Core Review Clause pursuant to Art. 17 RefuelEU Aviation Regulation[1] - is regulation failing due to the reality of the slow market ramp-up?

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Executive Summary

The RefuelEU Aviation Initiative ("ReFuelEU") will make the blending of Sustainable Aviation Fuel ("SAF") mandatory for the European aviation industry from 2025 via a quota system and a sub-quota for power-based fuel from 2030. This obligation is supported by the threat of penalties for airlines and fuel suppliers in the event of non-compliance. This law provides a compelling but evidently not yet sufficient incentive to make the necessary investments in corresponding projects for the market ramp-up required to comply with the quotas. In fact, in view of the Review Clause in Art. 17 of the RefuelEU, there is considerable uncertainty among investors regarding the stability of the quota law. The main concern is that the regime of penalties and quotas could be adjusted due to the de facto impossibility of achieving quotas. In this respect, the primary objective of policymakers should be to maintain confidence in the handling of the Review Clause pursuant to Art. 17 RefuelEU.

The objective of using Review Clauses is to monitor legislative efficiency. As an instrument for "better regulation", around 60% of European directives and regulations now contain corresponding clauses. Proposed amendments on the basis of a review are regularly justified by insufficient effectiveness in achieving the objectives, the need for adaptation with regard to practical compliance, the need for legal clarification or clarification and adaptation to new technical developments and digitalization. The Review Clause of the RefuelEU allows for a very far-reaching review and places particular emphasis on a balance between climate protection and the competitiveness of the European aviation market as well as the avoidance of carbon leakage and the shifting of CO2 emissions due to changes in traffic flows. In achieving this balance, certain conflicts of interest may be unavoidable. Therefore, changes to the ReFuelEU will have to be determined by means of a "practical concordance", i.e. the resolving of a possible collision of objectives in the gentlest possible way, so that the objectives of climate protection and competitiveness are met by means of the best possible balance. This will never lie in the abolition of quotas, but rather in support measures to mitigate the competitive pressure created by the quotas.

It should not be forgotten that in the event of SAF market failure, i.e. de facto non-fulfillment due to a lack of SAF production capacities, the question of whether and to what extent the private sector players are partly responsible for this situation could also be relevant in the context of the Review Clause, as misallocations were made when weighing up increased fuel costs and the cause of environmental damage, so that the undersupply of SAF would be compensated for by the lack of efficiency of climate damage.

[1] REGULATION (EU) 2023/2405 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 Oktober 2023 on ensuring a level playing field for sustainable air transport (ReFuelEU Aviation).

1. Initial situation

The RefuelEU Aviation Regulation regulates the blending of SAF via a quota system that starts at 2% from 2025 and increases to a 70% SAF blending quota by 2050. From 2030, an increasing sub-quota for electricity-based fuel (power-to-liquid, PtL) will also apply, so that the PtL sub-quota should reach 50% by 2050. This legal obligation is underpinned by a system of penalties set out in Art. 12 RefuelEU, which provides for not insignificant fines for distributors of fuel if sufficient SAF is not made available. So far, these regulations have not ensured that a corresponding market ramp-up of SAF - especially for PtL - is planned and implemented. Estimates put the investment required by 2050 for sufficient SAF production infrastructure at up to EUR 3 trillion. Obviously, the existing framework parameters are not sufficient to trigger the necessary willingness to invest. The reason cited time and again is that the profitability of a SAF production facility cannot be planned with sufficient certainty over the long term. A key factor for long-term security is regulatory stability. The confidence of market participants that the legislator will not abandon the objective of climate neutrality in aviation - laid down first and foremost in the ReFuelEU and in the provisions on European emissions trading (EU ETS) - and will adhere to the system of blending quotas is the basis for any willingness to invest. In this context, the question is regularly asked as to what will happen when the Core Review Report is submitted in 2027 in accordance with Art. 17 of the ReFuelEU? This regulation creates considerable uncertainty regarding the stability of the regulatory concept and thus inhibits investment activity for the SAF product, whose green premium is extraordinarily high. It is not without reason that aviation is referred to as a hard-to-abate industry. However, it is imperative that production capacities are built up immediately in order to achieve the target of around 300 million liters of SAF required in 2050. Otherwise, the product SAF, especially PtL, will not be available in sufficient quantities in the coming years.

