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## **WORKING DOCUMENT**

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From: General Secretariat of the Council  
To: Delegations

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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

- Non paper from the Presidency

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### **I. INTRODUCTION**

1. CORSIA (Carbon Offsetting and Reduction Scheme for International Aviation) is a global scheme developed by the International Civil Aviation Organization (ICAO) requiring from airlines to offset CO<sub>2</sub> emissions from international flights above a baseline by purchasing carbon credits.

2. In 2018, in accordance with Council Decision (EU) 2018/2027<sup>1</sup>, Member States notified ICAO that certain differences exist between Directive 2003/87/EC and CORSIA Standards and Recommended Practices (CORSIA SARPs). In 2020, in accordance with Council Decision (EU) 2020/954<sup>2</sup>, Member States notified ICAO of their voluntary participation in CORSIA from the pilot phase in 2021 and of the option selected for calculating operators' offsetting requirements during the pilot phase<sup>3</sup>.

## II. STATE OF PLAY OF NEGOTIATIONS

3. On 14 July 2021, the Commission adopted a proposal<sup>4</sup> for a decision by the Council and the European Parliament amending Directive 2003/87/EC as regards the notification of offsetting in respect of CORSIA for aircraft operators based in the Union in November 2022. The Decision must be adopted without any further delays to enable Member States to comply with their international commitments under CORSIA, namely to notify operators of their offsetting requirements for 2021 by 30 November 2022.<sup>5</sup>
4. On 20 May 2022, COREPER agreed on a mandate<sup>6</sup> for negotiations with the European Parliament. This mandate is meant to address the legal shortcomings identified in the Commission's proposal as set out in documents ST 7049/22 and ST 12307/22.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> In this respect, Member States notified ICAO that the calculation of operators' offsetting requirements for a given year during the pilot phase will be based on operators' emissions within the scope of CORSIA in that given year.

<sup>4</sup> ST 10869/21

<sup>5</sup> It should be stressed that, as clearly provided in the CORSIA rules, the deadline of 30 November 2022 is compulsory and not purely indicative.

<sup>6</sup> ST 9366/22

5. The European Parliament adopted its resolution on CORSIA Decision in plenary on 8 June 2022 and did not depart significantly from the Commission's proposal. The matter was referred back for interinstitutional negotiations to the Committee responsible.
6. At the first trilogue on 6 September 2022, the European Parliament suggested that the co-legislators' step back from their respective positions and adopt the Commission's initial proposal. Moreover, the rapporteur did not agree with the Presidency suggestion to mandate the technical level to work on possible alternative solutions.
7. The suggestion of the Parliament to adopt the Commission's initial proposal was discussed by COREPER on 21 September 2022. However, delegations requested the Presidency to continue the discussions with the Parliament to find a compromise solution between the Parliament's position and the COREPER mandate. The Presidency informed the Rapporteur accordingly and invited the Parliament to engage in technical discussions on the file.
8. On 14 October 2022, the Rapporteur informed the Presidency that there was not sufficient time to adopt the proposed CORSIA notification decision by the deadline of 30 November 2022 and suggested instead that priority should be given to finding agreement on the related articles and recitals in the ETS Aviation file. In addition, the Rapporteur reiterated that the Committee could not agree to give a mandate for the technical level to start discussions on the proposed CORSIA Notification decision.

### **III. RECENT DEVELOPMENTS IN ICAO**

9. The ICAO 41<sup>st</sup> Assembly confirmed the decision of the ICAO Council adopted at its 220<sup>th</sup> session to use the year 2019 as the baseline for calculating operators' annual offsetting requirements in CORSIA pilot phase. The baseline is used by ICAO to determine the Sectoral Growth Factor (SGF) each year.

10. On 31 October 2022, the ICAO published the SGF for 2021 at a value of 0<sup>7</sup>. The SGF is part of CORSIA implementation elements<sup>8</sup> and a parameter of the CORSIA methodology to calculate operators' annual offsetting requirements. Applying the SGF published by ICAO for 2021 results in operators' annual offsetting requirements for 2021 equalling 0.

