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Subject: 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 measure
- Letter to the Chair of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI)

Following the Permanent Representatives Committee meeting of 8 February 2023 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI).

SGS 23 / 00490



Brussels, 8 February 2023

Mr Pascal CANFIN
Chair, European Parliament Committee on the Environment, Public Health and Food Safety
European Parliament
60, rue Wiertz
1047 BRUSSELS

Subject: *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 measure (2021/0207 (COD))*


Dear Mr Canfin,

Following the informal meeting between the representatives of the three institutions, a draft overall compromise text was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise text contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,



Torbjörn Haak
Chairman of the Permanent Representatives
Committee (Part 1)

copy to: Frans Timmermans, Commissioner,
Sunčana GLAVAK, Jan-Christoph OETJEN, Rapporteurs

PE-CONS No/YY - 2021/0207(COD)

DIRECTIVE (EU) .../...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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

(Text with EEA relevance)

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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C,, p..

² OJ C,, p..

Whereas:

- (1) Directive 2003/87/EC of the European Parliament and of the Council³ 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 Council⁴. ***The European Union has competence to extend the allowance trading system by the European Union Emissions Trading System to all flights which arrive at or depart from an aerodrome located in a Member State.***

- (2) ***Protection of the environment is one of the most important challenges facing the Union and the rest of the world.*** 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”)⁵. 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. ***By adopting the Glasgow Climate Pact in November 2021, its Parties recognised that keeping the increase in the global average temperature to 1,5°C above pre-industrial levels would significantly reduce the risks and impacts of climate change, and committed to strengthen their 2030 targets by the end of 2022 in order to accelerate climate action in this critical decade and to close the ambition gap with the 1,5°C target.*** 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 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 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).

⁵ Paris Agreement (OJ L 282, 19.10.2016, p. 4).

- (2a) *Aviation accounts for 2-3% of global CO₂ emissions and aviation's total climate impact is at least twice higher than that of CO₂ alone. Aviation is the second biggest source of transport climate impacts after road transport. In 2022, Eurocontrol projected an increase in European aviation activity of 44% by 2050 compared to 2019. The need for action to reduce emissions is becoming increasingly urgent, as stated by the Intergovernmental Panel on Climate Change (IPCC) in its latest reports of 7 August 2021 entitled 'Climate change 2021: The Physical Science Basis', of 28 February 2022 entitled 'Climate Change 2022: Impacts, Adaptation and Vulnerability', and of 4 April 2022 entitled 'Climate Change 2022: Mitigation of Climate Change'. The report of 4 April 2022 entitled 'Climate Change 2022: Mitigation of Climate Change' identifies international aviation as a sector where 'sectoral agreements have adopted climate mitigation goals that fall far short of what would be required to achieve the long-term temperature goal of the Paris Agreement'. The Union should therefore address this urgency by stepping up its efforts and establishing itself as an international leader in the fight against climate change.*
- (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 **█** implement **CORSIA** from the start of the pilot phase 2021-2023⁶.

⁶ 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) 2018/2027⁷, 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 2019⁸.
- (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 **contribution** of the Union and its Member States submitted to the UNFCCC Secretariat on 17 December 2020⁹.
- (7) ■ In Regulation (EU) 2021/1119 of the European Parliament and of the Council¹⁰, **the Union has enshrined the target of reducing emissions to net zero at the latest by 2050 and the aim to achieve negative emissions thereafter in legislation**. That Regulation also establishes a binding **domestic** Union **intermediate climate target** of **at least a 55 % net greenhouse gas emissions reduction (i.e. emissions after deduction of removals)** ■ below 1990 levels by 2030.

⁷ 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).

⁸ COM(2019)640 final.

