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Delegations will find attached document COM(2018) 723 final/2 - ANNEX.

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ANNEX

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to the

Proposal for a Council Decision

on the position to be taken on behalf of the European Union in 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

ANNEX

As regards request 5.a):

No disapproval of the First Edition of Annex 16, Volume IV shall be registered.

As regards request 5.b):

The following differences shall be notified:

I.1. In the area of monitoring, reporting and verification, certain differences exist between Directive 2003/87/EC and detailed rules adopted by the Commission, on the one hand, and CORSIA on the other hand.

Monitoring reporting and verification requirements as defined in Part II, Chapters 1 and 2 of the First Edition of Annex 16, Volume IV will apply as from 1 January 2019 to an aeroplane operator producing annual CO₂ emissions greater than 10 000 tonnes from international flights conducted by aeroplanes with a maximum certificated take-off mass greater than 5 700 kg, with the exception of humanitarian, medical and firefighting flights.

The rules of the European Union applicable in this field on 1 December 2018 are mainly contained in 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). That Directive is the legal basis for the detailed provisions in the matter, contained in Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 181, 12.7.2012, p. 1) and in Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 181, 12.7.2012, p. 30).

It should be noted that the European Commission is currently in the process of adopting implementing and delegated acts that are expected to remove differences with the CORSIA Monitoring Reporting Verification requirements of the First Edition of Annex 16, Volume IV, with an expected entry into force before 1 January 2019.

However, Directive 2003/87/EC as it currently stands applies irrespective of the nationality of the airline operator and applies without distinction to flights within and between Member States and/or EEA countries.

I.2. As regards offsetting, certain differences exist between Directive 2003/87/EC and detailed rules adopted by the Commission, on the one hand, and CORSIA on the other hand.

From 1 January 2021 to 31 December 2035, the offsetting requirements of the First Edition of Annex 16, Volume IV will apply to an aeroplane operator conducting international flights (as defined in Part II, Chapter 1, point 1.1.2, and Part II, Chapter 2, point 2.1) between States included in the forthcoming ICAO document entitled “CORSIA States for Chapter 3 State Pairs”.

The rules of the European Union applicable in this respect on 1 December 2018 are mainly contained in 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). Insofar as aviation is concerned, the fundamental provisions of Directive 2003/87/EC applicable on 1 December 2018 were enacted in 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). Directive 2003/87/EC applies on 1 December 2018 as last amended by Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ L 76, 19.3.2018, p. 3). With respect to Corsia Eligible Fuels, the applicable rules are contained in Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

None of the above mentioned rules, which can all be consulted in the relevant editions of the Official Journal of the European Union, has been altered since the adoption of the First Edition of Annex 16, Volume IV.

Directive 2003/87/EC applies irrespective of the nationality of the airline operator and in principle covers flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies. Directive 2003/87/EC applies without distinction to flights within and between Member States and/or EEA countries.

Other relevant rules are contained in Decisions of the EEA Joint Committee including, most recently, Decision No 99/2018 of 27 April 2018 amending Annex XX (Environment) to the EEA Agreement in respect of Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021, and in Council Decision (EU) 2018/219 of 23 January 2018 on the conclusion of the Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems (OJ L 43, 16.2.2018, p. 1).

II. Having regard to the on-going international developments, the Union legislator adopted Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021 (OJ L 350, 29.12.2017, p. 7). That Regulation amended point (a) of Article 28a(1) of Directive 2003/87/EC to exempt all emissions from flights to and from aerodromes located in countries outside the European Economic Area (EEA) in each calendar year from 1 January 2013 to 31 December 2023. That Regulation inserted Article 28b in Directive 2003/87/EC.

In accordance with that provision the Commission is to present, within 12 months of the adoption by the ICAO of the relevant instruments, and before the global market-based measure becomes operational, a report to the European Parliament and to the Council in which it is to consider ways for those instruments to be implemented in Union law through a revision of that Directive. In that report, the Commission is also to consider the rules applicable in respect of flights within the EEA, as appropriate. It is also to examine the ambition and overall environmental integrity of the global market-based measure, including its general ambition in relation to targets under the Paris Agreement, the level of participation, its enforceability, transparency, the penalties for non-compliance, the processes for public input, the quality of offset credits, monitoring, reporting and verification of emissions, registries, accountability as well as rules on the use of biofuels. In addition, the report is to consider whether the provisions adopted under Article 28c of Directive 2003/87/EC¹ need to be revised.

¹ Concerning monitoring, reporting and verification.

Article 28b of Directive 2003/87/EC also provides that the Commission is to accompany the report referred to in paragraph 2 of that Article with a proposal, where appropriate, to the European Parliament and to the Council to amend, delete, extend or replace the derogations provided for in Article 28a of that Directive, that is consistent with the Union economy-wide greenhouse gas emission reduction commitment for 2030 with the aim of preserving the environmental integrity and effectiveness of Union climate action.