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To:	Delegations
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Subject:	Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft operators based in the Union - 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 11 November 2022 which endorsed a revised mandate for negotiations with the European Parliament, 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 22 / 04971

Council of the European Union
General Secretariat

Brussels, 11 November 2022

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 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 (2021/0204(COD))***

Dear Mr. Canfin,

Following the informal contacts between the representatives of the three institutions, the Permanent Representatives' Committee agreed today on the above-mentioned proposal with limited changes of a purely factual or technical nature. You find the text in the annex to this letter.

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 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.

Member States are to participate in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) from 2021. As foreseen in the CORSIA standards and recommended practices, Member States shall inform airlines of their offsetting requirements in respect of 2021 emissions by 30 November 2022. In view of the need for the urgent adoption of this Decision and its entry into force by 30 November 2022, I would be grateful if the European parliament could organise a vote at the earliest available opportunity during its second Plenary meeting in November (21-24 November 2022).

On behalf of the Council I also wish to thank you in advance for your cooperation which should enable us to reach agreement on this file in urgency at first reading and Member States to comply with their obligations under the Convention on International Civil Aviation.

Yours sincerely,

Jaroslav ZAJICEK
Chair of the Permanent Representatives Committee (Part 1)

copy to: Mr. Frans TIMMERMANS, Vice-President of the Commission
Ms. Sunčana GLAVAK, Rapporteur
Ms. Karima Delli, Chair of the Committee on Transport and Tourism

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Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft operators based in the Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) of the International Civil Aviation Organization (ICAO) is in operation since 2019 as regards the monitoring, reporting and verification of emissions and is intended to be a globally-applied market-based measure aiming to offset international aviation carbon dioxide emissions since 1 January 2021 above a fixed emissions level with certain offset credits.

[1] OJ C […], […], p. […].
[2] OJ C […], […], p. […].

(1a) The Paris Agreement, adopted in December 2015 under the United Nations Framework Convention on Climate Change (UNFCCC) 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. This has been reinforced with the adoption of the Glasgow Climate Pact in November 2021, in which the Conference of the Parties recognises that the impacts of climate change will be much lower at the temperature increase of 1,5ºC, compared with 2ºC, and resolve to pursue efforts to limit the temperature increase to 1,5ºC.

(2) Subject to the differences between the EU legislation and ***the provisions in the First Edition of Annex 16, Volume IV to the Chicago Convention: Carbon Offsetting and Reduction Scheme for International Aviation (‘***CORSIA ***SARPs’)***, notified to ICAO following Council Decision (EU) 2018/2027[3], and the manner in which the European Parliament and Council amend Union legislation, the Union intends to implement CORSIA ***through Directive 2003/87/EC***.

(3) Commission Delegated Regulation (EU) 2019/1603**[4]** was adopted to appropriately implement the rules of CORSIA for monitoring, reporting and verification of aviation emissions. The offsetting within the meaning of the International Standards and Recommended Practices for CORSIA**[5]** is calculated on the basis of CO_2 emissions verified in accordance with that Regulation.

(4) Due to a large decrease in aviation emissions in 2020 as a consequence of the COVID-19 pandemic, the ICAO Council decided in its 220th session in June 2020 that 2019 emissions should be used as baseline for calculating the offsetting by aircraft operators for the years 2021-23. ***This decision was endorsed by ICAO 41st Assembly in October 2022.***

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

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3 Council Decision (EU) 2018/2027 of 29 November 2018 on the position to be taken on behalf of the European Union within the International Civil Aviation Organization in respect of the First Edition of the International Standards and Recommended Practices on Environmental Protection — Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)(OJ L 325, 20.12.2018, p. 25).

4 Commission Delegated Regulation (EU) 2019/1603 of 18 July 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards measures adopted by the 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).

5 First Edition of the International Standards and Recommended Practices on Environmental Protection — Carbon Offsetting and Reduction Scheme for International Aviation (Annex 16, Volume IV to the Chicago Convention).

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

(7) Since the objectives of this Decision cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.

(8) […]

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

(9a) ***Without prejudice to the adoption of a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emissions reduction target and appropriately implementing a global market-based measure, this Decision is intended to be a purely temporary measure that is only to apply pending the expiration of the transposition period of that Directive. In case the transposition period has not expired by 30 November 2023 and ICAO determines that the SGF for 2022 emissions equals zero, Member States should notify aircraft operators that their offsetting requirements in respect of year 2022 are zero. If the SGF for 2022 emissions is different from zero, the Commission may, where appropriate, submit a new proposal for the calculation and the notification of those offsetting requirements.***

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

HAVE ADOPTED THIS DECISION:

Article 1

In Article 12 of Directive 2003/87/EC the following paragraph***s*** 6 ***and 7*** are[…] added:

‘6. By 30 November 2022, Member States shall notify aircraft operators that, in respect of the year 2021, they have […]zero[…] offsetting ***requirements*** within the meaning of ***paragraph 3.2.1. of*** ICAO’s International Standards and Recommended Practices on Environmental Protection for Carbon Offsetting and Reduction Scheme for International Aviation. Member States shall notify aircraft operators that fulfil the following conditions:

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

(b) they produce annual CO_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 outermost regions of the same 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 such flights were conducted with the same aircraft, and were required to accomplish the related humanitarian, medical or firefighting activities or to reposition thereafter the aircraft for its next activity.

7. In the absence of a legislative act amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure or where the period for the transposition of such an act has not expired by 30 November 2023, and the Sector Growth Factor (SGF) for 2022 emissions, to be determined by ICAO equals zero, Member States shall, by 30 November 2023, notify aircraft operators that, in respect of the year 2022, their offsetting requirements within the meaning of paragraph 3.2.1. of ICAO's International Standards and Recommended Practices on Environmental Protection for Carbon Offsetting and Reduction Scheme for International Aviation equal zero.'

Article 2

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

Done at Brussels,

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