In view of the harsh reality that first investment decisions for SAF production sites are lacking, many regulations in the RefuelEU appear to be legislative wishful thinking aimed at regulating decarbonization without answering the question of its economic feasibility, i.e. where the estimated EUR 2.5 trillion in investment funds required by 2050 for the development of a global SAF production landscape are to come from. If one also knows that the blending quotas are based on certain aviation growth assumptions that are significantly too low compared to the actual growth rates, i.e. the blending quotas would have to be tightened in order to meet the decarbonization targets, the sceptical view of the ReFuelEU is even better understood.

Art. 17 RefuelEU stipulates a reporting obligation for the Commission. Accordingly, by January 2027 and every four years thereafter, the Commission is to report on (1) the development of the aviation fuel market as well as competitiveness and connectivity, the need for investment, employment and training as well as research and innovation in the field of SAF, technological progress and (2) possible adjustments to the scope of the Regulation with regard to the definition of SAF, the permissible fuels and their minimum percentages as well as the level of fines and initiatives, improvements and further measures to promote SAF, (3) the possible inclusion of further mechanisms to support SAF and limit adverse effects and (4) the impact of the exemptions granted.

Therefore, it will be ascertained whether the SAF quotas set out in the regulation need to be revised as a result. The concern is that the EU Commission will determine during this review that, due to the insufficient expansion of production capacities, the blending quotas will have to be adjusted due to de

facto impossibility and thus also the regime of penalties. So what can we expect from the review under Art. 17 ReFuelEU?

2. Review Clauses in EU legislation

There is no inter-institutional definition of the term "Review Clause".[2] The EU Commission used the term "monitoring and evaluation clause" in its "Better Regulation Toolbox" 2021.[3] However, it is recognized that there is a wide range of such clauses depending on the scope of the review and the intensity of the adjustment. It should therefore be possible to stipulate on a case-by-case basis which information and data is to be collected and evaluated in connection with the review, the form in which the report is to be provided and the frequency with which a review is to take place.[4] The Mandelkern Report, a report on possibilities and instruments for better regulation in the EU, mentions the Review Clause as a weaker sub-clause of the so-called sunset clause, according to which a legislative act is only valid for a fixed period of time and loses its validity after the date specified in the sunset clause.[5] The Review Clause is defined in the Mandelkern Report as a provision in a regulation that requires a review within a specified period of time, where the outcome (status quo, revision or repeal) is not predetermined.[6]

In the EU Parliament Research Service report on existing Review Clauses (Rolling Check-List)[7] a distinction is made between "core" and "non-core" Review Clauses. The former are those that include "heavier", "substantive" review provisions corresponding to reviews in the strict sense and evaluations (review of the act or parts thereof, evaluation of the act). The latter refer to clauses containing "lighter" provisions (e.g. reports on implementation, reports on application, reports on transposition, provisions on regular monitoring).[8]

a. Objectives for the use of Review Clauses

The purpose of Review Clauses is stated to be "better lawmaking". The clauses are an important tool for monitoring the effectiveness and efficiency of legislation.[9] Review Clauses are now included in around 60% of European directives and regulations.[10] A report may result in an amendment to the directive or regulation. The objective of a directive or regulation is generally not abandoned in the event of a legislative amendment, unless the need for regulation no longer exists. Amendment measures are designed not to jeopardize the effectiveness of the directive or regulation, insofar as measures are necessary for the benefit of legal certainty or to promote practical feasibility. Otherwise, to promote effectiveness if regulations were not sufficiently effective or were implemented too heterogeneously in the Member States.

b. Effects of the adaptation of directives and regulations

(1) Legislative amendments to a directive or regulation as a result of a Commission report occur in EU legislative practice. The Commission's amendment proposal is usually based

