



Conseil de
l'Union européenne

Bruxelles, le 21 juin 2022
(OR. fr, en)

**Dossier interinstitutionnel:
2021/0207(COD)**

10479/22
ADD 2

LIMITE

**CLIMA 299
ENV 634
ENER 317
TRANS 417
AGRI 277
COMPET 517
ECOFIN 644
AVIATION 132
CODEC 956**

NOTE

Origine:	la présidence
Destinataire:	Comité des représentants permanents
N° doc. Cion:	10917/21 - COM (2021) 552 final
Objet:	PREPARATION DE LA SESSION DU CONSEIL "ENVIRONNEMENT" DU 28 JUIN 2022 Proposition de directive du Parlement Européen et du Conseil modifiant la directive 2003/87/CE en ce qui concerne la contribution de l'aviation à l'objectif de réduction des émissions à l'échelle de l'ensemble de l'économie de l'Union et mettant en œuvre de manière appropriée un mécanisme de marché mondial – Orientation générale

En vue de la réunion du Coreper le 24 juin 2022, les délégations trouveront en annexe le texte de compromis de la Présidence sur le sujet visé en objet.

**Proposal for a Directive of the European Parliament and of the Council
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 measure¹**

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 Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

¹ Changes to the previous Presidency compromise are marked in **bold and underlined**, deletions by [...]. Previous changes are underlined.

² OJ C , , p. .

³ OJ C , , p. .

Whereas:

- (1) Directive 2003/87/EC of the European Parliament and of the Council⁴ established a system for greenhouse gas emission allowance trading within the Union, in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner. Aviation activities were included in the EU emissions trading system by Directive 2008/101/EC of the European Parliament and of the Council⁵.
- (2) The Paris Agreement, adopted in December 2015 under the United Nations Framework Convention on Climate Change (UNFCCC) entered into force in November 2016 (“the Paris Agreement”)⁶. The parties to the Paris Agreement have agreed to hold the increase in the global average temperature well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5 °C above pre-industrial levels. In order to achieve the objectives of the Paris Agreement, all sectors of the economy need to contribute to achieving emission reductions, including international aviation.
- (3) The International Civil Aviation Organization (ICAO) Council adopted the First Edition of the International Standards and Recommended Practices on Environmental Protection - Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) (Annex 16, Volume IV to the Chicago Convention) at the tenth meeting of its 214th session on 27 June 2018. The Union and its Member States continue to support CORSIA and are committed to implement it from the start of the pilot phase 2021-2023⁷.

⁴ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁵ Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (OJ L 8, 13.1.2009, p. 3).

⁶ Paris Agreement (OJ L 282, 19.10.2016, p. 4).

⁷ 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).

- (4) In line with Council Decision (EU) 2018/2027⁸, Member States notified the ICAO Secretariat of differences between CORSIA and the EU ETS. The objective was to preserve the Union *acquis* and future policy space, as well as the Union level of climate ambition and the exclusive roles of the European Parliament and Council in deciding the contents of Union legislation. Following the adoption of this amendment to Directive 2003/87/EC, the notification of differences between CORSIA and the EU ETS to the ICAO Secretariat should be updated by a second notification of differences consistent with Union law to reflect the revisions made to Union law.
- (5) Tackling climate and environmental-related challenges and reaching the objectives of the Paris Agreement are at the core of the Communication on “The European Green Deal”, adopted by the Commission on 11 December 2019⁹.
- (6) The Union undertook to reduce its economy-wide net greenhouse gas emissions by at least 55 % below 1990 levels by 2030 in the updated nationally determined reduction commitment of the Union and its Member States submitted to the UNFCCC Secretariat on 17 December 2020¹⁰.
- (7) The Union has enshrined into legislation the target of economy-wide climate neutrality by 2050 in Regulation (EU) 2021/1119 of the European Parliament and of the Council¹¹. That Regulation also establishes a binding Union domestic reduction commitment of net greenhouse gas emissions (emissions after deduction of removals) by at least 55% below 1990 levels by 2030.

⁸ Council Decision (EU) 2018/2027 of 29 November 2018 on the position to be taken on behalf of the European Union within the International Civil Aviation Organization in respect of the First Edition of the International Standards and Recommended Practices on Environmental Protection — Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) (OJ L 325, 20.12.2018, p. 25).

⁹ COM(2019)640 final.

