India, Japan and Canada) which impose taxation on domestic but not international flights without any issues arising' (CE Delft, 2018)<sup>13</sup>

#### **IV. Aviation is heavily subsidised in Europe**

'Firstly, aviation receives a direct subsidy of €3 billion a year for operation and infrastructure developments. Secondly, aviation is exempted from the basic consumer tax, VAT, that is placed on almost every good and service across the EU (apart from a limited number of necessities) leading to a shortfall of at least €7 billion per year in EU member state budgets. Finally, aviation does not pay any fuel tax. On average, across the EU consumers pay 48c per litre of fuel tax every time they fill up their cars, but airlines pay no tax when they fill up their 747s [aircrafts], leading to a shortfall of €32 billion a year across the EU. The aviation agreements negotiated between states (ASAs) contain language which makes it difficult to introduce such taxation. In addition, regional airports and airlines receive billions every year in state aid subsidies' (Transport & Environment, 2019)<sup>14</sup>. These subsidies create artificial increased demand, uncontrolled growth

<sup>10</sup> <https://reseauactionclimat.org/publications/aides-transport-aerien-dommageables-climat-injustes/>

<sup>11</sup> <https://www.transportenvironment.org/what-we-do/aviation/aviation-ets>

<sup>12</sup> [http://ec.europa.eu/competition/consultations/2011\\_aviation\\_guidelines/t\\_and\\_e\\_annex\\_en.pdf](http://ec.europa.eu/competition/consultations/2011_aviation_guidelines/t_and_e_annex_en.pdf)

<sup>13</sup> <https://www.cedelft.eu/en/publications/2253/taxing-aviation-fuels-in-the-eu>

<sup>14</sup> <https://www.transportenvironment.org/what-we-do/aviation-and-eu-ets>

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in aviation emissions and distortions with greener alternatives such as rail transport for the most carbon-intensive transport mode.

In light with these observations, we call for the European Commission to propose a pan-European kerosene tax that will ultimately aim at increasing the ticket prices for domestic and intra-European flights. More specifically, we aim to make a contribution to the transition to greener means of transport. Thus, by making short-distance flights more unattractive through higher prices, people will be more encouraged to use trains.

**V. The scope of the European Kerosene Tax**

a) Why a pan-European tax is needed

A tax at the EEA (European Economic Area) level would avoid unfair competition from neighboring countries.

b) The shorter the flight the higher the tax

The kerosene tax should be regressive in order to incentivise even more customers to use alternative transport modes and to avoid planes, especially on short distances. The main aim of the tax is to decrease the use of airplanes for journeys where alternatives exist (trains, buses...). This is especially true for short continental plane journeys. The logical way to do this would be to have high taxes for short flights and decreasing taxes for longer flights. The tax would therefore longitudinally increase.

c) Exemptions

i) Extra-European flights.

CORSIA should apply to non-EEA flights as the agreement has already been agreed on at the international level (ICAO).

ii) Islands

Lower rates for flights connecting two EU islands and for flights connecting mainland Europe to non-reachable islands.

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**VI. The technical basis of the kerosene tax**

'Fuels used in commercial aviation are exempt from excise duties in the EU, in contrast to fuels used on road and rail transport. However, the Energy Taxation Directive permits EU Member States to impose a tax on aviation fuel used in domestic flights without limitation as well as on intra-EEA flights between Member States on the condition that the affected States have entered into a bilateral agreement to do so.

If Member States were to enter into a bilateral agreement to tax fuel on flights between them, such a measure could also affect aircraft operators registered in a non-EU Member State, as they sometimes operate on intra-EEA routes. In that case, it is possible that some of these airlines would be subject to separate bilateral air service agreements that prohibit both States from taxing fuels.

Such a situation could potentially distort the competitive market. (...) The legal analysis shows that it appears to be possible for EU Member States to tax aviation fuels on flights between them even when non-EU carriers are enjoying a mutual exemption from fuel tax operate on those routes. There are several ways to minimise the chances that a legal challenge by these carriers would be successful. The most promising option seems to be the introduction of a *de minimis* threshold.

'The Energy Taxation Directive permits EU Member States to impose a tax on aviation fuel used in domestic flights and via bilateral agreements, on intra-EU flights. Nothing in the Chicago Convention prevents the imposition of domestic or intra-EU fuel tax. All ECAA members have unlimited cabotage rights in all other EU Member States. This does not prohibit fuel taxation as the Energy Taxation Directive is included in the ECAA Agreement and clearly contemplates Member States imposing a tax on domestic and intra-EU aviation. Both the Netherlands and Norway have domestic aviation fuel taxes. The Excise Duty Directive requires a fuel tax to be imposed at the time of release for consumption, which would be as the aircraft fuels at the airport and this could result in the situation where airlines pay tax on fuel that is used in extra-EU flights. However, as long as a rebate system is established (potentially by using the data from the ETS) to refund any tax paid on fuel used internationally, this does not pose a problem. There is no reason why a fuel tax and the ETS cannot cover the same domestic and intra-EU flights. The Open Skies agreement only exempts fuel used in international, not domestic, flights from taxation.

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It can be argued that the Open Skies Agreement allows for each side to unilaterally impose fuel taxation as the exemption is only on the basis of reciprocity and can be withdrawn at any time. In addition, there are several ways that US airlines could be exempted from any intra-EU fuel taxation including a *de minimis* based on the amount of tax paid, the number of flights or the routes. In conclusion, a domestic fuel tax can be imposed without any legal concerns arising. As long as a *de minimis* is established for intra-EU fuel taxation to ensure foreign carriers are exempt, that too can be imposed, and no legal issues prevent it.' (Faber & O'Leary, 2018, CE Delft)<sup>15</sup>

### **VII. Rates of the Kerosene tax**

CE Delft suggests using the minimum rate possible established by the 2003 Energy Tax Directive (ETD). For the first time, the later included provision where Member States, on a bilateral basis could tax fuel on flights between the two MS concerned, at a minimum of 33 cents/liter (or €33/hectoliter).

