

# HFW Aero



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## Legal news round-up

Significant global developments

## In conversation with...

Henning zur Hausen, General Counsel and Company Secretary at Etihad Aviation Group

## Cutting out carbon

Is sustainable aviation fuel the future of commercial aviation?

# HFW



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## Introduction



Welcome to the first edition of **HFW Aero**. Each quarter, we will bring you cutting-edge comment and insight from some of the industry's leading figures, and share our thoughts on the key legal, regulatory and commercial issues that should be on your radar.

In this issue, we are delighted to feature a fascinating interview with Henning zur Hausen, General Counsel of Etihad. The Covid-19 outbreak has caused profound disruption to global aviation, and Henning's call for a united industry and regulatory response goes to the heart of the challenge faced by airlines struggling to navigate an ever-changing patchwork of rules and legislation as they try to get their aircraft back in the sky.

Our industry may be grappling with survival, but sustainability rightly remains front and centre. Speaking at last month's Global Sustainable Aviation Forum, IATA CEO Alexandre de Juniac said that investments in carbon offsetting, sustainable fuels and radical green technologies remain the keys to combatting climate change.

On page 10, we take a deep dive into one of these potential solutions: sustainable aviation fuel, or SAF. You may be surprised to learn that commercial flights can already be fuelled by used cooking oil, or that oil-rich Norway is leading the way with a bold compulsory SAF uptake quota. We look at how SAF is made, how it is regulated, and how we might get to the point where it is able to compete on price with fossil fuels.

You'll also find a roundup of legal news, including a look at how certain insolvency regimes have responded to issues created by the pandemic.

We hope you enjoy reading our new magazine. As always, if you'd like to discuss any of the issues in more detail, please don't hesitate to get in touch. We're here to help.

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# Legal news round-up

## Insolvency

When the English High Court approved its £12 billion restructuring plan, Virgin Atlantic became the first company to take advantage of a novel restructuring process introduced by the UK's new Corporate Insolvency and Governance Act 2020 (CIGA). One significant feature of the new procedure is the potential for a "cross-class cram down" (familiar to some from US Chapter 11 bankruptcies), which enables a company to bind certain classes of creditors to a plan, even where they have voted against it. In the end, all relevant classes of creditors did vote in favour of the plan, so there was no need to invoke the cross-class cram down. However, Virgin's test case has provided other beleaguered corporates, in the aviation industry and beyond, with a useful insight into how the English High Court will approach future restructuring schemes under this new regime.

The administration of sister airline Virgin Australia has also prompted court proceedings of potential wider

significance, this time in relation to the nature of an insolvency administrator's obligation to "give possession" under Article XI(2) of the Cape Town Protocol. Australia is the first signatory to consider this point. The decision may well be followed in other ratifying states in accordance with the principles of consistent interpretation of international treaties.

In brief, a dispute arose between an engine lessor and the administrator as to whether the administrator could simply make the leased engines available for the lessor to collect from Australia, or whether they had to be transported to Florida at the administrator's cost, as per the redelivery obligations set out in the lease. The first instance judge held that the administrator did indeed have to pay to return the engines to Florida. However, the administrator successfully overturned the decision on expedited appeal to the Full Federal Court.

The Full Court's decision is lengthy and considers many matters specific to

Australian insolvency law. In essence, it held that, although the administrator was required to take some "affirmative steps" which go beyond simply disclaiming the property, it did not have to comply with the terms of the lease in effecting a full redelivery. The extent of the "affirmative steps" was remitted to the first instance court to decide upon review of the facts. We understand that the decision may be appealed again to the High Court.

New rules to assist firms in financial difficulties have been **enacted in France** as a result of the pandemic. Two new Ordinances make significant changes to the conciliation procedure, which is a unilateral and voluntary procedure allowing a debtor to seek, with the help of a court-appointed conciliator, an agreement with its main creditors in order to put an end to its difficulties. Firstly, the duration was extended from the previous maximum of 5 to up to 10 months for all conciliations in progress on 27 March 2020 or opened up to and including 23 August 2020.