[2] Cf. Review Clauses in EU legislation adopted during the first half of the ninth parliamentary term (2019-2024): A rolling check-list, PE 734.675 – October 2022, p. III.
[3] Better Regulation Toolbox 2021, tool #44, p. 372.
[4] Review Clauses in EU legislation adopted during the first half of the ninth parliamentary term (2019-2024): A rolling check-list, PE 734.675 – October 2022, pp. 9, 13 ff.
[5] Mandelkern Report 2001, pp. 18, 85.
[6] Mandelkern Report 2001, pp. 85.
[7] Review Clauses in EU legislation adopted during the first half of the ninth parliamentary term (2019-2024): A rolling check-list, PE 734.675 – October 2022.
[8] Review Clauses in EU legislation adopted during the first half of the ninth parliamentary term (2019-2024): A rolling check-list, PE 734.675 – October 2022, p. 9.
[9] Cf. Herrnfeld/Brodowski/Burchard, European Public Prosecutors Office, 2021, S. p73.
[10] Review Clauses in EU legislation adopted during the first half of the ninth parliamentary term (2019-2024): A rolling check-list, PE 734.675 – October 2022, p. 15, https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734675/EPRS_STU(2022)734675_EN.pdf; vgl. Review Clauses in EU-Legislation: A Rolling Check-List, PE 598.601, March 2017, p. 13.

on an ex-post assessment. Sometimes, but not always, reference is made to a report. The reports are not always published,[11] meaning it is not possible to fully assess whether the Commission acted as a result of such a report or how the report influenced the changes.

(2) Amendment proposals are regularly based on the following reasons:

i. The provisions are not sufficiently effective to achieve the objective of the Directive or Regulation.[12]
ii. The regulations cannot be complied with in practice by the players to the required extent.[13]
iii. Legal precision and clarification is required, particularly if Member States have interpreted regulations differently or have standardized material requirements that differ too widely.[14]
iv. Adaptation to technical development or digitalization is required.[15]

In practice, directives and ordinances are amended in such a way that the legislative act is adapted as necessary to achieve the objective. However, the case that a still relevant and fundamentally existing objective is simply abandoned has not yet occurred. In this respect, it can be assumed that the basic intention of the ReFuelEU, including the market ramp-up of SAF intended by the regulation, will remain in place and only the design of the measures will be adjusted.

3. Art. 17 RefuelEU and possible amendments

According to the Regulation's explanatory memorandum, the objectives of the RefuelEU are to decarbonize aviation and achieve climate neutrality by 2050. However, measures to achieve these objectives of the Regulation must be in balance with the competitiveness of the EU's internal aviation market. If the competitiveness of the EU Internal Aviation Market were to be impaired too much, adjustments to the regulation would have to be expected. It seems highly unlikely that the objective of climate protection and thus also the objective of the ReFuelEU will be politically abandoned. In this respect, adjustments are to be expected in the points that Art. 17 para. 2 to 4 ReFuelEU mentions as review parameters and which are linked to the competitiveness of aviation. The benchmark for any amendment will be maintaining the balance between the objective of the regulation on the one hand and the competitiveness of the aviation industry on the other.

A closer look at the reporting obligations of Art. 17 ReFuelEU may allow conclusions to be drawn about possible amendments:

(1) Article 17 (2) sentence 1 ReFuelEU serves to protect the competitiveness of the EU's internal aviation market and requires a review of any measures necessary to reduce the cost pressure on aviation resulting from the RefuelEU. This review shall include a detailed assessment of the development of the aviation fuel market and the impact of this development on the functioning

[11] Cf. Weber/Edwards/Huber, EU Review Clauses in Need of Review? An Analysis of Review Clauses in EU Legislation in the Context of Better Lawmaking, 2017, pp. 124, 134 f.
[12] Cf. Recital (13) Directive (EU) 2022/2464; Recital (2) Directive (EU) 2019/2161; Recital (12) Directive (EU) 2019/883; Recital (6) Directive (EU) 2020/1057; Recital (3) Regulation (EU) 2019/1381
[13] Vgl. Recital (7) Directive (EU) 2019/1159
[14] Vg. Recital (12) Directive (EU) 2019/883; Recital (6) Directive (EU) 2020/1057; Recital (4) Directive (EU) 2018/645; p. 17 COM (2018) 241 final
[15] Recital (2) Directive (EU) 2017/2109

of the Union's internal aviation market, including competitiveness and connectivity, in particular for islands and remote areas, as well as on the cost-effectiveness of reducing life-cycle emissions.[16]

