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Destinataire:	Conseil
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N° doc. Cion:	10869/21 + COR1
Objet:	Proposition de décision du Conseil et du Parlement européen modifiant la directive 2003/87/CE en ce qui concerne la notification de la compensation dans le cadre d'un mécanisme de marché mondial pour les exploitants d'aéronefs établis dans l'Union – Information de la part de la Présidence

1. INTRODUCTION

1. Le régime de compensation et de réduction de carbone pour l'aviation internationale (CORSIA) adopté par l'Organisation de l'aviation civile internationale (OACI) en juin 2018 prévoit que les opérateurs aériens doivent compenser les émissions de CO₂ qui dépassent le niveau de la période de référence par l'achat de crédits éligibles.

2. Le 14 juillet 2021, la Commission a soumis au Parlement européen et au Conseil la proposition de décision du Conseil et du Parlement européen modifiant la directive 2003/87/CE en ce qui concerne la notification de la compensation dans le cadre d'un mécanisme de marché mondial pour les exploitants d'aéronefs établis dans l'Union¹, (« proposition de décision CORSIA»). Cette proposition doit être adoptée en procédure législative ordinaire.
3. La proposition de décision CORSIA introduit une modification des règles applicables à l'aviation dans le système d'échange de quotas d'émission (SEQE) de l'Union européenne afin de mettre en œuvre l'obligation des États membres de notifier, le 30 novembre 2022, aux opérateurs aériens établis dans l'UE leurs exigences de compensation pour l'année 2021 au titre du CORSIA.
4. Par ailleurs, la proposition de révision des règles du SEQE applicables à l'aviation² (« révision SEQE aviation ») fait partie intégrante du paquet «Ajustement à l'objectif 55» de l'UE. La révision comprend la mise en œuvre à long terme des obligations du CORSIA par l'intermédiaire de la directive 2003/87/CE ("directive SEQE").

2. EXAMEN PAR LES AUTRES INSTITUTIONS

5. Au Parlement européen, la proposition de décision CORSIA a été renvoyée à la commission de l'environnement, de la santé publique et de la sécurité alimentaire (ENVI) et Sunčana Glavak (PPE, Croatie) a été désignée comme rapporteure. La commission des transports et du tourisme (TRAN) est associée. Le Parlement devrait adopter sa position en plénière en juin 2022.
6. Le Comité économique et social européen a adopté son avis le 20 octobre 2021. Le Comité des régions a adopté son avis lors de sa plénière fin avril 2022.
7. Les Parlements irlandais et espagnol ont émis des avis motivés sur l'application du principe de subsidiarité.

¹ ST 10869/21 + COR 1

² ST 10917/21

3. EXAMEN PAR LE CONSEIL

8. Le groupe de travail aviation a commencé son examen de la proposition de décision CORSIA en septembre 2021 avec une présentation générale par la Commission. La proposition a été inscrite à l'ordre du jour de 8 réunions au niveau du groupe aviation depuis lors.
9. La proposition de décision CORSIA n'a pas fait l'objet d'une analyse d'impact spécifique. Les options stratégiques pour la mise en œuvre du CORSIA et l'augmentation de la mise aux enchères dans le secteur de l'aviation ont été évaluées dans l'analyse d'impact³ qui accompagne la proposition de révision SEQE aviation.
10. Le groupe aviation soutient les objectifs de la proposition de décision CORSIA. Cependant, de nombreuses délégations ont considéré que l'approche suivie par la Commission dans sa proposition soulevait un certain nombre de problèmes juridiques.
11. Ces problèmes juridiques et les solutions proposées par la Présidence ainsi que son projet de compromis ont été présentés dans le document ST 7049/22.

4. CONCLUSION

12. Le compromis est une solution juridiquement sûre, cohérente et équilibrée qui permet aux Etats membres de remplir leurs obligations internationales de manière provisoire tant que la révision du SEQE aviation n'est pas terminée, sans toutefois préjuger de l'issue des négociations entre les co-législateurs.
13. Le 20 mai 2022, le Comité des représentants permanents a confirmé le compromis atteint au niveau du groupe de travail tel qu'il figure à l'annexe et a approuvé le mandat de négociation avec le Parlement européen, fondé sur ce compromis. Le Comité des représentants permanents a également décidé de rendre public le mandat de négociation avec le Parlement européen.