¹⁰ https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European%20Union%20First/EU_NDC_Submission_December%202020.pdf

¹¹ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality (European Climate Law) (OJ L 243, 9.7.2021, p. 1).

- (8) This amendment to Directive 2003/87/EC aims at the implementation for aviation of the Union's contributions under the Paris Agreement, and of the regulatory framework to achieve the binding Union 2030 climate target of a domestic reduction of net greenhouse gas emissions by at least 55 % compared to 1990 levels by 2030 set out in Regulation (EU) 2021/
- (9) Aviation should contribute to the emission reduction efforts necessary for the Union's 2030 climate target. Therefore, the total quantity of allowances for aviation should be consolidated and subject to the linear reduction factor.
- (10) Achieving the increased climate ambition will require channelling as many resources as possible to the climate transition. As a result, all auction revenues that are not attributed to the Union budget should be used for climate-related purposes.
- (11) In accordance with Article 28b(3) of Directive 2003/87/EC, the Union is to assess the ICAO's CORSIA scheme and implement it as appropriate, and in a manner that is consistent with the Union's economy-wide emission reduction commitment for 2030.
- (12) The total quantity of allowances for aviation should be consolidated at the level of allocation for flights departing from an aerodrome located in the EEA and arriving at an aerodrome located in the EEA, in Switzerland or in the United Kingdom. The allocation for the year 2024 should be based on the total allocation to active aircraft operators in year 2023, reduced by the linear reduction factor as specified in Article 9 of Directive 2003/87/EC. The level of allocation should be increased to take into account the routes that were not covered by the EU ETS in the year 2023 but are covered by the EU ETS from year 2024 onwards.
- (13) Increased auctioning from the year after the entry into force of this amendment to Directive 2003/87/EC should be the rule for the aviation sector allocation of allowances, taking into account the sector's ability to pass on the increased cost of CO₂. A gradual phase out of free allocation from 2024 to 2026 and full auctioning from 2027 should be implemented.

(13a) The transition from use of fossil fuels to the increasing use of sustainable aviation fuels would play a role in achieving the decarbonisation of air transport. However, considering the high level of competition between aircraft operators, the developing EU market of sustainable aviation fuels, and the important price differential between fossil kerosene and alternatives fuels, that transition should be supported by a combination of policies on the supply side such as [RefuelEU Aviation Regulation] and on the demand side by incentivising early movers with appropriate transitional support to bridge those price differentials. Therefore, during the period from 1 January 2024 until 31 December 2030, allowances should be allocated in a manner similar to contracts for difference, covering part of the remaining price differential between fossil kerosene and fuels identified in article 4(1) of the [RefuelEU Aviation Regulation]. Those allowances should take into account the price of carbon by promoting increased greenhouse gas emissions savings, in proportion to the amount of fuels used as reported under Commission Implementing Regulation (EU) 2018/2066). For this purpose, a maximum of 20 million allowances should be reserved from 1 January 2024 until 31 December 2030. Those allowances should come from the pool of total allowances available for aviation and should be used only for flights covered by the EU ETS and in a non-discriminatory manner.

(14) Directive 2003/87/EC should also be amended with regard to acceptable compliance units, to take into account the Unit Eligibility Criteria adopted by the ICAO Council at its 216th session in March 2019 as an essential element of CORSIA. Airlines based in the Union should be able to use [...] units for compliance for flights to or from third countries that are considered to be participating in CORSIA. To ensure that the Union's CORSIA implementation supports the Paris Agreement goals and gives incentives for broad participation to CORSIA, the [...] units should originate from states that are parties to the Paris Agreement and that participate in CORSIA, and double counting of [...] units should be avoided.

- (15) In order to ensure uniform conditions for the use of [...] units in accordance with Article 11a of Directive 2003/87/EC, implementing powers should be conferred on the Commission to adopt a list of the [...] units which have been considered acceptable by the ICAO Council to use for compliance of CORSIA, and that fulfil the eligibility conditions above. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹².
- (16) To ensure that the necessary arrangements are in place for authorisation by the participating parties, timely adjustments to the reporting of anthropogenic emissions by sources and removals by sinks covered by the nationally determined contributions of the participating parties, and avoiding double counting and a net increase in global emissions, implementing powers should be conferred on the Commission to lay down detailed requirements for such arrangements. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹³.

