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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 567 final
Subject:	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 aircraft operators based in the Union

Delegations will find attached document COM(2021) 567 final.

Encl.: COM(2021) 567 final

EUROPEAN
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Brussels, 14.7.2021
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2021/0204 (COD)

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 aircraft operators based in the Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal introduces an amendment to aviation rules in the Emissions Trading System of the European Union (EU ETS) to implement Member States' notification to EU-based airlines of the offsetting for the year 2021 under the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) of the International Civil Aviation Organisation (ICAO).

The objective is to implement this notification in a manner that minimises the administrative burden of national authorities and airline operators, and provides legal certainty as regards CORSIA offsetting by airlines based in Member States.

ICAO's CORSIA is an offsetting mechanism where countries should have airlines based in those countries offset CO_2 emissions that exceed the relevant baseline by international credits. Due to the COVID-19 pandemic, the ICAO Council decided in June 2020 that 2019 emissions should be used as baseline in 2021-2023 instead of the average of 2019-2020 emissions[1]. The CORSIA review in 2022 will examine the impact of COVID-19 on CORSIA on various issues.

Subject to the differences notified in 2018[2] and the manner in which the European Parliament and Council amend Union legislation, the EU intends to implement CORSIA. Therefore, EU-based airlines should surrender credits if relevant to comply with CORSIA offsetting in respect of their 2021 emissions. As foreseen in the CORSIA standards and recommended practices, EU Member States should calculate and inform airlines of their offsetting in respect of 2021 emissions by 30 November 2022; thereafter, those airlines should cancel the according number of credits by 31 January 2025.

Due to the COVID-19 pandemic, aviation ETS CO_2 emissions decreased in 2020 by 64% compared to 2019[3]. In November 2020, the European Organisation for the Safety of Air Navigation (Eurocontrol) published its forecast for the recovery of the European aviation sector for the years 2020-2024[4]. It describes the impact of the COVID-19 pandemic on air traffic. According to the forecast, even in the most optimistic scenario, the 2019 emission levels would not be reached before 2024, whereas the worst-case scenario predicts such recovery by 2029.

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1 https://www.icao.int/environmental-protection/CORSIA/Pages/CORSIA-and-Covid-19.aspx

2 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).

3 https://ec.europa.eu/clima/news/emissions-trading-greenhouse-gas-emissions-reduced-2020_en

4 https://www.eurocontrol.int/publication/eurocontrol-five-year-forecast-2020-2024

While estimates do not foresee any actual CORSIA offsetting requirements during the period 2021-2023, there should nonetheless be a legal obligation in Union law for Member States to notify the offsetting figures to EU-based airlines by 30 November 2022 in respect of emissions during 2021. Based on the above factual evidence about 2020 and the first half of 2021, the likelihood for any actual CORSIA offsetting requirements materialising in respect of 2021 is minimal, and is also very low in respect of 2022. Therefore, this proposal foresees that once it is clear what the additional offsetting figure in respect of the year 2021 is, most likely: zero, Member States shall, during the course of 2022, communicate this to airlines. This proposal should be adopted by Council and the European Parliament once the emissions data for 2021 will be known, that is after 1 January 2022.

The same approach will be taken in respect of subsequent years in the event that the relevant 'Fit for 55' proposals are not yet adopted.

EU-based airlines' ETS obligations remain in force as in Union law pursuant to Directive 2003/87/EC. These obligations include the obligation to monitor and report their emissions, including those relating to flights between the EEA and third countries.

- **Consistency with existing policy provisions in the policy area**

Revision of aviation ETS rules is an integral part of EU's "Fit for 55" package. The revision includes implementation of CORSIA through the EU ETS Directive.

This proposal is the only CORSIA-related amendment that should be in place by 30 November 2022, so that the notification of zero additional offsetting can take place by that date.

Other amendments related to CORSIA implementation include provisions regarding the use of international credits for extra-EEA flights; surrender obligations for extra-EEA flights; treatment of non-EU-based airlines for extra-European flights; treatment of EU-based airlines on routes where CORSIA is not applied in the same way; and Directive's coverage to flights of EU airlines between two third countries. These other amendments related to CORSIA implementation are included in a wider proposal for a Directive to amend 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.

- **Consistency with other Union policies**

This very specific proposal does not raise any issue of consistency with other Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this proposal is Article 192 TFEU. In accordance with Article 191 and 192(1) TFEU, the European Union shall contribute to the pursuit, *inter alia*, of the following objectives: preserving, protecting and improving the quality of the environment; promoting

measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

- **Subsidiarity (for non-exclusive competence)**

Climate change is a trans-boundary problem and EU action can effectively complement and reinforce regional, national and local action. Coordination of climate action should be taken at European level and, where possible, effective action should be facilitated at global level. EU action is justified on grounds of subsidiarity as set out in Article 5 of the Treaty of the European Union. Since 1992, the European Union has worked to develop joint solutions and drive forward global action to tackle climate change. More specifically, action at EU level will provide for cost effective delivery of the 2030 and long-term emission reduction objectives while ensuring fairness and environmental integrity. Articles 191 to 193 of the TFEU confirm and specify EU competencies in the area of climate change.