(2) Article 17 (2) sentences 2 and 3 ReFuelEU deals with the review of investment, employment and training needs as well as research and innovation in the field of SAF. In addition, technological progress relevant to SAF in the field of research and innovation in the aviation sector, including in the reduction of non-CO2 emissions or technologies for capturing CO2 from the air (direct air capture - DAC), shall be collected and reported. In this context, it will be determined whether progress is being made on the path to climate neutrality or whether, for example, further European investment measures are necessary.

(3) In the context of Article 17 (3) sentence 1 ReFuelEU, it should be examined whether the scope of the Regulation, the definition of SAF, the permitted fuels and the minimum percentages in Article 4 and Annex I as well as the level of fines need to be revised. Article 4 in conjunction with the Annex to Article 4 sets out the minimum proportions of SAF that must be made available for refuelling at European airports at a certain point in time. According to Art. 5, aircraft operators are then obliged to a certain extent to refuel at European airports (and thus indirectly to refuel SAF). The reason for a change could be, for example, a disparity between competitiveness and the promotion of climate protection through measures such as the SAF quota. However, negative effects on the connectivity of remote areas are also taken into consideration. Recital (49) of the ReFuelEU, however, focuses on mechanisms to support the production and refueling of SAF and mechanisms to bridge price differences between SAF and conventional aviation fuels when addressing such a disparity or negative impact.[17] However, changes to the provisions on sanctions are not excluded in this context.

(4) Article 17 (3) sentences 2 and 3 ReFuelEU requires an assessment of the possible extension of the scope of the Regulation to other energy sources and other types of synthetic fuels within the meaning of Directive (EU) 2018/2001 - with due regard to the principle of technological neutrality. The report shall also assess initiatives, improvements and additional measures to further facilitate and promote increased deployment and market ramp-up of non-drop-in aviation fuels and related services, infrastructure and technologies, each consistent with the objective of decarbonizing aviation while maintaining a level playing field. If a new technology emerges that contributes better and faster to achieving the target than SAF, there is a fundamental possibility that it will be included in the regulation and that quotas for SAF will be reduced as a result. However, this is not expected to happen immediately, as sustainable aviation fuels are generally regarded as the most suitable technology for achieving climate neutrality in the aviation industry.[18]

(5) According to Article 17(4) ReFuelEU, the possible inclusion of mechanisms to support the production and refueling of SAF - including the collection and use of funds - and to limit the adverse effects of this Regulation on connectivity and competitiveness should be examined. In particular, it shall consider whether these mechanisms should include financial and other mechanisms to bridge the price gap between SAF and conventional aviation fuels. The focus of this part of the review will therefore be on financial support, market ramp-up and price differentials. If significant

[16] Recital (49) Regulation (EU) 2023/2405.
[17] For information on the examination of these mechanisms, see in particular Recital (48) Regulation (EU) 2023/2405.
[18] Cf. Aireg – Aviation Initiative for Renewable Energy in Germany e.V., https://aireg.de/2023/05/05/markthochlauf-erneuerbarer-treibstoffe/ (last retrieved on 08.03.2024).

problems are identified in relation to financial support and innovation measures, there is the possibility of amending the regulation to address these problems.

Based on the reporting obligations, adjustments to reduce cost pressure in the form of innovation aid, support measures for production and refueling, bridging the price difference between SAF and conventional fuel, increasing CO2 costs, the extension of the minimum blending quotas over time or the reduction of fines could also be considered. It is also possible that the existing regulations could be made more precise with regard to the avoidance of carbon leakage, as the Commission should regularly examine possible modal shifts and a possible associated shift in CO2 emissions as well as possible remedial measures.[19] In this respect, the report pursuant to Art. 17 also represents an opportunity in that the Commission recognizes that a market ramp-up of SAF will not occur without certain accompanying government measures. If specific projects make it clear why implementation is failing, even though the stakeholders were prepared to comply with the legislative objective, this may lead to a strengthening of the SAF mandates because the EU institutions will develop targeted support instruments.