¹² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

¹³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (17) [...] The calculation of offsetting requirements for CORSIA for Union-based [...] aircraft operators should be made [...] on the basis of ICAO’s International Standards and Recommended Practices on Environmental Protection for Carbon Offsetting and Reduction Scheme for International Aviation, taking into account the non-application of CORSIA for flights [...] departing from an aerodrome located in the EEA and arriving at an aerodrome located in the EEA, in Switzerland or in the United Kingdom [...], in virtue of the “clean cut” principle. Implementing powers should be conferred on the Commission to adopt a methodology for the calculation taking into account the differences between those International Standards and Recommended Practices and the Directive 2003/87/EC. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (18) In order to ensure uniform conditions for listing countries which are considered to be applying CORSIA for the purposes of Directive 2003/87/EC pursuant to Article 25a(3) of that Directive, implementing powers should be conferred on the Commission to adopt and maintain the list of states other than EEA countries, Switzerland and the United Kingdom, which are considered to be participating in CORSIA for the purposes of Union law. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (19) As CORSIA implementation and enforcement for aircraft operators based outside the Union is meant to belong solely to the home country of these aircraft operators [...], aircraft operators based outside the Union should not be required to cancel units for CORSIA compliance under this Directive [...].

- (19a) As CORSIA implementation and enforcement for aircraft operators based outside the Union is meant to belong solely to the home country of these aircraft operators, [...] where an aircraft operator based outside the Union has significant emissions from flights within the EEA, or departing from an aerodrome in the EEA to Switzerland or to the United Kingdom, the country in which that aircraft operator is based may also notify differences regarding application of CORSIA in respect of intra-European flights. Directive 2003/87/EC should be kept under review in light of developments in this regard.
- (19b) In order to incentivize CORSIA participation and avoid the overlapping of CORSIA and EU ETS instruments for the same flights, aircraft operators should not be required to surrender allowances in respect of emissions from flights to or from countries other than EEA countries, Switzerland and the United Kingdom, which are considered to be participating in CORSIA for the purposes of Union law.
- (20) To ensure equal treatment on routes, flights to and from countries that are not implementing CORSIA for the purpose of Union law other than flights departing from an aerodrome located in the EEA and arriving at an aerodrome located in the EEA, in Switzerland or in the United Kingdom should be exempt from [...] allowances surrendering or units cancelling obligations. To incentivise full implementation of CORSIA starting in 2027, the exemption should only apply to emissions up to 31 December 2026 for allowances surrendering.
- (21) Flights to and from Least Developed Countries and Small Island Developing States, as defined by the United Nations, not implementing CORSIA for the purpose of Union law, other than those states whose GDP per capita equals or exceeds the Union average, should be exempt from [...] allowances surrendering or units cancelling obligations without an end date for the exemption.

- (22) In order to ensure uniform conditions for exempting aircraft operators from [...] offsetting requirements as laid down in Article 12(8) of Directive 2003/87/EC in respect of emissions from flights to and from countries applying CORSIA in a less stringent manner in its domestic law, or failing to enforce CORSIA provisions in a manner equal to all aircraft operators pursuant to Article 25a(7) of that Directive, implementing powers should be conferred on the Commission to exempt airlines based in the Union from [...] offsetting requirements in respect of emissions from flights where a significant distortion of competition to the detriment of airlines based in the Union occurs due to a less stringent implementation or enforcement of CORSIA in the third country. The distortion of competition could be caused by a less stringent approach to eligible [...] units or double counting provisions. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (23) In order to ensure uniform conditions for the establishment of a level playing field on routes between two different countries applying CORSIA where those countries allow aircraft operators to use other units than those on the list adopted pursuant to Article 11a(8) of Directive 2003/87/EC, pursuant to Article 25a(8) of that Directive, implementing powers should be conferred on the Commission to allow aircraft operators based in a Member State to use unit types additional to the list adopted pursuant to Article 11a(8) or not to be bound by the conditions of Article 11a(2) and (3). Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (23a) The emissions factor of Jet Kerosene (Jet A1 or Jet A) under the EU ETS should be aligned with the emissions factor for that fuel established in Annex 16, Volume IV to the Convention on International Civil Aviation signed on 7 December 1944 (Chicago Convention). No change in allocation levels is made as a result of the increase in the emissions factor of Jet Kerosene because free allocations to aviation are being discontinued in favour of auctioning to deliver greater emission reductions.