- **Proportionality**

This proposal complies with the proportionality principle because it does not go beyond what is necessary in order to achieve the objectives of implementing the EU's target for reducing greenhouse gas emissions in a cost-effective manner, while ensuring fairness and environmental integrity.

- **Choice of the instrument**

A Decision of the Parliament and the Council through the ordinary legislative procedure[5] is considered to be the appropriate instrument to amend the ETS Directive, as the actions required are to be undertaken by Member States. This choice is in line with the precedents of three previous ETS-related Decisions (the 'backloading' Decision[6], the Market Stability Reserve Decision[7] and the first ETS 'stop the clock' Decision[8]).

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

There was no *ex-post* evaluation or fitness check related to these proposals due to the early stage of implementation of existing legislation and, consequently, the limited data availability.

- **Stakeholder consultations**

Stakeholders were consulted regarding policy options to implement CORSIA through the EU ETS as appropriate. The inception impact assessment on updated rules for aviation ETS was

[5] Unlike acts directed only at positions in international bodies under Article 218(9) of the Treaty, that only involved Council, e.g. the Council Decision notifying differences to ICAO.

[6] Decision No 1359/2013/EU amending Directive 2003/87/EC clarifying provisions on the timing of auctions of greenhouse gas allowances (OJ L 343, 19.12.2013, p. 1).

[7] Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L 264, 9.10.2015, p. 1–5).

[8] Decision 377/2013/EU derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community (OJ L 113, 25.4.2013, p. 1–4).

published on 3 July 2020 with a feedback period lasting until 28 August 2020, and the open public consultation was conducted through an online survey between 1 October 2020 and 14 January 2021. The results of stakeholder consultations are summarised in an annex to the impact assessment accompanying the proposal for a Directive to amend 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[9].

- **Impact assessment**

The subject matter of this proposal pertains to notification by Member States of offsetting and has no environmental or economic impacts compared to the current situation.

Policy options for CORSIA implementation and increased aviation auctioning were assessed in the impact assessment accompanying the proposal for a Directive to amend 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[10].

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it contributes to the objective of a high level of environmental protection in accordance with the principle of sustainable development as laid down in Article 37 of the Charter of Fundamental Rights of the European Union[11].

4. BUDGETARY IMPLICATIONS

There are no budgetary implications of this proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

National authorities and aircraft operators can use the existing infrastructure regarding monitoring and reporting of aircraft operators' emissions. As there are no transactions foreseen, no registry arrangements are required.

- **Detailed explanation of the specific provisions of the proposal**

A new paragraph is added to Article 12 of Directive 2003/87/EC that places a legal obligation for Member States' national authorities to notify [most probably: zero] additional offsetting for EU-based aircraft operators in respect of their 2021 emissions.

The aircraft operators that shall be notified are the aircraft operators referred to in Article 1 of Commission Delegated Regulation 2019/1603, implementing CORSIA as appropriate in respect of monitoring and reporting of emissions.

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9 SWD [reference to be added]
10 SWD [reference to be added]
11 OJ C 326, 26.10.2012, p. 391.

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amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft 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 Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) 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.

(2) Subject to the differences between the EU legislation and CORSIA, notified to ICAO following Council Decision (EU) 2018/2027[3], and the manner in which the European Parliament and Council amend Union legislation, the Union intends to implement CORSIA.

(3) Commission Delegated Regulation (EU) 2019/1603[4] was adopted to appropriately implement the rules of CORSIA for monitoring, reporting and verification of aviation

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1 OJ C […], […], p. […].

2 OJ C […], […], p. […].

3 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).

4 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

emissions. The offsetting within the meaning of the International Standards and Recommended Practices for CORSIA[5] is calculated on the basis of CO_2 emissions verified in accordance with that Regulation.

(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 by aircraft operators for the years 2021-23.

(5) Aviation emissions are highly likely to not exceed their collective 2019 levels in 2021. Therefore, aircraft operators' additional offsetting is expected to be zero for the year 2021.

(6) Member States should implement CORSIA by notifying aircraft operators based in those Member States of their offsetting in respect of year 2021 by 30 November 2022.

(7) Since the objectives of this Decision 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.

(8) In order to ensure certainty about the level of offsetting in respect of the year 2021, this Decision should be adopted after 1 January 2022 when the total level of emissions for the year 2021 will be known.

(9) It is important to ensure legal certainty for national authorities and for aircraft operators as regards CORSIA offsetting for the year 2021 as soon as possible during 2022. Accordingly, this Decision should enter into force without delay.

(10) Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

Article 1

In Article 12 of Directive 2003/87/EC the following paragraph 6 is added:

'6. By 30 November 2022, Member States shall notify aircraft operators that, in respect of the year 2021, they have [zero] offsetting within the meaning of ICAO's International Standards and Recommended Practices on Environmental Protection for Carbon Offsetting and Reduction Scheme for International Aviation. Member States shall notify aircraft operators that fulfil the following conditions:

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[5] 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). 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).

(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 CO_2 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), CO_2 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.

Article 2

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*