Council of the European Union

Brussels, 13 May 2020
(OR. en)

7973/20

**Interinstitutional File: 2020/0078(NLE)**

**AVIATION 72**
**CLIMA 81**
**RELEX 323**

**COVER NOTE**

| | |
|---|---|
| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 13 May 2020 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2020) 194 final |
| Subject: | Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the International Civil Aviation Organization, in respect of notification of voluntary participation in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) from 1 January 2021 and of the option selected for calculating the aeroplane operators' offsetting requirements during the 2021-2023 period |

Delegations will find attached document COM(2020) 194 final.

Encl.: COM(2020) 194 final

EUROPEAN
COMMISSION

Brussels, 13.5.2020
COM(2020) 194 final

2020/0078 (NLE)

Proposal for a

# COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the International Civil Aviation Organization, in respect of notification of voluntary participation in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) from 1 January 2021 and of the option selected for calculating the aeroplane operators' offsetting requirements during the 2021-2023 period**

# EXPLANATORY MEMORANDUM

## 1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf in the International Civil Aviation Organisation (ICAO) on voluntarily participation in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) from 1 January 2021, and on the option selected for calculating the aeroplane operators' offsetting requirements during the 2021-2023 period.

## 2. CONTEXT OF THE PROPOSAL

### 2.1. The Chicago Convention and the Paris Agreement

The Chicago Convention ('the Convention') aims to regulate international air transport. It entered into force on 4 April 1947 and established the International Civil Aviation Organisation.

The Paris Agreement was adopted by the Conference of the Parties to the United Nations Framework Convention on Climate Change in December 2015, whose objective is to limit global temperature increase well below 2°C compared to pre-industrial levels, and to pursue efforts to limit temperature increase to 1.5°C. All sectors of the economy should contribute to achieving these emission reductions, including international aviation.

All EU Member States are parties to both Agreements. The EU and its Member States are Parties to the Paris Agreement and have jointly committed to reduce their greenhouse gas emissions.

### 2.2. The International Civil Aviation Organisation

The International Civil Aviation Organisation is a specialized agency of the United Nations. The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport.The EU is an ad-hoc observer in many ICAO bodies (Assembly and other technical bodies).

### 2.3. The Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)

The International Standards and Recommended Practices (SARPs), Environmental Protection — Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) were adopted as Annex 16, Volume IV to the Chicago Convention by the ICAO Council at its 214th Session on 27 June 2018.

The monitoring, reporting and verification (MRV) requirements related to CO2 emissions from international flights under Annex 16, Volume IV apply from 1 January 2019. The CO2 offsetting requirements under Annex 16, Volume IV will apply from 1 January 2021.

Chapter 3, Paragraphs 3.1.3 and 3.2.1 and Appendix 1 ('Administration Procedures') to Annex 16, Volume IV, requires States to notify ICAO by 30 June 2020 of

- their decision to voluntarily participate, or to discontinue the voluntary participation from 1 January 2021[1];
- which option they have selected for calculating the aeroplane operators' offsetting requirements during the 2021-2023 period.

[1] Paragraph 3.1.3 refers to "inclusion of the State in the ICAO document entitled 'CORSIA States for Chapter 3 State Pairs'". The paragraph includes a note that specifies that the document in question logs "States that have volunteered to participate during the compliance periods from 1 January 2021 to 31 December 2026". It should also be noted that Appendix 1 requires States to notify ICAO of any decision to discontinue the voluntary participation by 30 June each year preceding the year where the voluntary participation would be discontinued.

## 2.4. The EU Emissions Trading System

The aviation sector has been included in the EU's Emissions Trading System (EU ETS) since 2012.[2] The EU ETS covered emissions from flights landing in and departing from the European Economic Area (EEA), including to and from third countries. However, in order to provide momentum within the International Civil Aviation Organisation and to facilitate progress towards a global approach to tackle international aviation emissions, the Union adopted temporary derogations to limit the geographical scope to only cover intra-EEA flights, thereby excluding extra-EEA flights, pending international developments.[3]

The last revision of Directive 2003/87/EC, in 2017, translates the understanding, spelled out in Article 28b, that CORSIA would be taken into account by way of an amendment to the scheme governing the EU ETS, subject to an assessment of the key features of CORSIA, including in terms of participation and that this should be achieved in a manner consistent with the EU climate objective for 2030 (in accordance with the non-backsliding principle under the Paris Agreement[4]).

# 3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

## 3.1. Background

The Union is a strong supporter of ICAO's global market-based measure for international aviation emissions, CORSIA, which contributes to tackling climate change. The Union's support has been shown, inter-alia, by the European Parliament and Council amending the EU ETS three times in order to facilitate progress in ICAO.

While the initial objective of CORSIA is limited to compensating for the growth of emissions from 2020, it is important to support initial progress and to contribute to adequate participation in the interest of achieving its objective.