- (24) In order to ensure a level playing field on routes between two third countries implementing CORSIA, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of accepting other [...] units on those routes. 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-Making¹⁴. 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.
- (25) Special consideration should be given to promoting accessibility for the outermost regions of the Union. Therefore, a temporary derogation from the EU ETS, should be provided until 2030 for emissions from flights between an aerodrome located in an outermost region of a Member State and an aerodrome located in the same Member State outside that outermost region in order to respond to the most important needs of residents in terms of employment, education and other opportunities. **This derogations should, for the same reasons, cover flights between aerodromes that are both located in the same outermost region or in different outermost regions in the same Member State.**
- (26) A comprehensive approach to innovation is important to achieving the European Green Deal objectives and for the competitiveness of the European industry. This is of particular importance for hard to decarbonise sectors such as aviation and shipping where a combination of operational improvements, alternative climate-neutral fuels and technological solutions need to be deployed. Therefore, Member States should ensure that the national transposition provisions do not hamper innovations and are technologically neutral. At EU level, the necessary R&I efforts, are supported among others, through the Horizon Europe Framework Programme, which includes significant funding and new instruments for the sectors coming under the ETS.

¹⁴ OJ L 123, 12.5.2016, p.1.

- (26a) In accordance with Article 12(8) of Directive 2003/87/EC as amended by Decision [XXX] [2021/0204(COD)], Article 12(6) and (7) of that Directive are to apply until 31 December 2024 or the end of the transposition period of this Directive whichever is the earliest date. The deadline for transposition period of this Directive is 31 December 2023 and Article 12(6) to (8) of Directive 2003/87/EC will therefore apply in the version prior to the amendments introduced by this Directive until that date.
- (27) Since the objectives of this Directive 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 Directive does not go beyond what is necessary in order to achieve those objectives.
- (28) Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/87/EC is amended as follows:

(1) Article 3c is amended as follows:

(a) paragraph 2 is deleted,

(b) the following paragraphs 5, **5a, 5b**, 6 and 7 are added:

‘5. The Commission shall determine the total quantity of allowances to be allocated in respect of aircraft operators for the year 2024 on the basis of the total allocation of allowances in respect of aircraft operators that were performing aviation activities falling within Annex I in the year 2023, reduced by the linear reduction factor specified in Article 9, and shall publish that quantity, as well as the quantity of free allocation which would have taken place in 2024 [...] under the rules for free allocation in force prior to the amendments introduced by [this amending Directive].

5a. A maximum of 20 million of the total quantity of allowances referred to in paragraph 5 for the period from 1 January 2024 until 31 December 2030, shall be reserved in respect of aircraft operators, on a non-discriminatory basis for the uplifting of fuels identified in article 4(1) of the [RefuelEU Aviation Regulation] for flights subject to allowances surrendering requirements according to article 12(3). Those allowances shall be allocated in the same manner as a contract for difference to cover part of the price differential between fossil kerosene taking into account the price of carbon and the price of the relevant fuels. They shall cover 70% of the remaining price differential between fossil kerosene and the relevant fuels. If for a given year the demand of allowances for the uplifting of such fuels is higher than the availability of allowances, they shall be reduced in an equal manner for all aircraft operators concerned.

5b. Each aircraft operator may apply on a yearly basis for an allocation of the allowances for flights, from 1 January 2024 until 31 December 2030, for which allowances has to be surrendered based on the reported uplifting of the fuels for these flights in accordance with the use of fuels as reported under Commission Implementing Regulation (EU) 2018/2066. Member States shall allocate allowances to aircraft operators subject to availability of allowances and in accordance with the implementing act referred to in the third subparagraph.

The Commission shall publish in the Official Journal details of the cost difference between fossil kerosene and the relevant fuels on a yearly basis.

The Commission shall by means of delegated acts establish the detailed arrangements for the yearly calculation of the cost difference and for the allocation of allowances for uplifting of the fuels identified in Article 4(1) of the [ReFuelEU Aviation Regulation] and establish the detailed arrangements for the calculation of the greenhouse gas emissions saved in accordance with the use of fuels as reported under Commission Implementing Regulation (EU) 2018/2066 and the arrangements for taking into account the price of carbon in the allocation.

By 1 January 2028, the Commission shall carry out an evaluation regarding the application of this paragraph and submit its results in a report to the European Parliament and the Council in a timely manner. The report may, if appropriate, be accompanied by a legislative proposal to incentivise the uplifting of the fuels identified in Article 4(1) of the [ReFuelEU Aviation Regulation] through other instruments than allocation of free allowances, in articulation with the review to be undertaken under article 14 of [ReFuelEU Aviation Regulation].