## "New rules to assist firms in financial difficulties have been enacted in France as a result of the pandemic."

Secondly, if the conciliator asks a creditor to suspend its claim during the conciliation process, but the creditor refuses to agree to do so, judges now have reinforced powers to defer the payments due and to order the stay of all proceedings during the conciliation process. They can also grant grace periods of up to two years. Unlike in French insolvency proceedings, measures ordered as part of the conciliation process are not general ones relating to all creditors; they only concern the principal creditors against whom the measures have been ordered.

The French measures are similar to other provisions of CIGA in the UK, which contains temporary measures designed to address acute hardship caused by the pandemic, such as flexibility to hold virtual AGMs and a restriction on creditors filing winding up petitions in circumstances where the debtor's indebtedness has been caused by issues related to Covid-19. It also introduces a new moratorium which prevents creditors from commencing or continuing legal actions, pursuing payment or taking enforcement action while the company in distress explores its rescue and restructuring options and prohibits termination clauses in a contract for the supply of goods or services that would otherwise be applicable to a company entering a relevant insolvency process.

There are a number of exceptions to the application of CIGA, but it may apply to operating leases not registered under the Cape Town Convention. Operating leases typically include termination rights triggered when the airline enters into a formal insolvency process or automatic termination once the airline is declared insolvent. If CIGA applies, these provisions will no longer have effect. The lessor will only be able to terminate the

lease with the consent of the company or the administrator, after the new moratorium period comes to an end, or with the leave of the court if it can show that the continuation of the contract would cause it significant hardship.

## 737 Max

Lessors, financiers and airlines alike will be following developments in relation to the US FAA's **Notice of Proposed Rulemaking (NPRM)** for an Airworthiness Directive (AD) affecting the Boeing 737 MAX. This NPRM proposes mandating a number of design changes to address an identified unsafe condition of the aircraft. If such changes are agreed to, the 737 MAX would be a different aircraft from a structural perspective, with a knock-on effect on the relevant purchase agreements because the aircraft purchased by airlines and lessors would be different from the aircraft that will return to service.

## Brexit

As we move into the final quarter of the year, Brexit looms large on the horizon in the UK and Europe. When the ninth round of exit negotiations between the EU and the UK closed on 2 October the EU's chief negotiator Michel Barnier reported "positive new developments" on aviation safety. At present, the industry remains largely in the dark as to the likely shape of the future regulatory environment. There is no doubt that the UK will leave the EASA system on 1 January 2021, and all existing European aviation laws will become law in the UK. However, mutual recognition of safety certificates and licences between the UK and European systems will cease unless a deal is struck. This means, for example, that in a no-deal scenario the EU may no longer recognise the

## Support for the aviation industry

IATA warned on 6 October that, unless government support plans are enhanced and extended, the consequences will be "dire" for an industry already burning through cash at a rate of US\$300,000 per minute. Covid-19 has moved the focus away from delay and cancellation compensation under EU 261 towards the obligation to refund the price of a cancelled flight within 7 days, which has proved unworkable for airlines in severe cashflow difficulties. Some European enforcement bodies have been more accommodating than others and allowed vouchers to be issued, but the EU has thus far resisted all calls to amend the obligation. Governments in the EU have, however, benefitted from the European Commission's State Aid Temporary Framework, which aims to remedy the liquidity shortages faced by airports/airlines by allowing measures such as direct grants, tax advantages, State guarantees for loans, subsidised public loans and certain recapitalisation measures. State aid under the Temporary Framework can be granted until 30 June 2021, with a further extension for recapitalisation measures only until 30 September 2021.

Governments further afield have taken positive steps to protect the industry such as **Brazil's new civil aviation emergency plan**, which gives airlines up to 12 months to reimburse passengers.

validity of UK-approved components already on EU aircraft, and existing holders of EASA design approvals will not be recognised by EASA states. Engineers will no longer be able to work on EU-registered aircraft without transferring their licences to another EU state, while UK-issued cabin crew attestations will no longer be valid on EU-registered aircraft. **This UK CAA briefing** summarises the key points, with a strong emphasis on contingency planning for a no-deal scenario.

Brexit is unlikely to make any material difference to the extent of consumer protection for passengers flying in and out of the UK - the substance of Regulation EC 261/2004 on cancellations and delays (EU261) looks set to be transposed wholesale into UK law as of January 2021 and the UK Government has said that it has no appetite to change it.

In the wider commercial context, **this HFW briefing** sets out a number of “action items” as the Brexit transition period draws to a close, covering commercial agreements, data protection, imports and exports and employment issues.