4. Impossibility of complying with quotas

The regulation itself attempts to address the problem of limited SAF volumes with the flexibility mechanism.[20] If the regulations cannot be implemented in practice in the future, an amendment may be proposed, Art. 17 para. 6 RefuelEU. It is not immediately foreseeable that the SAF quotas will be reduced in an amendment to the regulation. The same result as reducing the quotas can also be achieved by adjusting the implementation periods.

In the sense of a "self-fulfilling prophecy", the existence of the quotas is often questioned today in terms of a possible SAF shortage and thus a de facto unattainability of the quotas. As a result, there is a certain reluctance to conclude off-take agreements, thus preventing the emergence of further SAF projects and ultimately also inhibiting the market ramp-up. The fact that the quantities of SAF required to achieve the quotas and, indirectly, to achieve climate neutrality in the industry may not be available should, in the view of the EU Commission, be seen more as an incentive to build plants and promote SAF production or plant financing. The wording of recital (45) is very much geared towards stability and consistency. This at least shows that the legislator is aware of the need for consistent regulation for a market ramp-up.

The problem of a considerable price difference between SAF and regular kerosene, even in the foreseeable future, is known to the EU legislator, as can be seen from recital (41). The resulting problems and the associated difficulties with regard to the economic viability of SAF are also known. Support measures are intended to provide a remedy. Insofar as the funding instruments mentioned in recital (41) are expanded and optimized with regard to financing, the market ramp-up could be more successful. The wording of recital (45) also inspires confidence in this context. According to this, it is "essential to ensure that the minimum shares of SAF can be successfully supplied to the aviation market without supply shortages" and “[s]imilarly, in order to provide legal certainty and predictability for the market and drive investments durably towards SAF production capacity, this Regulation should remain

[19] Vgl. Aireg – Aviation Initiative for Renewable Energy in Germany e.V., https://aireg.de/2023/05/05/markthochlauf-erneuerbarer-treibstoffe/ (zuletzt abgerufen am 08.03.2024).
[20] Cf. Recital (45), Art. 15 Regulation (EU) 2023/2405.

stable over time".[21] It seems that the EU legislator is striving to achieve the greatest possible consistency here, which nevertheless leaves room for the necessary flexibility to adapt to new innovations, research or changes in circumstances in order to achieve climate neutrality. After all, rigid quotas must not ultimately be at the expense of the legislative objective and thus climate protection.

5. Excursus: Comparison of PtL quota in Germany - Federal Immission Control Act (BImSchG)

a. Introduction of the PtL quota and legislative rationale

The PtL quota is standardized in Germany in Section 37a (2) in conjunction with (4a) BImSchG. The quotas were introduced on 01.10.2021. If one looks at the amendments made to the BImSchG since then, it is apparent that some changes have been made. The still relatively new Section 37a (4a) BImSchG, which defines the quotas, has not been amended since its introduction. In addition, Section 37a BImSchG does not provide for an exception to the obligation to comply with the quotas in Paragraph 4a. Only the sale of the obligation is possible. According to Section 37a (6) and (7) BImSchG, the obligation to meet the quotas can be transferred to third parties.

The PtL quota also faces the problem of potential unattainability, meaning that the critical point in time at which the quota may need to be revised is still in the future.[22] How the German legislator deals with this problem could lead the way in dealing with SAF quotas. Nevertheless, it must be borne in mind that different legislators in different legal systems are involved, which may well lead to divergent approaches.