6. In respect of flights departing from an aerodrome located in the EEA which arrive at an aerodrome located in the EEA, in Switzerland or in the United Kingdom, which were not covered by the EU ETS in 2023, the total quantity of allowances to be allocated to aircraft operators shall be increased by the levels of allocations, including free allocation and auctioning, which would have been made if they were covered by the EU ETS in that year, reduced by the linear reduction factor specified in Article 9.

7. By way of derogation from Articles 12(3), 14(3) and Article 16, Member States shall consider the requirements set out in those provisions to be satisfied and shall take no action against aircraft operators in respect of emissions taking place until 2030 from flights between an aerodrome located in an outermost region of a Member State and an aerodrome located in the same Member State [...] **including another aerodrome in an outermost region of the same Member State** ;

(2) Article 3d is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. In the years 2024 to 2026, 15% of the allowances referred to in Article 3c(5) and (6) as well as a share of the remaining 85% of allowances, in respect of which free allocation would have taken place, shall be auctioned. The remainder of allowances those years shall be allocated for free. The share of allowances in respect of which free allocation would have taken place to be auctioned shall for the respective years increase as set out below.

In 2024, 25% of the quantity of allowances in respect of which free allocation would have taken place as published in accordance with Article 3c shall be auctioned.

[...]

[...] In 2025, 50% of the quantity of allowances in respect of which free allocation would have taken place in that year, calculated from the publication in accordance with Article 3c shall be auctioned.

[...] In 2026, 75% of the quantity of allowances in respect of which free allocation would have taken place in that year, calculated from the publication in accordance with Article 3c shall be auctioned.

[...] As from 1 January 2027, all of the quantity of allowances in respect of which free allocation would have taken place in that year shall be auctioned, **except for the quantity of allowances referred to in Article 3c(5a).**

[...] 1a. Allowances which are allocated for free shall be allocated to aircraft operators proportionately to their share of verified emissions from aviation activities reported in 2023. This calculation shall also take into account verified emissions from aviation activities reported in respect of flights that are only covered by the EU ETS from 1 January 2024. **By 30 June of the relevant year, the competent authorities shall issue the allowances which are allocated for free for that year.**’

(c) paragraph 2 is deleted,

(d) in paragraph 3, the first sentence is replaced by the following:

‘The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the detailed arrangements for the auctioning by Member States of aviation allowances in accordance with paragraphs 1 [...] and 1a of this Article, including the modalities of the auctioning which are made necessary [...] for the transfer of a share of revenue from such auctioning to the general budget of the Union as own resources in accordance with Article 311(3) TFEU.’

(da) in paragraph 3, in the third sentence, the words “ For the period referred to in Article 3c(1), the reference year shall be 2010, and for each subsequent period referred to in Article 3c” are replaced by “For each period referred to in Article 13.”;

(e) paragraph 4 is replaced by the following:

‘4. Member States shall determine the use of revenues generated from the auctioning of allowances covered by this Chapter, except for the revenues established as own resources in accordance with Article 311(3) of the Treaty and entered in the general budget of the Union. Member States [...] should use those revenues [...] from the auctioning of allowances in accordance with Article 10(3).’;

(3) Articles 3e and 3f are deleted;

[...] ¹⁵

(5) Article 11a is amended as follows:

(a) paragraphs 1 to 3 are replaced by the following:

‘1. Subject to paragraphs 2 and 3 of this Article, aircraft operators that hold an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State shall be able to use the following units to comply with their obligations to cancel units in respect of the quantity notified as laid down in Article 12 (8) [...].’;

(a) credits authorised by parties participating in the mechanism established under Article 6(4) of the Paris Agreement;

(b) credits authorised by the parties participating in crediting programmes which have been considered eligible by the ICAO Council as identified in the implementing act adopted pursuant to paragraph 8;

¹⁵ The same proposal is made also in the general amending Directive, Article 1(8), and justified in recital (25) to that proposal. As the two dossiers are moving in parallel, it is suggested to only make the change in the other proposal where it is justified in the recitals.

(c) credits authorised by parties agreements pursuant to paragraph 5;

(d) credits issued in respect of Union level projects pursuant to Article 24a.