⁹ https://unfccc.int/sites/default/files/NDC/2022-06/EU_NDC_Submission_December%202020.pdf

¹⁰ 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 *is essential to ensure the integrity of and effectively steer the EU ETS in order for it to contribute, as a policy tool, to achieving the Union's objectives to reduce by 55 % net greenhouse gas emissions by 2030 and to become climate-neutral by 2050, at the latest, and the aim to achieve negative emissions thereafter as laid down in Article 2(1) of Regulation (EU) 2021/1119 and it thereby also aims at the implementation for aviation of the Union's contributions under the Paris Agreement. Therefore, the total quantity of allowances for aviation should be consolidated and subject to the linear reduction factor.*
- (8a) *In addition to CO₂, aviation affects the climate through non-CO₂ emissions such as water vapour (H₂O), oxides of nitrogen (NO_x), sulphur dioxide (SO₂) and soot particles, as well as through atmospheric processes caused by such emissions, for example the formation of ozone and contrail cirrus. The climate impact of such non-CO₂ emissions depends on the type of fuel and engines used, on the location of the emissions, in particular the cruise altitude of the aircraft, and its position in terms of latitude and longitude, as well as the time of the emissions and the weather conditions at that time. The Commission's Impact Assessment of 2006 on the inclusion of aviation in the EU greenhouse gas Emissions Trading Scheme (EU ETS), Directive 2008/101/EC recognised that aviation has an impact on the global climate through the release of non-CO₂ emissions. Article 30(4) of Directive 2003/87/EC, as amended by Directive (EU) 2018/410 of the European Parliament and of the Council, required the Commission to present an updated analysis of the non-CO₂ effects of aviation, accompanied, where appropriate, by a proposal on how best to address those effects, before 1 January 2020. To fulfil that requirement, the European Union Aviation Safety Agency (EASA) conducted an updated analysis of the non-CO₂ effects of aviation on climate change and published its study on 23 November 2020. The findings of the study confirmed what had been previously estimated, namely that the significance of non-CO₂ climate impacts from aviation activities are at least as important in total as those of CO₂ alone.*

- (8b) *It follows from the findings of the EASA’s study of 23 November 2020 that non-CO₂ aviation emissions, in line with the precautionary principle, can no longer be ignored. Union regulatory measures are needed to achieve reductions of emissions in line with the Paris Agreement. Therefore, the Commission should set up a monitoring, reporting and verification scheme for non-CO₂ aviation emissions. Building on the results of this scheme the Commission should submit a report, by 1 January 2028, and where appropriate and based on an impact assessment, submit a legislative proposal containing mitigation measures for non-CO₂ emissions, by expanding the scope of the EU ETS to cover such effects.*
- (9) Aviation should contribute to the emission reduction efforts necessary for the Union’s *climate neutrality objective and the Union’s climate targets as laid down in Regulation (EU) 2021/1119 and the objectives of the Paris Agreement*. 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, *which should also be part of the just transition*. As a result, all auction revenues that are not attributed to the Union budget should be used for climate-related purposes.
- (10a) *The transition of the aviation sector towards sustainable aviation should take into account the social dimension of the sector and its competitiveness, to ensure that this transition is socially just and provides training, re-skilling and up-skilling for workers. The Commission should present a report to the European Parliament and the Council on the application of this Directive and its social impacts on the aviation sector.*
- (10b) *Flights spanning 1 000 kilometers and less account for 6-9 % of total aviation CO₂ emissions. The Commission should submit a report on measures to promote a modal shift towards alternative, more sustainable modes of transport, pending the technological breakthroughs and availability of zero-emission aviation fuels and aircrafts.*
- (11) *The Commission should report on the implementation of the ICAO’s CORSIA scheme and of the ICAO’s basket of measures to meet the Long-term global aspirational goal, adopted by ICAO Assembly in October 2022.*