#### IV. WAY FORWARD

11. Applying the methodology with the 2021 SGF published by ICAO gives the same result as the value defined in the Commission's proposal i.e. 0. Thus it resolves one of the shortcomings of the Commission's proposal.
12. Despite the remaining uncertainties, in light of the 30 November 2022 deadline set by ICAO for CORSIA participating States to notify their operators and taking into account the state of play of the file, the Presidency proposes that, in line with the principle of sincere cooperation, the Council should withdraw some of its previous amendments to the Commission proposal and invite the European Parliament to proceed without any further delay with the adoption of the Commission's proposal with the minor amendments highlighted in the Annex. Those limited changes are highlighted in **bold underlined** and ~~strikethrough~~.
13. Should the European Parliament approve the Commission's proposal with the minor amendments highlighted in the Annex, the Council would approve the European Parliament's position, resulting in the adoption of the Decision in the form of the Commission's proposal with the minor amendments as highlighted in the Annex (subject to revision by the legal linguists of both institutions).
14. If the European Parliament agrees with the Decision in the form of the Commission's proposal with the minor amendments as highlighted in the Annex, the Decision could still be adopted in time for Member States to notify their operators of their 2021 CORSIA annual offsetting obligations.

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<sup>7</sup> [CORISIA Annual Sector Growth Factor \(SGF\) \(icao.int\)](https://www.icao.int)

<sup>8</sup> Implementation Elements include criteria and procedures to be followed by ICAO that may require frequent updates or that are not yet available and are captured in ICAO documentation, managed and approved by an ICAO Body and published by ICAO. SGF use is mandatory because it is referenced in the CORSIA standard 3.2.1 that requires its application in the implementation of CORSIA SARPs.

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**

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<sup>9</sup>,

Having regard to the opinion of the Committee of the Regions<sup>10</sup>,

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.

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<sup>9</sup> OJ C [...], [...], p. [...].

<sup>10</sup> OJ C [...], [...], p. [...].

- (2) Subject to the differences between the EU legislation and **the provisions in the First Edition of Annex 16, Volume IV to the Chicago Convention: Carbon Offsetting and Reduction Scheme for International Aviation ('CORSA SARPs')**, notified to ICAO following Council Decision (EU) 2018/2027<sup>11</sup>, and the manner in which the European Parliament and Council amend Union legislation, the Union intends to implement CORSIA **through Directive 2003/87/EC**.
- (3) Commission Delegated Regulation (EU) 2019/1603<sup>12</sup> was adopted to appropriately implement the rules of CORSIA for monitoring, reporting and verification of aviation emissions. The offsetting within the meaning of the International Standards and Recommended Practices for CORSIA<sup>13</sup> is calculated on the basis of CO<sub>2</sub> 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. **This decision was endorsed by ICAO 41<sup>st</sup> Assembly in October 2022.**
- (5) Aviation emissions ~~are highly likely to~~ **did** not exceed their collective 2019 levels in 2021. **On 31 October 2022, the ICAO determined that the Sector Growth Factor (SGF) for 2021 emissions equals 0. The SGF is a parameter of the CORSIA methodology used to calculate annual operators' offsetting requirements.** Therefore, aircraft operators' additional offsetting ~~are~~ **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.~~

<sup>11</sup> 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 (CORSA)(OJ L 325, 20.12.2018, p. 25).

<sup>12</sup> 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).

<sup>13</sup> 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).

- (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.
- (9a) **Without prejudice to the adoption of 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 emissions reduction target and appropriately implementing a global market-based measure, this Decision is intended to be a purely temporary measure that is only to apply pending the expiration of the transposition period of that Directive. In case the transposition period has not expired by 30 November 2023 and ICAO determines that the SGF for 2022 emissions equals 0, Member States should notify aircraft operators that their offsetting requirements in respect of year 2022 are zero. If the SGF for 2022 emissions is different from 0, the Commission may, where appropriate, submit a new proposal for the calculation and the notification of those offsetting requirements.**
- (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 **requirements** within the meaning of **paragraph 3.2.1. 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:

- (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<sub>2</sub> 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 to this Directive and by Article 2(3) of Commission Delegated Regulation (EU) 2019/1603**, other than those departing and arriving in the same Member State (including outermost regions of the same Member State), from 1 January ~~2021~~<sup>19</sup>.

For the purposes of the first subparagraph, point (b), CO<sub>2</sub> 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 aircraft, and were required to accomplish the related humanitarian, medical or firefighting activities or to reposition thereafter the aircraft for its next activity.**

**7. In the absence 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 or where the period for the transposition of such an act has not expired by 30 November 2023, and the Sector Growth Factor (SGF) for 2022 emissions, to be published by ICAO equals zero, Member States shall, by 30 November 2023, notify aircraft operators that, in respect of the year 2022, their offsetting requirements within the meaning of paragraph 3.2.1. of ICAO's International Standards and Recommended Practices on Environmental Protection for Carbon Offsetting and Reduction Scheme for International Aviation equal 0.'**

*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*  
*The President*

*For the Council*  
*The President*