2. Units referred to in paragraph 1, points (a) and (b), may be used if the following conditions have been met:

(a) they originate from a country that is a party to the Paris Agreement at the time of use;

(b) they originate from a country that is listed in the implementing act adopted pursuant to Article 25a(3) as participating in Carbon Offsetting and Reduction Scheme for International Aviation (CORSA). This condition shall not apply in respect of emissions before 2027, nor shall it apply in respect of Least Developed Countries and Small Island Developing States, as defined by the United Nations, except for those countries whose GDP per capita equals or exceeds the Union average.

3. Units referred to in paragraph 1, points (a), (b) and (c), may be used if arrangements are in place for authorisation by the participating parties, timely adjustments are made to the reporting of anthropogenic emissions by sources and removals by sinks covered by the nationally determined contributions of the participating parties, and that double counting and a net increase in global emissions are avoided.

The Commission shall adopt implementing acts laying down more detailed requirements for the arrangements referred to in the first subparagraph, which may include reporting and registry requirements, and for listing the states or programmes which apply these arrangements. Arrangements shall take account of flexibilities accorded to Least Developed Countries and Small Island Developing States in accordance with paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).’,

(c) paragraph (4) is deleted,

(d) the following paragraph 8 is added:

‘8. The Commission shall adopt implementing acts listing [...] units which, have been considered eligible by the ICAO Council, and that fulfil the conditions laid down in paragraphs 2 and 3. The Commission shall amend that list as appropriate. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).’;

(6) Article 12 is amended as follows:

(a) paragraph 6 is replaced by the following:

‘6. In accordance with the methodology laid down in the [...] implementing act referred to in paragraph 7, Member States shall calculate the offsetting each year for the preceding calendar year in respect of flights to, from and between the countries that are listed in the implementing act adopted pursuant to Article 25a(3) and of flights between Switzerland or the United Kingdom and countries that are listed in the implementing act adopted pursuant to Article 25a(3) [...] and by 30 November each year inform the aircraft operators.

In accordance with the methodology laid down in the implementing act referred to in paragraph 7, Member States shall also calculate the total final offsetting requirements for a given CORSIA compliance period and inform the aircraft operators by 30 November of the year following the last year of the relevant CORSIA compliance period.

Member States shall inform aircraft operators that fulfil all of the following conditions of the level of offsetting:

- (a) the aircraft operator holds an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State;
- (b) they produce annual CO₂ emissions greater than 10 000 tonnes from the use of aircrafts with a maximum certified take-off mass greater than 5 700 kg conducting flights covered by Annex I, other than those departing and arriving in the same Member State (including outermost regions of the same Member State), from 1 January 2019.

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.’,

(b) the following paragraphs 7 and 8 are added:

‘7. [...] The calculation of offsetting responsibilities [...] referred to in paragraph 6 for the purpose of ICAO’s [...] Carbon Offsetting and Reduction Scheme for International Aviation shall be made in respect of flights to, from and between the countries that are listed in the implementing act adopted pursuant to Article 25a(3), and of flights between Switzerland or the United Kingdom and countries that are listed in the implementing act adopted pursuant to Article 25a(3). [...]

The Commission shall adopt implementing acts specifying in further detail the methodology for the calculation of offsetting requirements for aircraft operators. Those implementing acts shall be based on the methodology referred to in the International Standards and Recommended Practices on Environmental Protection for Carbon Offsetting and Reduction Scheme for International Aviation [...] referred to in the preceding subparagraph. They should, however, contain the necessary adaptations to the methodology to ensure compliance with the provisions of this Directive. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

The first such implementing act shall be adopted by [1 May 2024]. The Commission shall ensure that no aircraft operator covered by paragraph 6 of this Article is subject to offsetting responsibilities in addition to and overlapping with their obligation to surrender allowances in accordance with this Directive with respect to the same flights during the CORSIA compliance period 2021-2023.’