## Dispute resolution

For those involved in inter-EU disputes, the Recast Brussels Regulation will cease to apply from the end of the Brexit transition period, which could make it more difficult to serve English court proceedings on parties in the EU, establish jurisdiction in English courts, or enforce judgments of English Courts in the EU (although the provisions of the Regulation will continue to apply to disputes started before the end of the transition period).

The UK has applied to join the Lugano Convention in its own right. The Lugano Convention is similar to Recast Brussels and the UK's membership of it would resolve many of the challenges that may arise as a result of the end of the UK's membership of Recast Brussels. However, accession could be blocked by the EU as the unanimous approval of all of the current members, including the EU, is required. The EU's position on the UK's membership remains unclear.

Acceding to the Hague Convention on Choice of Courts will be more straightforward and will assist to some extent if the Lugano route is blocked or delayed. However, the Hague Convention is narrower in scope because it excludes certain specific types of contracts and only applies where there is an underlying exclusive jurisdiction clause.

On a more positive note, Brexit should not alter the ability of parties to choose English law to govern their contracts. Neither will it affect the New York Convention 1958, which governs arbitration and the enforcement of arbitral awards.

In a welcome development for dispute resolution globally, the **Singapore Mediation Convention** came into force on 12 September 2020, just over a year after it opened for signature in August 2019. It creates an international regime for the enforcement of mediated settlements broadly akin to the 1958 New York Convention for the enforcement of arbitral awards and should make commercial parties from signatory states more comfortable with considering mediation as a form of dispute resolution. Notable signatories to date include China, the United States, India, Nigeria, Turkey, Singapore and Malaysia. The take-up in APAC states has been high but, so far, no EU Member States have signed up.

## UK Supreme Court appeals

Two cases of significant interest to the aviation industry have reached the UK Supreme Court. In October it heard the **appeal** against the ruling obtained by Friends of the Earth in February that the UK Government's support for the proposed third runway at London Heathrow was unlawful as it failed to take into account the Paris Agreement on Climate Change. In opening argument, counsel for LHR was at pains to state that the plans for the development are still very much alive and will go ahead if the appeal is successful. **Bott & Co v Ryanair**, which may reinvigorate the activities of claims agencies, was listed for late October but temporarily adjourned due to a positive Covid-19 test. Consumer rights and environmental issues are global issues

and both decisions have the potential to influence behaviours beyond the UK. We will report further in our next issue.

## CJEU

The Court of Justice of the European Union (CJEU) has recently **clarified some aspects of the procedure for dawn raids**. Dismissing an appeal by an Italian company fined for participation in a power cable cartel, the court confirmed that the Commission can make copy-images of the hard drives of a firm's computers without examining them first to determine their relevance to inspection. The Commission is then entitled to continue its examination at its premises in Brussels where this is justified in the interests of the effectiveness of the inspection.

Finally, we have observed a growing and concerning trend for domestic courts to refer questions of interpretation of the Montreal Convention (MC99) to the CJEU. MC99 is not itself a piece of European legislation, but the CJEU asserts jurisdiction on the grounds that it is “an integral part of the European Union legal order” because the EU signed the treaty on behalf of all the Member States and implemented it by way of a Regulation which has direct effect of law.

This summer saw the case of **SL v Vueling** which related to liability limits in baggage claims, while late in 2019 **GN v ZU** (the “Niki” case) looked at whether a coffee spill was an “accident” triggering airline liability. The issue in the Vueling case was arguably already well settled aviation law, while the question asked in the Niki case – must there be present a “hazard typically associated with aviation” in order for liability to attach? – has been the subject of decades of debate in common-law judgments around the world. CJEU judgments are notable for their brevity, often betray a pro-consumer perspective and make no reference to the huge body of worldwide case law which precedes them. In our view, there is a danger that the over-reliance of some Member State courts on the CJEU where MC99 is concerned will result in the nuance of the existing international case law being lost or distorted.

In conversation with...

# Henning zur Hausen

General Counsel and Company Secretary  
at Etihad Aviation Group

**“Our industry has seen many crises, but this one is undoubtedly the gravest. The disruption has been unprecedented.”**



**The Covid-19 pandemic has impacted every industry globally, but the challenges for aviation have been immense.** Our industry has seen many crises, but this one is undoubtedly the gravest. The disruption has been unprecedented.