³ ST 10917/21 ADD 2

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aeroplane operators based in the Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) of the International Civil Aviation Organization (ICAO) is in operation since 2019 as regards the monitoring, reporting and verification of emissions and is intended to be a globally-applied market-based measure aiming to offset international aviation carbon dioxide emissions since 1 January 2021 above a fixed emissions level with certain offset credits.

4 OJ C [...], [...], p. [...].

5 OJ C [...], [...], p. [...].

- (2) As recalled in Council Decision (EU) 2020/954⁶, subject to the differences under Article 38 of the Chicago Convention on International Civil Aviation (the 'Chicago Convention'), with the provisions in the First Edition of Annex 16, Volume IV to the Chicago Convention: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) ('CORSIA SARPs')⁷, and the manner in which the EU legislature amends Union legislation, in particular in the framework of the on-going revision of Directive 2003/87⁸, the Union intends to implement those SARPs.

⁶ Council Decision (EU) 2020/954 of 25 June 2020 on the position to be taken on behalf of the European Union within the International Civil Aviation Organization as regards the notification of voluntary participation in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) from 1 January 2021 and the option selected for calculating aeroplane operators' offsetting requirements during the 2021-2023 period (OJ L 212, 3.7.2020, p. 14).

⁷ First Edition of the International Standards and Recommended Practices on Environmental Protection — Carbon Offsetting and Reduction Scheme for International Aviation (Annex 16, Volume IV to the Chicago Convention).

⁸ 2021/0207 (COD)

- (2a) In order to allow Member States to comply in due time with their international obligations under the CORSIA SARPs and pending the on-going revision of Directive 2003/87⁹ that will implement those SARPs in EU law as appropriate for the long-term, this Decision should lay down rules allowing the calculation and the notification of aeroplane operators' annual offsetting requirements under those SARPs with respect to all flights covered by those SARPs until that revision is complete. Such rules should therefore be laid down for the sole purpose of the implementation of Member States' obligations under CORSIA SARPs with regard to the calculation and the notification of annual offsetting requirements. Those rules and the annual offsetting requirements of the aeroplane operators for the annual emissions from 2021 to 2023 following from their application should be without prejudice to the calculation of the total final offsetting requirements for the entire 2021-2023 compliance period and to the outcome of the on-going revision of Directive 2003/87¹⁰, in particular regarding the articulation between the rules laid down in that Directive and the rules set out in the CORSIA SARPs to be defined by the EU legislature, including for that period. Accordingly, the amount of annual emissions to be offset calculated pursuant to this Decision should be considered as provisional only as it might be adjusted further in the framework of the notification by Member States to operators of their final offsetting requirements for the entire 2021-2023 compliance period depending in particular on the scope of Directive 2003/87 following that revision. Moreover, the rules laid down in this Decision concerning the calculation and the notification of aeroplane operators' annual offsetting requirements should apply until 31 December 2024 or until the end of the transposition period of the new legislative act revising the Directive 2003/87 whichever is the earliest date.
- (2b) In accordance with CORSIA SARPs, Member States should implement those SARPs by notifying aeroplane operators, based in those Member States, of their annual offsetting requirements in respect of a given year by 30 November of the following year.

⁹ 2021/0207 (COD)

¹⁰ 2021/0207 (COD)

- (3) Commission Delegated Regulation (EU) 2019/1603¹¹ was adopted to appropriately implement the rules of CORSIA SARPs for monitoring, reporting and verification of aviation emissions. The offsetting requirements of aeroplane operators pursuant to those SARPs' is to be calculated on the basis of CO₂ emissions transmitted to ICAO in accordance with that Regulation. If no data have been reported and verified by the aeroplane operators pursuant to that Regulation, in particular with respect to flights between aerodromes located in two different third countries, the aeroplane operator's CO₂ emissions in a given year should be estimated using the best available information and tools, such as the ICAO CORSIA CO₂ Estimation and Reporting Tool (CERT).
- (4) Due to a large decrease in aviation emissions in 2020 as a consequence of the COVID-19 pandemic, the ICAO Council decided in its 220th session in June 2020 that 2019 emissions should be used as baseline for calculating the offsetting requirements by aeroplane operators for the years 2021-2023. The ICAO Assembly is expected to confirm this Decision at its 41st Session in October 2022.
- (5) Aviation emissions should not exceed their collective 2019 levels in 2021. Therefore, aeroplane operators' additional offsetting is not expected to be positive for the year 2021. However, this estimate should be checked against both the 2021 verified emissions of aeroplane operators and the CORSIA annual Sector Growth Factor.
- (8) Therefore, in order to ensure an accurate calculation of annual offsetting requirements in respect of 2021, 2022 and 2023, Member States should notify aeroplane operators of those requirements as soon as the level of their emissions for each of those years and when the annual Sector Growth Factor are known, ahead of the applicable deadlines set out in CORSIA SARPs.