The German legislator integrated the PtL quota into the BImSchG in 2021[23] on the assumption that an EU-wide minimum quota for PtL would be introduced as part of a directive for alternative aviation fuels in the EU. The explanatory memorandum to the law already indicates that - if such a uniform PtL quota in air transport has not been introduced for all EU states by 2026 - the effects of such a national minimum quota will be examined in terms of international competitive disadvantages for the German aviation industry and appropriate measures will then be introduced.[24] This wording indicates that the existence of the PtL quota is linked to a European equivalent, as otherwise the German aviation industry could be disproportionately affected. If it is not assumed from the outset that the EU regulation takes precedence, the stricter German quotas could also lead to a disadvantages and thus amendments of the quota. In contrast to the explanatory memorandum to the PtL quota in the BImSchG, the recitals to the RefuelEU place a much stronger focus on legal certainty and consistency.[25] It therefore seems questionable whether conclusions can be drawn from the handling of the PtL quota in Germany and the already emerging problem of a lack of availability and the resulting de facto impossibility of fulfilling the quota with regard to the handling of SAF quotas in EU legislation. A European quota for synthetic aviation fuels was regulated as a sub-quota to the SAF quotas in Annex I of the RefuelEU, but only from 2031. The quota obligation in the PtL sector therefore starts much later than the German PtL quota, which is already scheduled for 2026. A postponement of the validity periods or a reduction in the minimum shares and thus an adjustment of the national quota to the

[21] Cf. Recital (45) Regulation (EU) 2023/2405.
[22] Cfl. CENA Hessen (2024): CENA SAF-Outlook 2024-2030 – Eine Analyse von Mengen, Technologien und Produktionsstandorten für nachhaltige Flugtreibstoffe, p. 15 ff.
[23] Effective as of 01.10.2021 by law from 24.9.2021 (BGBl. I S. 4458).
[24] Cf. BT-Drs. 19/27435, p. 21 - https://dserver.bundestag.de/btd/19/274/1927435.pdf.
[25] Cf. Recital (41) Regulation (EU) 2023/2405.

European quota does not seem unlikely in view of the question of quota attainability and also a collision between the German and the European PtL quota.

b. Dealing with quotas in the BImSchG - the biofuel quota

In principle, the German legislator shows an awareness of legal and planning certainty when dealing with quotas.[26] The biofuel quota, which was regulated in Section 37a (3) BImSchG old version until 2015, still exists to a certain extent today. Although the quota was replaced by the greenhouse gas reduction quota in 2015, it was not abandoned and merely incorporated into a new system and restructured accordingly.[27] This new system, in which the greenhouse gas reduction quota (GHG quota) is central, was established to improve the climate impact of biofuels and to make the quota legal framework more easily understandable.[28] With the introduction of the new quota, it is no longer just the proportion of biofuels that is decisive, but the reduction in emissions achieved by blending biofuels.[29]

If the history of the biofuel quota is examined on the basis of the amendments to the law, it can be seen that the amount and commitment periods as well as the areas of application of the quotas have changed over time.[30] When the biofuel quota was introduced, the initial aim was to achieve higher quota obligations. The biofuel quota was originally intended to be 8% for 2015 when the minimum shares were introduced in 2007.[31] The amendment to the law on the promotion of biofuels of 15.07.2009[32] lowered the biofuel quota and slowed down the quota increase The reasons for this development deviating from the original forecast included problems regarding the sustainability criteria of biofuel and thus the finding that biofuel is less beneficial for the climate balance than originally assumed.[33]

c. Interim result

A look at the history of German quota law shows that it will be adapted and optimized if new findings, technical progress or impending competitive disadvantages make this necessary. The same has already been established for the SAF quota under European law. The best possible achievement of climate neutrality requires a certain degree of regulatory flexibility. Legal certainty and legal consistency are at a disadvantage if the achievement of the legislative objective is jeopardized or thwarted by non-adjustment. Legislators will not accept this in the interests of regulatory consistency. However, the adjustment of the quota system in the BImSchG shows that the greatest possible consistency is being sought. Incentives for the use of biofuels were thus continued within the framework of the new system. Emissions savings were indirectly rewarded via the biofuel quota and are now explicitly rewarded as part of the GHG quota. The aim of the regulation is to reduce emissions in the transport sector and merely the instrument used has been adapted and optimized to achieve this goal. Changes to quotas have so far not been the result of "legislative whims", but have been based on considerations in favor of climate protection. Changes to the detriment of the quota due to distortions of competition or

