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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading (Strasbourg, 12 to 15 December 2022)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure[1], a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the rapporteur, Sunčana GLAVAK (EPP, HR), presented a compromise amendment (amendment number 8) to the abovementioned proposal for a Decision on behalf of the Committee on the Environment, Public Health and Food Safety. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

[1] OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 13 December 2022, the plenary adopted the compromise amendment (amendment number 8) to the abovementioned proposal for a Decision. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto[2].

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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[2] The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics.*** The symbol " ▌ " indicates deleted text.

P9_TA(2022)0428

Notification under the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)

European Parliament legislative resolution of 13 December 2022 on the 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 (COM(2021)0567 – C9-0323/2021 – 2021/0204(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2021)0567),

– having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0323/2021),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by Seanad Éireann, asserting that the draft legislative act does not comply with the principle of subsidiarity,

– having regard to the opinion of the European Economic and Social Committee of 20 October 2021[3],

– having regard to the opinion of the Committee of the Regions of 28 April 2022[4],

– having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 11 November 2022 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the opinion of the Committee on Transport and Tourism,

– having regard to the report of the Committee on the Environment, Public Health and Food Safety (A9-0145/2022),

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3 OJ C 105, 4.3.2022, p. 140.
4 OJ C 301, 5.8.2022, p. 116.

1. Adopts its position at first reading hereinafter set out[5];

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[5] This position replaces the amendments adopted on 8 June 2022 (Texts adopted, P9_TA(2022)0231).

P9_TC1-COD(2021)0204

Position of the European Parliament adopted at first reading on 13 December 2022 with a view to the adoption of Decision (EU) 2022/… 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[6],

Having regard to the opinion of the Committee of the Regions[7],

Acting in accordance with the ordinary legislative procedure[8],

[6] OJ C 105, 4.3.2022, p. 140.
[7] OJ C 301, 5.8.2022, p. 116.
[8] Position of the European Parliament of 13 December 2022.

Whereas:

(1) The Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) of the International Civil Aviation Organization (ICAO) has been 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 from 1 January 2021 above a fixed emissions level with certain offset credits.

(2) The Paris Agreement, adopted in December 2015 under the United Nations Framework Convention on Climate Change (UNFCCC)[9], entered into force in November 2016. Its Parties 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. That commitment has been reinforced with the adoption of the Glasgow Climate Pact in November 2021, in which the Conference of the Parties recognised that the impact of climate change would be much lower with a temperature increase of 1,5 ºC, compared with 2 ºC, and resolved to pursue efforts to limit the temperature increase to 1,5 ºC.

(3) Subject to the differences between Union legislation and ***the provisions in the First Edition of Annex 16, Volume IV, to the Convention on International Civil Aviation — Carbon Offsetting and Reduction Scheme for International Aviation***, ***establishing the International Standards and Recommended Practices on Environmental Protection for CORSIA (CORSIA SARPs),*** and which were notified to ICAO following the adoption of Council Decision (EU) 2018/2027**[10]**, and subject to the manner in which the European Parliament and the Council amend Union legislation, the Union intends to implement

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9 ***OJ L 282, 19.10.2016, p. 4.***

10 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).

CORSIA ***through Directive 2003/87/EC of the European Parliament and of the Council***[11].

[11] ***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).***

(4) Commission Delegated Regulation (EU) 2019/1603[12] was adopted in order to appropriately implement the rules of CORSIA for monitoring, reporting and verification of aviation emissions. The offsetting within the meaning of the CORSIA SARPs is calculated on the basis of CO_2 emissions verified in accordance with that Delegated Regulation.

(5) 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 to be carried out by aircraft operators for the years 2021-2023. ***That decision was endorsed by the ICAO 41st Assembly in October 2022.***

[12] 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).

(6) Aviation emissions ***did*** not exceed their collective 2019 levels in 2021. ***On 31 October 2022, ICAO determined that the Sector Growth Factor (SGF) for 2021 emissions equals zero. The SGF is a parameter of the CORSIA methodology used to calculate annual operators' offsetting requirements.*** Therefore, aircraft operators' additional offsetting ***is*** to be zero for the year 2021.

(7) Member States should implement CORSIA by notifying aircraft operators that hold an air operator certificate issued by a Member State and aircraft operators that are registered in a Member State of those aircraft operators' offsetting in respect of the year 2021 by 30 November 2022.

(8) 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.

▌

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

(10) Without prejudice to the adoption of a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards the contribution of aviation 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 the event that the transposition period has not expired by 30 November 2023 and ICAO determines that the SGF for 2022 emissions equals zero, Member States should notify aircraft operators that their offsetting requirements in respect of the year 2022 amount to zero. If the SGF for 2022 emissions is different from zero, the Commission should be able, where appropriate, to submit a new proposal for the calculation and the notification of those offsetting requirements.

(11) 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 ***paragraphs are*** added:

‘6. By 30 November 2022, Member States shall notify aircraft operators that, in respect of the year 2021, 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 (CORSIA SARPs) amount to zero. Member States shall notify aircraft operators that fulfil the following conditions:

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

(b) they produce annual CO_2 emissions greater than 10 000 tonnes from the use of ***aeroplanes*** 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 the outermost regions of that Member State, from 1 January 20***21***.

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***;***

(vi) flights preceding or following a humanitarian, medical or firefighting flight provided that such flights were conducted with the same aircraft and were required to accomplish the related humanitarian, medical or firefighting activities or to reposition the aircraft after those activities for its next activity.

7. Pending a legislative act amending this Directive as regards the contribution of aviation to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure, and in the event that the period for the transposition of such a legislative 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 CORSIA SARPs amount to zero

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** 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).'*

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 ...,

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