¹¹ Commission Delegated Regulation (EU) 2019/1603 of 18 July 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards measures adopted by the International Civil Aviation Organisation for the monitoring, reporting and verification of aviation emissions for the purpose of implementing a global market-based measure (OJ L 250, 30.9.2019. p. 10).

- (8a) It is not expected that the formula defined in CORSIA SARPs for the calculation of CORSIA offsetting requirements be amended by the 41st ICAO Assembly. Its use should enable the timely adoption of this Decision well ahead of the 41st ICAO Assembly so that Member States are able to calculate accurately operators' annual offsetting requirements in time to meet the deadline of 30 November 2022 set out in CORSIA SARPs.
- (8b) The operators' annual offsetting requirements should be calculated on the basis of the CO₂ emissions in a given year from flights between ICAO Contracting States applying CORSIA, as identified in Annex Ia of Directive 2003/87/EC, and of the Sector's Growth Factor applicable for that year. The Sector Growth Factor should be calculated as the difference between the total sectoral CO₂ emissions for the given year y and the baseline, divided by the total sectoral CO₂ emissions for the given year y, where the baseline is the total annual sectoral CO₂ emissions during 2019 or the average total annual sectoral CO₂ emissions during 2020 and 2019, depending on the Decision by 41st ICAO Assembly.
- (8c) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in order to update the list of ICAO Contracting States applying CORSIA included in Annex Ia of Directive 2003/87/EC, on the basis of the list of State pairs published by the ICAO including potential updates of such list by the ICAO. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (8d) In order to ensure uniform conditions for the implementation of Article 12(6) of Directive 2003/87/EC, implementing powers should be conferred on the Commission with respect to the establishment of the sector's growth factor.

- (9b) Since the objectives of this Decision to lay down detailed rules regarding the calculation and the notification of airplane operators' annual offsetting requirements for the purposes of the application of CORSIA SARPs cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (9c) In order to comply in due time with CORSIA SARPs, this Decision should enter into force without delay.
- (10) Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

Article 1

(1) In Article 3 of Directive 2003/87/EC the following definition is added:

(oo) ‘aeroplane operator’ means the person who operates an aeroplane at the time it performs an aviation activity listed in Annex I or, where that person is not known or is not identified by the owner of the aeroplane, the owner of the aeroplane.

(2) In Article 12 of Directive 2003/87/EC the following paragraphs 6, 7 and 8 are added:

‘6. By 30 November each year from 2022 to 2024, Member States shall, for the purposes of the application of CORSIA SARPs, calculate, for each of the aeroplane operators referred to in paragraph 7, the annual amount of CO₂ emissions required to be offset for the preceding given year *y*. This amount (OR_{*y*}) shall be calculated as follows:

$$OR_y = OE_y * SGF_y$$

Where:

OE_y = aeroplane operator's CO₂ emissions in the given year y from flights between States included in the list in Annex Ia reported to ICAO in accordance with Article 7 of Commission Delegated Regulation (EU) 2019/1603. If no data have been reported and verified by the aeroplane operators pursuant to that Delegated Regulation, in particular with respect to flights between aerodromes located in two different third countries, the aeroplane operator's CO₂ emissions in the given year y shall be estimated using the best available information and tools.

The Commission shall adopt, by 31 October 2023, a delegated act, in accordance with Article 23, to supplement Annex Ia by updating the list of States included in that Annex for the purpose of calculating aeroplane operators' CO₂ emissions (OE_y) for 2023. That delegated act shall be based on the list of States included in the ICAO instrument entitled 'CORSIA States for Chapter 3 State pairs' to be published by the ICAO.

SGF_y = Sector's Growth Factor applicable for the given year y

By 15 November each year from 2022 to 2024, the Commission shall, by means of implementing acts, establish the Sector's Growth Factor applicable for the preceding given year y (SGF_y). Those implementing acts shall be based on the data included in the ICAO instrument entitled 'CORSIA Annual Sector's Growth Factor (SGF)' to be published by ICAO by 31 October each year from 2022 to 2024 and be calculated as the difference between the total sectoral CO₂ emissions for the given year y and the baseline, divided by the total sectoral CO₂ emissions for the given year y .