Etihad's transformation programme over the last three years has positioned us comparatively well, and we have focused on reducing the impact of the crisis to the extent possible. That meant responding quickly as the market changed; being agile in managing our operation through the pandemic, and being prepared for when air travel reopened.

**Having grounded much of our fleet at the start of the crisis, we took advantage of the aircraft downtime to embark on the biggest aircraft maintenance programme in our history.** This ensured that the airline is in its best shape for when it returns to flying.

Many of our passenger aircraft, including the majority of our 787s, were redeployed as belly-hold cargo freighters to complement Etihad Cargo's operational fleet of 777-200F freighters. This was in response to the increased demand for airfreight and also to help ensure the flow of essential supplies into, out of, and via the UAE. On the foundation of this ‘mini-freighter’ operation, we are now successively rebuilding our network to support passenger travel where government restrictions allow and travel demand returns.

**Like the rest of the business, the legal team have also faced significant challenges.** The dramatic drop in our revenues has forced us to renegotiate terms and restructure literally hundreds of agreements across the supply chain. With a significant portion of our fleet grounded, we have also had to support our business colleagues in ensuring compliance with key obligations and negotiations with lessors and financiers.

Covid-19 has led to a deluge of refund claims for all airlines following flight cancellations. This posed a major challenge that needed to be managed in an appropriate manner, and that could sometimes not be fulfilled within the timeframes guests would have expected. This attracted the attention of several national consumer protection authorities, who prepared to initiate proceedings that had to be addressed with the support of the legal team.

We are also supporting the close monitoring of the ‘use or lose’ rule suspensions under various airport slot regulations while our operations remain reduced or suspended – very important to avoid any risk of losing precious slots.

Last, but not least, we are assisting our colleagues in the commercial and operations divisions in navigating the asymmetrical and constantly-changing health and immigration requirements worldwide. This remains a key challenge, not least because we need to keep our guests properly informed.



## Profile

**Henning zur Hausen** is the General Counsel and Company Secretary at Etihad Aviation Group, and has worked in the aviation industry for over 20 years. Etihad is leveraging the power of technology to redefine travel experiences in a post-Covid-19 world, with a key focus on wellness. This includes new self-service check-in and health screening at Abu Dhabi Airport; a partnership with Canadian travel risk management company Sitata to create an interactive travel map for passengers, which uses advanced algorithms to detect and update new travel information globally in real-time; and a partnership with Austrian-based healthcare technology company Medicus AI to create a Covid-19 risk assessment tool that helps passengers make informed decisions about travelling.

[www.etihad.com](http://www.etihad.com)

### **There needs to be a united industry and regulatory response to Covid-19.**

While we have seen constructive proposals from ICAO and IATA, thus far there has been no meaningful inter-governmental response to travel restrictions and border requirements, which continues to pose unprecedented operational and commercial challenges.

Our view is that the introduction of international standards on testing passengers for Covid-19 and issuing health visas would give additional reassurance to passengers and health authorities alike, helping the airline industry recover from this crisis. Etihad has already engaged with governments in key aviation markets on the possibility of some form of health certification for travellers, and the technology is advancing quickly to make it a reality.

### **This pandemic will come to an end and aviation will eventually return to growth – that’s a fact.**

The unknown variable is when. With a successive re-opening of borders and travel lanes, supply and demand will surely take some time to reach some kind of equilibrium. Nonetheless, it is only a matter of time until demand picks up again, and we will work our way through this.

The industry needs to consider the likelihood that this global pandemic will change the way guests travel for the long term – both at the airport and in the sky. Remember, there was a time when cockpit doors were left open for guests to greet the pilots; passengers’ suitcases weren’t screened; and liquids, aerosols and gels over 100ml were allowed. However, events during the last three decades led to revised global safety and security rules and regulations, which are now the norm. It could well be the case that the measures we’re currently applying, such as mandatory health screenings prior to travel, personal protective equipment for crew and amended in-flight service standards and procedures will, in some shape or form, become a permanent feature of air travel.

It is quite clear that Covid-19 is raising health concerns for all travellers. Aside from the wider macro impact that will only become visible over time, the most obvious change we are going to see is a greater focus on wellness, as passengers come to expect certain assurances of how their health and wellness are being protected when travelling.