(11a) *In order to facilitate progress at ICAO, the Union has three times adopted time-bound derogations to the EU ETS so as to limit compliance obligations to emissions from flights between aerodromes situated in the European Economic Area, with equal treatment on routes of aircraft operators wherever they are based. The most recent derogation from the EU ETS, laid down in Regulation (EU) 2017/2392, limited compliance obligations to intra-EEA flight emissions taking place up to 2023, and envisaged potential changes to the scope of the system as regards activity to and from aerodromes situated outside the EEA from 1 January 2024 onwards following the review set out in that Regulation. In order to assess the implementation of the now existing ICAO CORSIA scheme, and how it is applied in practice, the current derogation from EU ETS obligations should be extended for surrender obligations until 31 December 2026 from flights operated by aeroplane operators not covered by CORSIA to and from relevant third countries, in respect of which EU ETS reporting and surrender obligations would otherwise apply by 31 March and 30 September 2027. This should be the last time-bound derogation to the EU ETS. A review should take place by 1 July 2026. If the ICAO Assembly by 2025 did not strengthen the CORSIA scheme in line with achieving its long-term aspirational goal, towards meeting the Paris Agreement objectives or if countries listed in the Implementing Act referred to in Article 25a(3), represent less than 70 % of international aviation emissions using the most recent available data, then the Commission should propose as appropriate that EU ETS apply to emissions from departing flights from 2027, and that airlines should be able to deduct any costs incurred from CORSIA offsetting on those routes, to avoid double charging. In parallel, if a third country does not apply the CORSIA scheme from 2027, EU ETS should apply to emissions from flights departing to that State.*

- (12) The total quantity of allowances for aviation should be consolidated at the level of allocation for flights *or which allowances have to be surrendered in accordance with Directive 2003/87*. 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 in 2024 and 2025 and full auctioning from 2026 should be implemented.*
- (13a) *The EU ETS Directive should contribute to incentivising the decarbonisation of commercial air transport. The transition from the use of fossil fuels would play a role in achieving such decarbonisation. However, considering the high level of competition between aircraft operators, the developing EU market for sustainable aviation fuels, and the important price differential between fossil kerosene and sustainable aviation fuels, that transition should be supported by incentivising early movers. Therefore, during the period from 1 January 2024 until 31 December 2030, 20 million allowances should be reserved to be allocated to cover part of the remaining price differential between fossil kerosene and the eligible aviation fuels for individual aircraft operators. Those allowances should come from the pool of total allowances available and should be used only for flights covered by the surrender requirement of Directive 2003/87/EC and in a non-discriminatory manner. Following an evaluation the Commission could decide to present a legislative proposal to allocate a capped and time-limited amount of allowances, which should not go beyond 31 December 2034.*

- (13b) *Supersonic commercial flights ceased to be offered, inter alia, due to the disproportionately elevated environmental damage. Nevertheless, current trends show intensive research into renewed introduction of supersonic aviation. The positive correlation between the speed of travel and the level of emissions due to fuel burn justify the different treatment between subsonic and supersonic flights. Therefore, it is appropriate to exclude possible future supersonic flights from the support for non-fossil fuels.*
- (13c) *While the EU ETS applies to flights since 2012, the ‘Fit for 55’ package includes additional measures, which, together with the EU ETS, could have a cumulative impact on the sector. In order to safeguard air connectivity for flights serving island regions or small airports, this Directive’s mechanism to bridge the remaining price difference between conventional aviation fuel and alternatives thereto should limit adverse impacts on air connectivity and mitigate the risk of carbon leakage. By 2026, the Commission should report on possible effects on connectivity.*
- (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 **with CORSIA** 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 *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 Council¹¹.
- (15a) Information on the use of carbon credits to comply with offsetting under the CORSIA scheme should be made publicly available in a no less transparent manner than how it is made available on the use of international credits under this Directive up to 2020 pursuant to Annex XIV of Commission Regulation (EU) No 389/2013.***
- (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 Council¹².

¹¹ 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).

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).

