**Annex 1** Assessing the Hardness of CORSIA (the currently valid Assembly Resolution (A40-19[[1]](#footnote-2))) in Governing SAF

|  |  |  |  |
| --- | --- | --- | --- |
| **Aspect of Softness/Hardness** | **Summary of Analysis** | **Score\***  **(L, M,**  **H )** | **Combining Sub-dimensions** |
| *Formal status* – Formal source of law or not? | CORSIA is established as a series of Assembly Resolutions of ICAO, a UN specialized agency. The resolutions constitute an international agreement and as such a binding legal instrument between the Member States that have ratified them. | H | H |
| *Obligation* – Authority | The Assembly Resolutions as decisions of ICAO as an UN special agency enjoy high authority amongst the UN Member States. | H | M |
| *Obligation* – Mandating language | The language of A40-19 varies considerably. It is mandating on setting the second, obligatory phase from 2027 (para. 9(e)), in re-affirming 39th Session decisions on the scope (para. 10) and calculation of the amounts (para. 11) of offsetting. Yet, its language is also mandating in *delimiting* the law e.g. as regards certain exemptions (e.g., paras. 13-14) and on the safeguard clause (para. 16).  The language for developing CORSIA is however soft in only ‘requesting – as appropriate’ the Council to update the SAF sustainability requirements (and other issues) in Annex 16, Vol. IV ‘as appropriate’ (para. 19(b)). Also, Member States ‘are requested’ to ‘take the necessary action to ensure’ that national policies and frameworks are established for Annex 16, Vol. IV (para. 19(f)). The requirement on offering training is harder, ‘decision to take all necessary actions’ (para. 21). | L |
| *Precision* – Accuracy (*ratione materiae*) | The accuracy varies in A40-19 and the Annex 16, Vol. IV. They mostly are hard as they describe the technical aspects of climate offsets of aviation and the CORSIA eligible fuels (sustainable aviation fuels and low carbon advanced fuels (LCAFs)) with high accuracy. The important clauses (para. 10) and more political commitments on future actions to implement CORSIA (para. 19) are also moderately accurate. CORSIA is soft on, e.g., monitoring implementation (para. 7) and special circumstances (para. 8). The provisions on implementation are supplemented by the accurate provisions of Annex 16[[2]](#footnote-3). | H | H |
| *Precision* – Specificity (*ratione personae*) | The specificity of the paragraphs is in some untargeted acknowledgments (paras. 4, 5, 8, 9g) low, but mostly relatively high, in particular on the important para. 9 on the 3 phases of CORSIA and para. 19(f) on implementation targeting the Member States; para. 15 on (reporting during) compliance periods targeting airplane operators, and para. 19 on updating the requirements targeting the Council. | H |
| *Means of implementation* – Scope | The ICAO Council is the subject of a delegation of a range of implementing tasks from ensuring further progress on sustainable aviation fuels (para. 6), conductinga review of the implementation of CORSIA (paras. 9, 17) and updating Annex 16, Vol IV, as appropriate (para. 19). There is also a mandate, e.g., to ‘monitor the implementation of all elements’, and to ‘consider the necessary policies’ (para. 7). There is a delegation of authority to the ICAO Council, but a direct mechanism of enforcement is missing, as the Member States retain parts of the authority. | M | M**–**H |
| *Means of implementation* – Institution | The ICAO Council, a 35-member body to discharge the duties of ICAO as instructed by the Assembly, is the main institution to which the implementation of CORSIA is delegated. Elected by the CORSIA Assembly, it has authority amongst the ICAO Member Countries. | H |
| **Overall hardness** | Overall, the hardness of CORSIA is between medium and high. CORSIA is an instrument of formal international law and sets precise rules. The obligation is at medium level and implementation at medium-to-high level. | **M–H** | |
| **Ambition** | The ambition of CORSIA is only very low. LCAFs require a 10% reduction in GHG emissions compared to fossil fuels. Other environmental impacts considered through a reference to ICAO’s environmental objectives, which contain some targets related, e.g. clean air and biodiversity. | **L** | |

\* **Scale**: Low (L), Medium (M), High (H)