**Environmental sustainability also remains on the map for the aviation industry – and rightly so.** To be direct, we need to fly, but we have to do it responsibly. Airlines and wider industry organisations that adapt to meet ambitious sustainability goals will be the future leaders of aviation.

At Etihad, our approach to sustainability is a practical one, focused on achieving real world and measurable, incremental improvements that benefit not just ourselves, but the industry and global communities alike. In January 2020, Etihad announced our commitment of halving our emissions by 2035, and having zero net carbon emissions by 2050. And by the end of 2022, we will have reduced the amount of single-use plastic items used throughout our business by 80%.

The development of sustainable aviation fuels and their practical application in a way that is commercially viable is also a priority – we are part of the Abu Dhabi Sustainably Bioenergy Research Consortium, which farms saltwater-tolerant plants to produce biofuel. In 2019, Etihad operated the first commercial flight using sustainable aviation fuel refined in Abu Dhabi on a Boeing 787 Dreamliner from Abu Dhabi to Amsterdam, and we recently used 50,000 gallons of a 50/50 blend of sustainable aviation fuel on the final flight of our ecoDemonstrator 787-10 flight tests. This is a major step forward for the sector to prove the viability of producing a 50/50 blend of sustainable aviation fuel at a high volume – an important moment for the industry.

**“To be direct, we need to fly, but we have to do it responsibly. Airlines and wider industry organisations that adapt to meet ambitious sustainability goals will be the future leaders of aviation.”**



# Cutting out carbon

Is sustainable aviation fuel the future of commercial aviation?

The aviation industry may be grappling with survival but it has not lost sight of its sustainability objectives.

Speaking at last month's Global Sustainable Aviation Forum, CEO of IATA Alexandre de Juniac said:

*"COVID-19 has devastated the aviation industry. But we are working hard to re-connect the world safely and sustainably. We're committed to pushing ourselves, our partners, and governments to achieve our carbon targets in a green recovery...the keys to combatting climate change remain investments in carbon offsetting, sustainable fuels, and radical green technologies."*

With the recent activist-driven explosion in awareness of environmental issues, any campaign to restore public confidence in flying must have at its heart a clear and measurable commitment to sustainability. The aviation industry's goal is to halve CO<sub>2</sub> emissions from 2005 levels by 2050. The road and rail sectors are successfully transitioning to electric propulsion but weight constraints mean that battery-powered commercial flight is still decades away. Is sustainable aviation fuel a realistic way to achieve this?

## What is SAF?

Sustainable Aviation Fuel (SAF) is made by blending the fossil-fuel derived kerosene (Jet A1) conventionally used in aircraft with up to 50% renewable hydrocarbon, produced either from biomass (plant or animal material) or from alternative feedstocks, including used cooking oil, municipal waste and agricultural residues. Once blended, SAF meets the same specifications as fossil jet fuel.

The term "biofuels" refers to fuel produced from biomass. Conventional so-called "first generation" biofuels

produced from food crops such as maize or sugar cane are controversial from a sustainability perspective. Biofuels produced from crops grown on existing agricultural land divert that land away from food production, which may lead to land use change, where crops for food are grown on non-cropland, possibly including areas with high carbon stock such as forest or wetlands. This process of indirect land use change may cause the release of CO<sub>2</sub> stored in trees and soil, which risks negating the greenhouse gas (GHG) emissions savings that result from increasing use of biofuels. This has led to incentivisation of advanced or "second generation" non-food biofuels produced from waste or residues. That said, not all cultivated biofuel feedstocks displace food production and innovations such as the fuel crops grown on arid land irrigated by seawater described by Henning Zur Hausen of Etihad on page 8, are part of a new breed of sustainable biofuels.

SAF feedstocks include electro-fuels, which are advanced fuels produced with hydrogen obtained from the electrolysis of water and biofuels from recycled waste (both biological, such as food and garden waste, and non-biological, such as plastics). **Velocys**, in a joint venture with British Airways and Shell, are developing a commercial plant in Lincolnshire, U.K. (the first of its kind in Europe) which will make SAF from household and commercial waste that would otherwise go to landfill. They heat the waste to a high temperature to break it down and turn it into a gas which is then synthesised into hydrocarbons, resulting in fuel that is chemically identical to fossil fuel-derived kerosene.