- (17) *The calculation of offsetting requirements for CORSIA for Union-based aircraft operators should be made in accordance with implementing acts to be adopted by the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.*
- (17a) *In October 2022 and in the context of the Covid pandemic, the 41st ICAO Assembly decided to change the previous baseline of ICAO's CORSIA scheme for the years 2024-35 from the average of 2019 and 2020 carbon dioxide emissions to 85 % of 2019 emissions. The average of all reported 2019-20 emissions was 435 859 594 tonnes. 2019 emissions were 608 076 604 tonnes, and 85 % of this figure is 516 865 113 tonnes. However, the actual baseline that ICAO determines to calculate the sector's growth factor is calculated by ICAO using a subset of emissions taking into account only emissions on routes that are subject to offsetting requirements. For the subset of all state pairs subject to offsetting requirements in the year 2021, the average of 2019 and 2020 emissions is not published by ICAO but is estimated to be 245 million tonnes, and the 2019 emissions were 341 380 188 tonnes, 85 % of which is 290 173 160 tonnes. For all state pairs expected to be subject to offsetting requirements in the year 2027, the average of 2019-20 emissions is estimated to be around 373 million tonnes, while 85 % of the corresponding 2019 emissions is estimated to be around 439 million tonnes.*
- (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.*
- (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.*
- (20a)** *Article 191 of the Treaty on the Functioning of the European Union (TFEU) provides that the Union policy on the environment is to contribute to promoting measures at international level combating climate change and sets out that, within their respective spheres of competence, the Union and the Member States are to cooperate with third countries and with the competent international organisations. Those objectives are also relevant for ICAO and the further development of CORSIA.*
- (20b)** *Data transparency and public access to information are essential to improve accountability and enforceability. Therefore, the Commission should publish in a user-friendly manner aircraft operators' emissions and offsetting which will facilitate assessing the impact of CORSIA on the global reduction of CO₂ emissions and its role in achieving the goals of the Paris Agreement.*

- (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.*
- (23b) *Renewable fuels of non-biological origin using hydrogen from renewable sources, compliant with Article 25 of Directive (EU) 2018/2001, should be rated as producing zero emissions for the aircraft operators using them until the detailed rules for the appropriate accounting are set.*
- (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 *TFEU* 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-Making¹³. 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.

¹³ OJ L 123, 12.5.2016, p. 1.

- (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 derogation 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.

- (26a)** *In accordance with Article 12(7) of Directive 2003/87/EC as amended by Decision (EU) 2023/136 of the European Parliament and of the Council¹⁴, that paragraph will apply to the notification to aircraft operators to be made by Member States by 30 November 2023 provided that the transposition date of this Directive has not expired by that date and that the Sector Growth Factor (SGF) for 2022 emissions, to be published by ICAO, equals zero. Therefore, Article 12(7) of Directive 2003/87/EC will apply to the calculation and notification of operators' offsetting requirements in respect of the year 2022 in its version prior to the amendments introduced by this Directive, provided that the Sector Growth Factor (SGF) for 2022 emissions, to be published by ICAO, equals zero.*
- (26b)** *The Innovation Fund should support research, the development and deployment of decarbonisation solutions, including zero emission technologies and reduce the climate and environmental impacts of the aviation sector. It should also support electrification and actions to reduce overall impacts of aviation.*
- (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.
- (27a)** *Simplifications and adaptation of administrative procedures to best practice would keep administrative burdens to a minimum.*
- (28)** Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹⁴ Decision (EU) 2023/136 of the European Parliament and of the Council of 18 January 2023 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 (OJ L 19, 20.01.2023, p. 1).

Article 1

Directive 2003/87/EC is amended as follows:

(-1) In Article 3, the following point is added:

‘(ua) ‘non-CO₂ aviation effects’ means the effects on climate of the release during fuel combustion of oxides of nitrogen (NO_x), soot particles, oxidised sulphur species, and effects from water vapour including contrails, from an aircraft performing an aviation activity listed in Annex I.’;

(1) Article 3c is amended as follows:

(a) paragraph 2 is deleted;

(b) the following paragraphs 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. For the period from 1 January 2024 until 31 December 2030, a maximum of 20 million of the total quantity of allowances referred to in paragraph 5, shall be reserved in respect of commercial aircraft operators, on a transparent, equal treatment and non-discriminatory basis for the uplifting of sustainable aviation fuels, and other aviation fuels identified in Article 4(1) of the [RefuelEU Aviation Regulation] that are not derived from fossil fuels, for subsonic flights for which allowances have to be surrendered in accordance with Article 12(3). In case in an airport eligible aviation fuel cannot be physically attributed to a specific flight, those allowances shall be available for eligible aviation fuels uplifted at that airport proportionate to the emissions from flights of the aircraft operator from that airport for which allowances have to be surrendered in accordance with Article 12(3).