[26] Cf. BT-Drs. 18/2709, p. 3 - https://dserver.bundestag.de/btd/18/027/1802709.pdf; Treibhausgasquote für Kraftstoffe ab 2015, hib 494/2014 - https://www.bundestag.de/webarchiv/presse/hib/2014_10/333364-333364 (last retrieved on 08.03.2024).
[27] Cf. BT-Drs. 18/2442 - https://dserver.bundestag.de/btd/18/024/1802442.pdf.
[28] Cf. BT-Drs. 18/2442, p. 1, p. 16 - https://dserver.bundestag.de/btd/18/024/1802442.pdf.
[29] Greenhouse gas quota for fuels from 2015, hib 494/2014 - https://www.bundestag.de/webarchiv/presse/hib/2014_10/333364-333364 (last retrieved on 08.03.2024).
[30] Cf. Act amending the promotion of biofuels of 15.07.2009 - BGBl. I p. 1804; Fourth Act on the Amendment of Consumer Tax Laws of 15.07.2009 - BGBl. I p. 1870; Act amending the Energy Tax Act and the Electricity Tax Act of 01.03.2011 - BGBl. I p. 282.
[31] Cf. Act on the introduction of a biofuel quota by amending the Federal Immission Control Act and amending energy and electricity tax regulations (Biokraftstoffquotengesetz - BioKraftQuG) 18.12.2006 BGBl. I p. 3180 (3185); DBFZ Report Nr. 44, p. 17.
[32] BGBl. I 2009, Nr. 41 dated 20.07.2009, p. 1804.
[33] Cf. BT-Drs. 16/11131, p. 1, 10 ff. - https://dserver.bundestag.de/btd/16/111/1611131.pdf; BT-Drs. 16/12465, p. 4 f. - https://dserver.bundestag.de/btd/16/124/1612465.pdf.

adverse effects on the aviation industry are nevertheless possible. However, this is not only based on the simple trade-off between climate protection and economic efficiency, but also to avoid carbon leakage. The effectiveness of a measure taken may turn out differently than initially assumed, making adjustments necessary. In the past, this was not due to political inconsistency, but to efforts to promote climate protection as effectively as possible with the help of more effective instruments.[34] Direct conclusions cannot be drawn from changes to the content of the German PtL regulation for dealing with the European SAF quota due to the different legislators. In addition, due to a possible collision between the german PtL quota and the European sub-quota, it is questionable whether the German legislator will address the issue of the quota in terms of content. However, it is clear that both legislators are aware of the fundamental relevance of regulatory consistency for the intended market ramp-up.

6. Conclusion

Review Clauses are a common component of EU legislative acts and serve, among other things, to monitor legislative efficiency. For various reasons, actual amendments to directives or regulations are regularly made as part of reviews. However, the original objective is never changed. Instead, adjustments are intended to enable the objective to be achieved more quickly or more effectively. In view of the political objective behind the regulation and the existing technologies, as well as the actual handling of such Review Clauses in practice, the uncertainty that generally arises from the use of a Review Clause with regard to the durability of the regulation can at least be limited to such an extent that an actual or de facto repeal of the regulations is not to be expected. In view of the need to maintain a balance between climate protection and the competitiveness of the internal aviation market, as well as the avoidance of carbon leakage and the shifting of CO2 emissions through changes in traffic flows, certain conflicts of objectives are unavoidable; resolving them in any other way than by means of the gentlest possible compensation, in which all objectives are taken into account in the appropriate form, would be inadmissible. Competitive disadvantages resulting from climate protection measures can be mitigated much more efficiently and in accordance with the law by providing financial support than by withdrawing climate targets. Therefore, a lack of belief in the continued existence of the climate targets in the ReFuelEU is understandable, but at the same time it is no reason for the obligated parties to succumb to the belief that they can escape responsibility for the decarbonization of aviation. It would be desirable for politicians to live up to their responsibility to communicate and act and to take the understandable reluctance of investors as an opportunity to solve the existing problems in building the required SAF capacity by making improvements to the supporting measures and thus proactively countering the fear of a "self-fullfilling prophecy".

[34] Cf. BT-Drs. 16/11131, p. 1, 10 ff. - https://dserver.bundestag.de/btd/16/111/1611131.pdf; BT-Drs. 18/2442, p. 16 - https://dserver.bundestag.de/btd/18/024/1802442.pdf.