SAF has been shown to provide up to an 80% reduction in overall CO<sub>2</sub> lifecycle emissions compared to fossil fuels. CO<sub>2</sub> absorbed by plants during biomass growth is roughly equivalent to the CO<sub>2</sub> produced when the SAF is burned, which would suggest SAF from biomass is carbon neutral. However, account has to be taken of GHG emissions during SAF production, including transportation of feedstock and the refining process.

270,000 flights using SAF have been operated to date and numerous airlines have invested in the production of SAF. Chicago-based **Lanza Tech** recycles carbon from industrial off-gases, and predicts a future in which emissions from a steel mill making aircraft parts could be used to make aviation fuel. **BP Biojet** is made from used cooking oil and is already in commercial use – it can be delivered via an airport's existing fuel hydrant mechanism.

The "drop in" aspect of SAF is key – much research and development is of course under way with the aim of making aircraft more fuel *efficient*, but most airframes and engines can already operate safely using up to 50% SAF blended with conventional Jet A-1. Airbus has been offering customers SAF-powered delivery flights since 2016. In other words, the existing technical infrastructure of the aviation industry is not a barrier to the adoption of SAF. However, the potential of SAF is largely untapped. According to the European Commission in the introduction to its **ReFuelEU consultation** SAF currently represents only 0.05% of total jet fuel consumption in Europe.

The main barriers are, of course, financial. The production cost of SAF is currently at least twice as high as that of conventional jet fuel and higher than that of sustainable alternative fuels used in other transport modes. Oil prices are at an historic low and the industry, with wafer-thin margins at the best of times, is more strapped for cash than ever before. SAF, costing three to four times as much as conventional Jet A-1 is not currently an economically attractive substitute.

A long-term, stable policy framework with sufficient incentives is needed to inspire confidence and encourage major investment in SAF production.

### Blending mandates

In response to the ReFuelEU consultation, Rolls-Royce called for a “rapid scale-up in production of SAF”, incentivised by measures designed to create confidence in a future market for large volumes of the fuel. They support the introduction of “mandated blends” at the EU level. This entails imposing a minimum share of SAF, which would gradually increase over time, to be supplied to and/or used by airlines, creating a stable policy framework over a sufficient time horizon to provide investors with the necessary confidence to invest in the production of SAF. The Chief Executive of London Heathrow recently described mandates as an important “demand signal” in the fuel markets. However, IAG (echoed by Boeing) warned in their response that an EU mandate could distort competition globally, as EU carriers would be in direct competition with carriers that faced lower fuel costs in intercontinental markets, particularly those able to bypass refuelling in the EU by operating via Middle East hubs. IATA urged caution and sensitivity to potential market distortion in the development of any mandate policy, while Ryanair strongly stressed that only a global mandate would be a solution. They also, predictably, suggested that SAF quotas should be lower for airlines which operated inefficient long-haul routes with first-class seating.

The mandate approach has already been attempted on a national level by Norway, which, since January of this year now requires all suppliers there to blend 0.5% of SAF in all their aviation fuel; the ultimate target is 30% by 2030. SAS were reported as expecting an additional €3 million in annual fuel costs. Sweden and Finland are considering similar schemes.

### Regulatory framework

There is currently no international policy framework for the use of SAF. This will not come from ICAO, which has committed to supporting the industry and its member states to develop and deploy SAF, but has been clear that it has no plans to impose specific obligations on individual states. The use of SAF is of course rewarded through the global **CORSIA carbon-offsetting scheme** if it qualifies as a CORSIA Eligible Fuel. However, the CORSIA eligibility criteria are disappointingly low, at only 10% net GHG emissions reduction as against fossil fuel, compared to the 80% achievable.

IATA has recommended a number of government policy objectives, such as loan guarantees and capital grants for production facilities, including support for brokering aviation off-take agreements, fiscal incentives for early stage plant development and allowing SAF to compete on an equal basis with sustainable fuels used for land transport through equivalent or improved public incentives.

In Europe, the place of SAF in the framework of the revised Renewable Energy Directive (RED II) is the subject of much debate. The original RED, introduced in 2009, required the EU to fulfil at least 20% of its total energy needs with renewable energy by 2020. Under RED II, which came into force in December 2018, the EU overall target for consumption of energy from renewable sources has been increased to 32% by 2030.