Those allowances shall be allocated by the Member States to cover part of or all the price differential between the use of fossil kerosene and the price of the relevant eligible aviation fuels, taking into account incentives from the price of carbon and from harmonised minimum levels of taxation on fossil fuels. When calculating the price differences, the Commission shall take into account the report published under Article 12 of the [ReFuelEU Aviation Regulation] published by the European Union Aviation Safety Agency. Member States shall ensure the visibility of funding under these provisions corresponding to what is referred to in Article 30ic paragraph 1, points (a) and (b).

The allowances allocated under this paragraph shall cover:

- (i) 70 % of the remaining price differential between the use of fossil kerosene and hydrogen from renewable energy sources, and advanced biofuels as defined in Article 2, second paragraph, point (34) of Directive (EU) 2018/2001, which have a zero-emission factor under Annex IV or under the implementing act pursuant to Article 14;*
- (ii) 95 % of the remaining price differential between the use of fossil kerosene and renewable fuels of non-biological origin compliant with Article 25 of Directive (EU) 2018/2001, used in aviation, which have a zero-emission factor under Annex IV or under the implementing act pursuant to Article 14;*
- (iii) 100 % of the remaining price difference between the use of fossil kerosene and any eligible aviation fuel that are not derived from fossil fuels covered in the first subparagraph of paragraph 5a, at airports situated on islands smaller than 10 000 km² and not interconnected to mainland, at airports which are insufficiently large to be defined as Union airports according to Article 3 of the [Refuel aviation Regulation] and at airports located in an outermost region;*
- (iv) In other cases than (i) to (iii), 50 % of the remaining price differential between the use of fossil kerosene and the eligible aviation fuels that are not derived from fossil fuels covered in the first subparagraph paragraph 5a.*

The allocation may take into account possible support from other schemes at national level.

On a yearly basis, commercial aircraft operators may apply for an allocation of allowances based on the volume of eligible aviation fuels referred to in this paragraph, uplifted on flights for which allowance has to be surrendered in accordance with Article 12(3) between 1 January 2024 and 31 December 2030, excluding flights for which that requirement are considered satisfied pursuant to Article 28a(1). 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 a uniform manner for all aircraft operators concerned by the allocation of that year.

The Commission shall publish in the Official Journal details of the average cost difference between fossil kerosene, taking into account incentives from the price of carbon and from harmonised minimum levels of taxation on fossil fuels, and the relevant eligible aviation fuels on a yearly basis for the previous year.

The Commission shall adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the establishment of the detailed rules for the yearly calculation of the cost difference and for the allocation of allowances for uplifting of the fuels identified in the first subparagraph of this paragraph and the establishment of the detailed rules 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 incentives from the price of carbon and from harmonised minimum levels of taxation on fossil fuels.

From 1 January 2028, the Commission shall evaluate the application of this paragraph in its reports pursuant to Article 10(5) and provide this report to the European Parliament and the Council in a timely manner.

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 allocate a capped and time-limited amount of allowances until 1 January 2035 to further incentivise the uplifting of the fuels identified in the first subparagraph, in particular the uplifting of renewable fuels of non-biological origin compliant with Article 25 of Directive (EU) 2018/2001, used in aviation, which have a zero emission factor under Annex IV or under the implementing act pursuant to Article 14.

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 and 2025, 15 % of the allowances referred to in Article 3c(5) and (6), as well as a share of the remaining 85 % of those allowances, in respect of which free allocation would have taken place, shall be auctioned except for the quantities of allowances referred to in Article 3c(5a) and 10a(8), first subparagraph. 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.