'Energy Taxation Directive minimum rate is 0,33 EUR per liter. The potential revenues of an aviation fuel excise duty are about 6 billion euros for international intra-EEA flights and approximately 50% higher when domestic aviation is also included' (CE Delft, 2018)<sup>16</sup>

Transport & Environment proposes to 'rescind the explicit exemption for the taxation of aviation and marine fuels and require aviation jet fuels on domestic and intra EU routes to be subject at least to the EU minimum rate of fuel tax, which is currently 33 cents per liter' (Transport & Environment, 2018)<sup>17</sup>

To ensure a regressive kerosene tax, we propose:

Short flight (up to 600 Km): €0,45/liter

Medium flight (from 600 to 1500 Km): €0,38/liter

Long flights (from 1 500 Km): €0,33/liter

Depending on the results in terms of flights numbers and emissions, rates could be altered over the years in order to progressively increase the price of the tax.

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<sup>15</sup>[https://www.transportenvironment.org/sites/te/files/publications/2019\\_02\\_CE\\_Delft\\_Taxing\\_Aviation\\_Fuels\\_E\\_U.pdf](https://www.transportenvironment.org/sites/te/files/publications/2019_02_CE_Delft_Taxing_Aviation_Fuels_E_U.pdf)

<sup>16</sup>[https://www.transportenvironment.org/sites/te/files/publications/2019\\_02\\_CE\\_Delft\\_Taxing\\_Aviation\\_Fuels\\_E\\_U.pdf](https://www.transportenvironment.org/sites/te/files/publications/2019_02_CE_Delft_Taxing_Aviation_Fuels_E_U.pdf)

<sup>17</sup> <https://www.transportenvironment.org/publications/green-tax-shift-transport-can-help-fix-eu-budget>

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**VIII. Expected revenue from the Kerosene Tax**

‘Potential annual revenues in the largest 5 member states are €6.5bn alone at the minimum ETD rate of 33 cents/litre for their combined domestic and intra-EU flights while the total across the EU is estimated at €9.5bn. Ticket prices, especially for low cost carriers, have remained relatively low. Taxing kerosene at these rates would therefore not lead to a large increase in plane tickets’ prices. For example, low cost carriers like Ryanair, Easyjet, and Wizz account for over 50% of the intra-EU market with an average one-way ticket price of €80. If the cost is assumed to be passed on to the consumer, a €0,33 per liter kerosene tax on an average intra EU flight would add €14 to the average ticket price. If VAT at 15% was applied in isolation to air tickets and the cost fully passed through by carriers, then the €80 average one-way ticket price would increase by €12. Considering that average ticket prices have fallen dramatically from hundreds of euros over the past decade or so, and by 16% in the past 5 years alone<sup>13</sup>, these measures are manageable and politically defensible as a means to fund budgets and cover aviation’s unmet external costs (e.g. climate change, noise and air pollution). The EU championed the liberalisation of the EU aviation market in the mid 90’s, abolishing all restrictions on fares and routes. Traffic, especially on low cost carriers, expanded dramatically, helped along by generous and lax enforcement of rules on airport and airline state aid - all funded by the member states’ taxpayers (Transport & Environment, 2018).<sup>18</sup>

**IX. Decision-making procedure**

Article 113 TFEU ‘The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.’

Therefore, unanimity in the Council is required while the Parliament and the Economic and Social Committee are consulted, hence the importance that all Member States’ government agree with the proposal.

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<sup>18</sup> <https://www.transportenvironment.org/publications/green-tax-shift-transport-can-help-fix-eu-budget>

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**X. Investments possible by deleting tax exemptions**

Taxation of aviation would have two effects: it would accelerate the transition to a cleaner European mobility and also help to bridge European cities and regions even better with improved railway and bus networks. We thus call for a part of the tax revenues to finance research, development and innovation in aircraft engines, development of new greener fuels and in researching the impacts of non-CO2 emissions from cruise NOx emissions and ways mitigate them.

The ultimate goal in our effort to tax kerosene is to make especially short flights unattractive to consumers but to make trains more attractive through considerable improvement and creations of the national and transnational railway across the European Union. Therefore, we call for a substantial part of the tax to be used to finance the development of more railways, especially those transnational.<sup>19</sup> This is also critical to the EU strategy for improving economic and social cohesion and connectivity within and between Member States.

**XI. Impacts**

*a) Price of train tickets*

The prices of train tickets are expected to decrease as a consequence of more subsidies to the rail transport. Depending on the funding for the creation of new transnational railways and for the maintenance of existing transnational routes, prices for customers may go down.

*b) Behavioral and technical expectations*

Taxing carbon-intensive transport would encourage smarter mobility behavior and accelerate the uptake of cleaner technologies.

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<sup>19</sup>[https://ec.europa.eu/regional\\_policy/en/atlas/programmes?search=1&keywords=&periodId=3&countryCode=ALL&regionId=ALL&objectiveId=13&tObjectiveId=ALL](https://ec.europa.eu/regional_policy/en/atlas/programmes?search=1&keywords=&periodId=3&countryCode=ALL&regionId=ALL&objectiveId=13&tObjectiveId=ALL)