**Annex 2** Assessing the Hardness of the EU**–**Mercosur PTA TSD Chapter[[3]](#footnote-4) in Governing SAF

|  |  |  |  |
| --- | --- | --- | --- |
| **Aspect of Softness/Hardness** | **Summary of Analysis** | **Score\***  **(L, M,**  **H)** | **Combining**  **Sub-dimensions** |
| *Formal status* – Formal source of law or not? | The EU-Mercosur TA as an international agreement between nation states or groups thereof is a formal source of law. | H | H |
| *Obligation* – Authority | As a legal commitment by the EU and Mercosur and the governments of their member countries the FTA enjoys a high level of authority towards most actors. | H | M**–**H |
| *Obligation* – Mandating language | The language in the TA varies, but is of non-mandating nature in the core articles that (could) describe the rights and obligations of the parties. The right to regulate the level of protection within each party (Art. 2) is defined in hard (shall) to moderate (recognize the right of each) terms. Transparency (Art. 3) and dispute settlement provisions (Arts 13-17) use more stringent language, those on MEAs, climate change and biodiversity only moderately mandating (‘acknowledge the rights’, ‘shall, *as appropriate*’; ‘reaffirm commitments’) formulations, while the important Trade and sustainable development of Forests (Art. 8) and Supply Chains (Arts 8 and 11, respectively) is soft (‘recognize the importance of’, ‘encourage – as appropriate’). | M |
| *Precision* – Accuracy (*ratione materiae*) | The TSD Chapter reaches a low level of accuracy. The right to regulate the level of protection (Art. 2) is defined substantively in vague terms, and, e.g., the provisions on MEAs, climate change, biodiversity, and particularly sustainable management of forests and on supply chains are, for the most part, only moderately accurate (Arts 5–8, 11, respectively). | L | L**–**M |
| *Precision* – Specificity (*ratione personae*) | The TSD Chapter is addressed to the governments as the Parties to the Agreement. Their role is mostly quite specific, yet the provisions do not, as such, specify further the relevant implementing actors or institutions, with the exception of the dispute settlement process (Arts 15–17). Companies as the ultimate targets of the provisions are not directly mentioned as a part of the obligations (e.g., in the Article on supply chains (Art. 11)). They are targeted indirectly e.g. through support measures on products (Art. 8). Local communities and indigenous groups are specifically targeted in Art. 8(2). | M |
| *Means of implementation* – Scope | The implementation in the TA focuses firstly on the establishment of the sub-committee on trade and sustainable development (Art. 14). Its tasks cover the facilitation and monitoring (yet not stronger means of enforcement) of the TSD Chapter, dispute settlement and any other matter within the Chapter that the Parties may agree upon (Arts 14–17). The TA requires the setting up of Contact Points for (Art. 14(5)). Dispute settlement includes also the option of establishing Expert Panels (Art. 17.11) The material scope of these delegated tasks is overall speaking moderate, covering issues within the Chapter. The enforcement mechanisms do not include the authority to impose sanctions or suspension of trade concessions. However, CSOs views are to be taken into account in the consultations by the TSD Sub-Committee (Art. 16.6) and by the Panel of Experts through the Domestic Advisory Groups (DAGs) (Art. 17(11)), which could exert pressure on a party to comply. | M | M |
| *Means of implementation* – Institution | The authority of the institutions with delegated tasks is relatively high as organizations officially set up by the TA but limited substantively to advising and recommendations. | M |
| **Overall hardness** | Overall, the EU-Mercosur TA reaches a medium level of hardness. It is a *source of law* with high formal authority, but not fully mandating language. In terms of precision (both accuracy and specificity) as well as implementation, the FTA reaches a moderate level of hardness. | **M** | |
| **Ambition** | The level of ambition is between low and medium. No specific requirements in terms of SAF. The level of protection in general (and hence also on SAF) is left for the respective Party to determine while striving for high and effective levels of protection and respecting and promoting, in rather generic terms, the MEA commitments (UNFCCC[[4]](#footnote-5) and Paris Agreement[[5]](#footnote-6); Convention on Biological Diversity[[6]](#footnote-7) and the Convention on International Trade in Endangered Species[[7]](#footnote-8)). Promotion and cooperation on conservation and sustainable use of forests, and trade in products from sustainably managed forests are also mentioned, but are determined by the law of the country of harvest. | **L–M** | |