7. By 30 November each year from 2022 to 2024, Member States shall notify aeroplane operators of their annual offsetting requirements (OR_y) for the purposes of the implementation of the CORSIA SARPs in respect of the preceding given year y calculated in accordance with paragraph 6. Member States shall notify aeroplane operators that fulfil the following conditions:

- (a) the aeroplane operator has a registered ICAO designator for which a Member State is identified as the Notifying State; or the aeroplane operator does not have an ICAO designator but holds an air operator certificate issued by a Member State; or the aeroplane operator has none of the above but is registered as a legal –person in a Member State, including in the outermost regions, dependencies and territories of that Member State;

(b) the aeroplane operator referred to in subparagraph (a) produces in the given year y annual CO₂ emissions greater than 10 000 tonnes from the use of aeroplanes with a maximum certified take-off mass greater than 5 700 kg conducting international flights between ICAO Contracting States covered by Annex I, other than those departing and arriving in the same Contracting State (including outermost regions of the same Contracting State).

For the purposes of the first subparagraph, point (b), CO₂ emissions from the following types of flights shall not be taken into account:

- (i) state flights;
- (ii) humanitarian flights;
- (iii) medical flights;
- (iv) military flights;
- (v) firefighting flights.
- (vi) flights preceding or following a humanitarian, medical or firefighting flight provided such flights were conducted with the same aeroplane, and were required to accomplish the related humanitarian, medical or firefighting activities or to reposition thereafter the aeroplane for its next activity.

8. Paragraphs 6 and 7 shall apply until 31 December 2024 or until the end of the transposition period of a legislative act amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure, whichever is the earliest date.'

(3) Article 23 of Directive 2003/87/EC is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. The power to adopt delegated acts referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 12(6), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c shall be conferred on the Commission for an indeterminate period of time from 8 April 2018.'

(b) The first sentence of paragraph 3 is replaced by the following:

'The delegation of power referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 12(6), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c may be revoked at any time by the European Parliament or by the Council.'

(c) The first sentence of paragraph 6 is replaced by the following:

'A delegated act adopted pursuant to Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 12(6), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.'

(4) In Annex I of Directive 2003/87/EC, in the table, the following text is inserted after the first paragraph of the entry 'Aviation' of the column 'Activities':

'For the purpose of [Article 12(6) and (7) and Article 28c] of this Directive, flights between aerodromes that are located in two different ICAO Contracting States, operated by an aeroplane operator which has a registered ICAO designator for which a Member State is identified as the Notifying State; or by an aeroplane operator which does not have an ICAO designator but holds an air operator certificate issued by a Member State; or by an aeroplane operator which has none of the above but is registered as a legal person in a Member State, including in the outermost regions, dependencies and territories of that Member State.'

Article 2

This Decision shall enter into force on the day after the date of its adoption.

Done at Brussels,

For the European Parliament

For the Council

The President

The President

Annex Ia : List of States for calculating aeroplane operators' CO2 emissions in a given year

(OE_y)

A. List for calculating aeroplane operators' CO2 emissions (OE_y) in 2021 (y = 2021)

Afghanistan, Albania, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Cameroon, Canada, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Dominican Republic, El Salvador, Equatorial Guinea, Estonia, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Guyana, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, Latvia, Lithuania, Luxembourg, Madagascar, Malaysia, Malta, Marshall Islands, Mexico, Monaco, Montenegro, Namibia, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Rwanda, San Marino, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States, Zambia.

B. List for calculating aeroplane operators' CO2 emissions (OE_y) in 2022 (y = 2022)

Afghanistan, Albania, Armenia, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belgium, Belize, Benin, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Cameroon, Canada, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Dominican Republic, El Salvador, Equatorial Guinea, Estonia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guyana, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, Kiribati, Latvia, Lithuania, Luxembourg, Madagascar, Malaysia, Mali, Malta, Marshall Islands, Mexico, Monaco, Montenegro, Namibia, Nauru, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Oman, Palau, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Rwanda, San Marino, Saint Kitts and Nevis, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Sudan, Spain, Suriname, Sweden, Switzerland, Thailand, Tonga, Trinidad and Tobago, Turkey, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States, Uruguay, Vanuatu, Zambia.