As from 1 January 2026, 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) and 10a(8), first subparagraph.’;

(b) the following paragraph *is* added:

‘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) *TFEU* and entered in the general budget of the Union. Member States shall use the revenues generated from the auctioning of allowances *or the equivalent in financial value of these revenues* in accordance with Article 10(3).’;

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

■

(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 *are* 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;
- (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).’;

- (b) paragraph (4) is deleted;

(c) 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 *aeroplanes* 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 **2021**.

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;
 - (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.*’;
- (b) the following paragraphs 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 accordance with a methodology to be specified by the Commission 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 in accordance with Article 22a(2) *specifying the methodology for the calculation of offsetting requirements for aircraft operators referred to in the first subparagraph.*

The implementing acts shall in particular detail further the application of the requirements following from the relevant provisions of this Directive, in particular Articles 3c, 11a, 12 and 25a, and, to the extent possible in light of the relevant provisions of this Directive, from the International Standards and Recommended Practices on Environmental Protection for Carbon Offsetting and Reduction Scheme for International Aviation.

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 30 June 2024.

8. **█** Aircraft operators that 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, 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 cancelation shall take place by 31 January 2025 for emissions in the period 2021 to 2023 *and* by 31 January 2028 for emissions in the period 2024 to 2026.’;

(6a) In Article 14, the following paragraphs are added:

‘2a. Aircraft operators shall report once a year on the non-CO₂ aviation effects occurring from the 1 January 2025 onwards. For this purpose the Commission shall adopt by 31 August 2024 an implementing act pursuant to the first paragraph in order to include non-CO₂ aviation effects in a MRV framework. This MRV framework shall contain, at a minimum, the three-dimensional aircraft trajectory data available, and ambient humidity and temperature to allow to produce a CO₂ equivalent per flight. The Commission shall ensure, subject to available resources, the availability of tools to facilitate and to the extent possible automatise the MRV in order to minimise any administrative burden. From 2025, Member States shall ensure that each aircraft operator monitors and reports the non-CO₂ effects from each aircraft that it operates during each calendar year to the competent authority after the end of each year in accordance with the acts referred to in paragraph 1.

The Commission shall submit annually from 2026, as part of the report referred to in Article 10(5), a report to the European Parliament and the Council on the results of the application of the MRV framework referred to in the first subparagraph.

By 1 January 2028, based on the results of the application of the MRV framework of non-CO₂ aviation effects, the Commission shall submit a report and, where appropriate, a legislative proposal after having first carried out an impact assessment to mitigate such effects by expanding the scope of the EU ETS to include non-CO₂ aviation effects.

2b. The Commission shall publish at least the following aggregated annual emissions related data from aviation activities reported to Member States or transmitted to the Commission in accordance with Implementing Regulation (EU) 2018/2066 and Article 7 of Commission Delegated Regulation (EU) 2019/1603 at the latest 3 months after the respective reporting deadline in a user-friendly manner:

(a) per aerodrome pair within the EEA:

- (i) emissions from all flights;**
- (ii) total number of flights;**
- (iii) total number of passengers;**
- (iv) types of aircraft.**

(b) per aircraft operator:

- (i) data on emissions from flights within the EEA, from flights departing the EEA, flights incoming to the EEA and flights between two third countries, broken down by state pair and data on emissions subject to obligation to cancel CORSIA eligible emission units;**
- (ii) the amount of offsetting, calculated in accordance with Article 12(7); the amount and category of fuels used that have zero emission factor under this Directive or entitle the aircraft operator to receive allowances pursuant to Article 3c(5a);**
- (iii) the amount and type of credits pursuant to Article 11a used to comply with their offsetting referred to in point (b).**

For both paragraphs (a) and (b), in specific circumstances where the aircraft operator operates on a very limited number of aerodrome pairs or on a very limited number of State pairs that are subject to offsetting requirements or on a very limited number of State pairs that are not subject to offsetting requirements, it may request that such data not be published at the aircraft operator level, explaining why disclosure would be considered to harm its commercial interests. Based on this, the administering State may request the Commission that publication include this data at a higher level of aggregation. The Commission shall decide on the request.’;