\* **Scale**: Low (L), Medium (M), High (H)

|  |  |  |  |
| --- | --- | --- | --- |
| **Aspect of Softness/Hardness** | **Summary of Analysis** | **Score\***  **(L, M,**  **H)** | **Combining**  **Sub-dimensions** |
| *Formal status* – Formal source of law or not? | The Regulation is a formal source of law, which is binding and directly applicable (i.e., without transposition) in the Member States. Many provisions are directly effective. | H | H |
| *Obligation* – Authority | EU law enjoys a high level of authority towards all stakeholders to whom the law applies. | H | H |
| *Obligation* – Mandating language | The regulation defines in clear and mandating language food and feed crop-based biofuels as ineligible under the Regulation. It also sets multiple unequivocal requirements on SAF suppliers, aircraft operators as well as EU airports. | H |
| *Precision* – Accuracy (*ratione materiae*) | Is very accurate in terms of defining the types of flights covered by the use of SAF (Art. 2). ReFuelEU’s mandating requirements extend beyond the sustainability criteria of the fuels, e.g., to the ways in which they are fuelled, preventing the unsustainable practice of ‘fuel tankering’, and the SAF infrastructure to be made available. The specificity and accuracy of ReFuelEU thus are very high. (Arts 5, 6, 7). | H | H |
| *Precision* – Specificity (*ratione personae*) | The Regulation targets in specific terms key aviation actors: airports, aircraft operators, SAF suppliers, and Member States’ competent authorities. The scope is also broad; 95% of flights departing from EU airports. | H |
| *Means of implementation* – Scope | The EASA is given various supervisory tasks regarding SAF, such as reporting and monitoring obligations e.g., on SAF purchases (Recital 27, Arts 5-11, 13). The Member States have multiple enforcement tasks (Arts 11-12). | H | H |
| *Means of implementation* – Institution | The EU previously established the EASA, which serves as the central institution also for the present Regulation. | H |
| **Overall hardness** | The ReFuelEU Regulation is a hard instrument on all accounts. | **H** | |
| **Ambition** | The ReFuelEU Regulation has a gradually increasing target to reach mandatory SAF share of 70% by 2050. Considering the barely existing share of SAF in use at the time of enactment of the proposed Regulation, its uptake, as well as the inclusion of synthetic fuels, can be considered quite ambitious. This translates to a moderate-to-high level of ambition. | **M-H** | |

**Annex 3** The Hardness of the ReFuelEU Regulation[[8]](#footnote-9) in Governing SAF

\* **Scale**: Low (L), Medium (M), High (H)

1. ICAO Assembly Resolution A40-19 (2019). [↑](#footnote-ref-2)
2. ICAO, *Annex 16 to the Convention on International Civil Aviation: Environmental Protection*,Vol. IV (2023)*,* para. 2.1. [↑](#footnote-ref-3)
3. EU-Mercorsur Trade Agreement, Agreement in Principle, Brussels (Belgium), 1 July 2019, TSD Chapter, available at: <https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/text-agreement_en>. [↑](#footnote-ref-4)
4. Rio de Janeiro (Brazil), 9 May 1992, in force 21 Mar. 1994, available at: https://unfccc.int/resource/docs/convkp/conveng.pdf [↑](#footnote-ref-5)
5. Paris (France), 12 Dec. 2015, in force 4 Nov. 2016, available at: <https://unfccc.int/sites/default/files/english_paris_agreement.pdf>. [↑](#footnote-ref-6)
6. Rio de Janeiro (Brazil), 5 June 1992, in force 29 Dec. 1993, available at: <http://www.cbd.int/convention>. [↑](#footnote-ref-7)
7. Geneva (Switzerland), 3 Mar. 1973, in force 1 July 1975, available at: <https://www.cites.org/eng/disc/text.php>. [↑](#footnote-ref-8)
8. Regulation (EU) 2023/2405 on Ensuring a Level Playing Field for Sustainable Air Transport [2023] OJ L 2023/2405. [↑](#footnote-ref-9)