8. [...] Aircraft operators that hold an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, shall cancel units referred to in Article 11a only in respect of the quantity notified by that Member State, in accordance with paragraph 6, in respect of the relevant CORSIA compliance period [...]. The cancellation shall take place by 31 January 2025 for emissions in the period 2021 to 2023, by 31 January 2028 for emissions in the period 2024 to 2026, by 31 January 2031 for emissions in the period 2027 to 2029, [...] by 31 January 2034 for emissions in the period 2030 to 2032 and by 31 January 2037 for emissions in the period 2033 to 2035,;

(7) Article 18a [...] is amended as follows:

(a) In the first sentence of paragraph 2, the words “period referred to in Article 3c” are replaced by “period referred to in Article 13”

(b) Paragraph 3, point(b) is replaced by the following:

‘(b) as from 2024, at least every two years, update the list to include aircraft operators which have subsequently performed an aviation activity listed in Annex I. **Where an aircraft operator has not performed an aviation activity listed in Annex I during the four consecutive calendar years preceding the update of the list, that aircraft operator shall not be included in the updated list.**’;

(8) Article 23 is amended as follows:

(a) paragraphs 2 and 3 are 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), [...], 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.

3. The delegation of power referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), [...] 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. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official *Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’,

(b) paragraph 6 is replaced by the following:

‘6. A delegated act adopted pursuant to Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), [...], 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. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’;

(9) In Article 25a, the following paragraphs 3 [...] to 8 are added:

‘3. The Commission shall adopt an implementing act listing countries other than EEA countries, Switzerland and the United Kingdom, which are considered to be applying CORSIA for the purposes of this Directive, [...]. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

4. In respect of emissions from flights to or from countries that are listed in the implementing act adopted pursuant to paragraph 3, aircraft operators [...] shall not be required to surrender allowances according to article 12(3) [...] in respect of those emissions.

5. In respect of emissions occurring until 31 December 2026 from flights between the EEA and countries that are not listed in the implementing act adopted pursuant to paragraph 3, other than flights to Switzerland and the United Kingdom, aircraft operators shall not be required to surrender allowances according to article 12(3) in respect of those emissions [...].
6. In respect of emissions from flights to and from Least Developed Countries and Small Island Developing States as defined by the United Nations, other than those listed in the implementing act adopted pursuant to paragraph 3 and those states whose GDP per capita equals or exceeds the Union average, aircraft operators shall not be required to surrender allowances according to article 12(3) in respect of those emissions [...].
7. Where the Commission determines that there is a significant distortion of competition which is detrimental to aircraft operators that hold an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, the Commission shall be empowered to adopt implementing acts to exempt those aircraft operators from surrender requirements as laid down in Article 12(8) in respect of emissions from flights to and from such countries. The distortion of competition may be caused by a third country applying CORSIA in a less stringent manner in its domestic law, or failing to enforce CORSIA provisions in a manner equal to all aircraft operators. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).
8. Where aircraft operators that hold an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, the Commission shall be empowered to adopt implementing acts allowing those aircraft operators to use unit types additional to that list or not to be bound by the conditions of Article 11a(2) and (3) in respect of emissions from such flights. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

(9a) In article 28a(6), the words “By way of derogation from Articles 3g, 12, 15 and 18a” are replaced by “By way of derogation from Articles 12, 15 and 18a”

(10) Annex I **is amended as follows:**

(a) In the table, the second paragraph of the entry ‘Aviation’ of the column ‘Activities’ ¹⁶ is replaced by the following:

‘Flights between aerodromes that are located in two different countries that are listed in the implementing act adopted pursuant to Article 25a(3) and flights between Switzerland or the United Kingdom and countries that are listed in the implementing act adopted pursuant to Article 25a(3) and, for the purpose of Article 12(6), 12(7) and 28c, any other flight between aerodromes that are located in two different third countries by aircraft operators that fulfil all of the following conditions:

(a) the aircraft operator holds an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State;

(b) they produce annual CO₂ emissions greater than 10 000 tonnes from the use of aircrafts with a maximum certified take-off mass greater than 5 700 kg conducting flights covered by Annex I, other than those departing and arriving in the same Member State (including outermost regions of the same Member State), from 1 January 2019. For the purposes of this point, 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.’.

(b) In the table, in the column ‘Activities’ in the entry ‘Aviation’, in point (i), the word “30 000“ is replaced by “50 000”;

¹⁶ Introduced by the notification decision in its wording approved by Coreper in document 9366/22 – depends on final outcome of the negotiation on 2021/0204(COD).

(10a) Annex Ia¹⁷ is deleted.

(11) In Annex IV, Part B, the following sentence is inserted at the end of the fifth paragraph:

‘The emissions factor for Jet kerosene (Jet A1 or Jet A) shall be 3,16 (t CO₂/t fuel).’

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2023. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

¹⁷ Introduced by the notification decision in its wording approved by Coreper in document 9366/22.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