(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 **3c(5a)**, 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 **3c(5a)**, 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 **3c(5a)**, 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) Article 25a *is amended as follows*:

(a) *paragraph 2 is replaced by the following*:

‘2. *The Union and its Member States shall continue to seek agreements on global measures to reduce greenhouse gas emissions from aviation aligned with the objectives of Regulation (EU) 2021/1119 and of the Paris Agreement. In the light of any such agreements, the Commission shall consider whether amendments to this Directive as it applies to aircraft operators are necessary.*’;

(b) the following paragraphs 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, with a baseline of 2019 for 2021 to 2023 and a baseline **of 85 % of 2019 emissions** for each year **from 2024**. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 22a(2).
4. In respect of emissions **occurring until 31 December 2026** 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 *are* 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 *are* registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, operates flights between two different countries listed in the implementing act adopted pursuant to paragraph 3, including flights that take place between Switzerland, the United Kingdom and countries listed in the implementing act adopted pursuant to paragraph 3, and those countries allow aircraft operators to use other units than those on the list adopted pursuant to Article 11a(8), 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) Article 28a is replaced by the following:

‘Article 28a

Derogations applicable in advance of the mandatory implementation of the ICAO's global market-based measure

- 1. 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:***
 - (a) all emissions from flights to and from aerodromes located in countries outside the EEA, with the exception of flights to aerodromes located in the UK and Switzerland, in each calendar year from 1 January 2021 to 31 December 2026, subject to the review referred to in Article 28b;***
 - (b) all emissions from flights between an aerodrome located in an outermost region within the meaning of Article 349 of the Treaty on the Functioning of the European Union and an aerodrome located in another region of the EEA in each calendar year from 1 January 2013 to 31 December 2023, subject to the review referred to in Article 28b.***

For the purposes of Articles 11a, 12 and 14, the verified emissions from flights other than those referred to in the first subparagraph shall be considered to be the verified emissions of the aircraft operator.

- 2. By way of derogation from Article 3d(3), the number of allowances to be auctioned by each Member State in respect of the period from 1 January 2013 to 31 December 2026 shall be reduced to correspond to its share of attributed aviation emissions from flights which are not subject to the derogations provided for in points (a) and (b) of paragraph 1 of this Article.***

3. *By way of derogation from Article 3f, aircraft operators shall not be required to submit monitoring plans setting out measures to monitor and report emissions in respect of flights which are subject to the derogations provided for in points (a) and (b) of paragraph 1 of this Article.*
4. *By way of derogation from Articles 3f, 12, 15 and 18a, where an aircraft operator has total annual emissions lower than 25 000 tonnes of CO₂, or where an aircraft operator has total annual emissions lower than 3 000 tonnes of CO₂ from flights other than those referred to in points (a) and (b) of paragraph 1 of this Article, its emissions shall be considered to be verified emissions if determined by using the small emitters tool approved under Commission Regulation (EU) No 606/2010 and populated by Eurocontrol with data from its ETS support facility. Member States may implement simplified procedures for non-commercial aircraft operators as long as such procedures provide no less accuracy than the small emitters tool provides.*
5. *Paragraph 1 of this Article shall apply to countries with whom an agreement pursuant to Article 25 or 25a has been reached only in line with the terms of such agreement.’;*

(9b) Article 28b is replaced by the following:

‘Article 28b

1. *Before 1 January 2027 and every three years thereafter, the Commission shall report to the European Parliament and to the Council on progress in the ICAO negotiations to implement the global market-based measure to be applied to emissions from 2021, in particular with regard to:*
 - (i) *the relevant ICAO instruments, including standards and recommended practices, as well as the progress in the implementation of all elements of ICAO basket of measures towards the achievement of the Long term aspirational goal adopted at ICAO 41st Assembly.*