There is a sub-target of 14% for renewable fuels used in road and rail transport. Renewable fuels used in the aviation and maritime sectors are not

subject to any obligation, but Member States can opt for them to contribute to the target.

### Multipliers

The EU regime incentivises the use of certain biofuels through the use of multipliers. So, for example, RED II Annex IX Part A lists advanced biofuels, including biomass from municipal waste and certain algae, which are eligible for double counting. This means they count twice towards the target or sub-target to be achieved. It is up to individual Member States to apply multipliers if they wish and several do so for advanced biofuels, as does the UK.

RED II includes a separate multiplier of 1.2 for non-food renewable fuels supplied to the aviation and maritime sector.

However, IATA is of the view that the aviation multiplier does not go far enough, and that a major opportunity has been lost to create a regulatory framework to encourage the production of SAF. IATA has criticised the fact that there is no difference between the multiplier for SAF and maritime sustainable fuels, despite the fact that maritime sustainable fuels are much easier to produce. It is therefore not expected that there will be any significant incentive to produce SAF.

As a result, there is a continuing debate as to whether aviation should have its own separate mandate and/or a higher multiplier. One concern is that increasing the aviation multiplier for renewable fuels would simply re-direct renewable fuels to the aviation sector, away from the road sector, at a higher policy cost, and without any net climate benefit.

The ongoing ReFuelEU consultation is seeking stakeholder feedback. It is currently unclear whether Member States will implement RED II in such a way as to enable a real uptake of SAF in aviation. It may well be that changes will be required to RED II in the near future to provide the necessary market signals needed to entice large scale investment into SAF.



### The future of SAF

SAF is only one part of a raft of measures that must be employed in order to decarbonise aviation, the others being better operational and technological efficiency and schemes such as EU ETS and CORSIA. Some observers believe that incentivising the production and use of SAF is a blind alley and that efforts should be

turned towards developing hydrogen fuel instead. However, this is currently a minority view, as it would require large changes in costs, aircraft, infrastructure, management, safety and regulation. By contrast, the ease and safety with which SAF can be incorporated into current aviation industry practice is clear and, with the right policy support,

producers may have a chance of competing on price with fossil fuels. What is more, SAF could help win back reluctant fliers post-pandemic: the conscience of a climate change-aware passenger might well be eased by the knowledge that their flight is fuelled by the rubbish from their own kitchen bin.



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## Life beyond the pandemic

The challenge of adapting or becoming irrelevant

As the world entered the start of 2020, few could have imagined, let alone foreseen, the way in which the year would unfold. From the early stages of infection, the speed at which the coronavirus pandemic erupted across the globe resulted in unprecedented disruption to the global business landscape. The resulting challenges for the aviation sector have been well-documented. All organisations have had to change at pace and with agility, as many of their previous ways of working were not fit for purpose. They were confronted with the very real challenge of adapting or becoming irrelevant, or worse still disappearing completely.

Over the past few months, we have had the opportunity to meet with a number of prominent General Counsels and members of the executive teams of both regional and multi-national corporations from across Asia, the Middle-East and Europe, spanning a wide variety of industries, including aviation. These discussions have provided first-hand insights into the ways in which organisations are dealing with, managing through, and starting to emerge from, the pandemic. They are captured in our paper, **Life Beyond the Pandemic, a Business Perspective**.

What became clear from these conversations was a genuine (and in some ways) unexpected level of positivity about the future. This sentiment was largely shared across industry and geography, and whilst it did differ slightly at organisational level, some common themes emerged around diversification, agile working and the acceleration of digital transformation.

One observation was that there is a slow trickle of talent moving away from the more risk-facing start-up environment to roles within more established organisations. Whether this is a long-term change or one which we simply see as a direct impact of the pandemic is too early to tell. Either way, organisations have the opportunity to embrace these alternative thinkers and encourage them to develop innovation internally.

The business world is at a critical decision point. What the next normal will look like, and whether business will indeed take the opportunity to change direction or revert to the previous norm, remains unclear. However there is a sense that the business world is gearing up to emerge ready and capable to deal with the opportunities of life beyond the pandemic.

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