- (ii) ICAO Council-approved recommendations relevant to the global market-based measure including any possible changes to baselines;*
- (iii) the establishment of a global registry;*
- (iv) domestic measures taken by third countries to implement the global market-based measure to be applied to emissions from 2021;*
- (v) the level of participation in offsetting by third countries, including the implications of their reservations as regards such participation; and*
- (vi) other relevant international developments and applicable instruments, as well as progress to reduce aviation's total climate change impacts.*

In line with the global stocktake of the Paris Agreement, the Commission shall also report on efforts to meet the aviation sector's aspirational long-term emissions reduction goal of reducing aviation CO₂ emissions to net zero by 2050, assessed in line with criteria (i)-(vi) above.

- 2. By 1 July 2026, the Commission shall present a report to the European Parliament and to the Council in which it shall assess the environmental integrity of ICAO's global market-based measure, including its general ambition in relation to targets under the Paris Agreement, the level of participation in offsetting, 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.*

3. *The Commission shall accompany the report referred to in paragraph 2 with a legislative proposal for changes to this Directive, as appropriate, that are consistent with the Paris Agreement temperature goals, the Union's economy-wide greenhouse gas emission reduction commitment for 2030 and the objective of achieving climate neutrality by 2050 at the latest, with the aim of preserving the environmental integrity and effectiveness of Union climate action. In case the report referred to in paragraph 2 of this Article, to be published by 1 July 2026 shows that:*

(a) the ICAO Assembly by 2025 did not strengthen the CORSIA scheme in line with achieving its long-term aspirational goal, towards meeting the Paris Agreement objectives; or

(b) countries listed in the Implementing Act referred to in Article 25a(3), represent less than 70 % of international aviation emissions using the most recent available data,

then an accompanying proposal shall, as appropriate, include the application of the ETS to departing flights from aerodromes located in countries in the EEA to aerodromes located outside the EEA from January 2027 and exclude incoming flights from aerodromes located outside the EEA. The proposal shall also, as appropriate, allow the possibility for airlines to deduct any costs incurred from CORSIA offsetting on those routes, to avoid double charging. If the conditions in paragraphs (a) and (b) are not met, the proposal shall amend this Directive, as appropriate, to continue applying the EU ETS only to flights within the EEA, to flights to Switzerland and to the United Kingdom and to flights to countries not listed in the implementing act referred to in Article 25a(3).’;

(9c) *In Article 30, the following paragraph is added :*

‘5. In 2026, the Commission shall include the following elements in the report provided for in Article 10(5):

- (i) an evaluation of the environmental and climate impacts of flights of less than 1 000 km and considerations of options to reduce those impacts, including an examination of alternative modes of public transport available and the increased use of sustainable aviation fuels;*
- (ii) an evaluation of the environmental and climate impacts of flights performed by operators exempted pursuant to points (h) or (k) of the entry ‘Aviation’ of the column ‘Activities’ in the table of Annex I, and considerations of options to reduce those impacts;*
- (iii) an evaluation of the social impacts of this Directive in the aviation sector, including on its work force and air travel cost;*
- (iv) an evaluation of connectivity of islands and remote territories, including considerations of competitiveness and carbon leakage, as well as environmental and climate impacts.*

The report provided for in Article 10(5) shall also, where appropriate, contribute to the future revision of this Directive.’;

(10) In Annex I, in the table, the following text is inserted after the first paragraph of the entry ‘Aviation’ of the column ‘Activities’:

- (a) ‘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 *aeroplanes* 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 **2021**. 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;
 - (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.*’;

(10a) *In Annex I, in the table, in the column ‘Activities’ in the entry ‘Aviation’, in point (i), the word ‘30 000’ is replaced by ‘50 000.’;*

(11) In Annex IV, Part B, the following 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).

Emissions from renewable fuels of non-biological origin using hydrogen from renewable sources compliant with Article 25 of Directive (EU) 2018/2001 shall be rated with zero emissions for the aircraft operators using them until the implementing act referred to in Article 14 (1) is adopted.’

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*.

Article 4

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President