Council Decision (EU) 2016/915[5] established the Union position with regard to the international instrument to be drawn up within the ICAO bodies and intended to lead to the implementation from 2020 of a single global marked-based measure for international aviation emissions.

The objective of Regulation (EU) 2017/2392[6] is in particular "to prepare to implement a global market-based measure from 2021". As indicated in the Regulation, "[the] concrete operationalisation [of that measure] will require action by the ICAO Parties at domestic level."

Article 28b of the Directive 2003/87/EC (ETS Directive)[7] establishes that "within 12 months of the adoption by the ICAO of the relevant instruments, and before the global market-based measure

---

2 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.

3 In case no amendment to the EU ETS Directive is adopted by the European Parliament and Council by December 2023, thereafter the EU ETS for aviation would automatically revert back to its initial scope, namely covering all flights departing from airports in the EU Member States and all EFTA States and arriving to other airports in EU/EFTA or to third countries and, if not exempted through delegated legislation, incoming flights to airports in the EU/EFTA from third countries.

4 Article 3 of the Paris Agreement.

5 Council Decision (EU) 2016/915 of 30 May 2016 on the position to be taken on behalf of the European Union with regard to the international instrument to be drawn up within the ICAO bodies and intended to lead to the implementation from 2020 of a single global market-based measure for international aviation emissions, OJ L 153, 10.6.2016, p.32.

6 Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021, OJ L 350, 29.12.2017, p.7.

becomes operational, the Commission shall present a report to the European Parliament and to the Council in which it shall consider ways for those instruments to be implemented in Union law through a revision of this Directive. The Commission shall, in that report, also consider the rules applicable in respect of flights within the EEA, as appropriate. It shall also examine the ambition and overall environmental integrity of the global market-based measure, including its general ambition in relation to targets under the Paris Agreement, the level of participation, its enforceability, transparency, the penalties for non-compliance, the processes for public input, the quality of offset credits, monitoring, reporting and verification of emissions, registries, accountability as well as rules on the use of biofuels."

Council Decision (EU) 2018/2027[8], laid down the position to be taken on behalf of the Union within ICAO in respect of the First Edition of the SARPs on CORSIA as regards differences to be notified. In accordance with that Decision, Member States notified differences with ICAO, highlighting the differences between the EU ETS and CORSIA (being, respectively, route-based and State-based) and that the EU implementation of CORSIA would take place through a revision of the EU ETS as agreed in its last revision from 2017[9]. The objective was to preserve the EU *acquis* and future policy space, as well as the EU level of climate ambition.

On 4 March 2020, the Commission adopted a proposal for a 'European Climate Law'[10] according to which the Union would be bound to an objective of climate neutrality in the Union by 2050, in pursuit of the long-term temperature goal set out in Article 2 of the Paris Agreement. The proposal is based on the conclusion that additional action needs to be taken and every sector will have to contribute as current policies are expected to only reduce greenhouse gas emissions by 60% by 2050, and thus much more remains to be done to reach climate neutrality.

Finally, the Union has on several occasions expressed a political commitment to implementing CORSIA from the start of its pilot phase. On the most recent occasion, the statement on behalf of the EU and its Member States at the 40th ICAO Assembly in 2019 served, on the one hand, to indicate that the Union would preserve its policy space and climate ambition with regard to implementation of CORSIA through the EU ETS and, on the other hand, to express that the Union and its Member States continued to "strongly support CORSIA" and remained "fully committed to implement it from the start of the pilot phase". The Union has consistently recalled the need to preserve relevant EU legislation and climate ambition, consistent with the EU ETS as last revised, and reiterated in the 2018 difference filed, as well as in the EU statement delivered at the 40th ICAO Assembly. The European Parliament has since called on the Commission and the Member States to safeguard the EU's legislative autonomy in implementing the ETS Directive.[11]

---

7 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.

8 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.

9 Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021, OJ L 350, 29.12.2017, p. 7.

10 Commission Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) of 4.3.2020, COM(2020) 80.

11 European Parliament resolution of 28 November 2019 on the 2019 UN Climate Change Conference in Madrid, Spain (COP 25), P9_TA(2019)0079.

### 3.2. Proposed position

It is necessary to adopt, ahead of the deadline of 30 June 2020 set by the CORSIA SARPs, the position on the Union's behalf to allow the Member States to submit the necessary notifications.

On the first issue - i.e. notification of any decision to voluntarily participate, or to discontinue the voluntary participation from 1 January 2021 - considering the political commitment repeatedly made by the Union, and already acknowledged by ICAO, the expected environmental and international transport benefits associated with CORSIA and the absence of any viable alternative at global level, it is proposed to notify the Member States' voluntary participation from the start of the pilot phase on 1 January 2021. The notification would be subject to differences filed in 2018, in accordance with Council Decision (EU) 2018/2027, and any future differences and be without prejudice to the review of the EU ETS as agreed in 2017 and to the EU climate ambition as well as the Renewable Energy Directive[12].

On the second issue – i.e. notification of the option selected for calculating the aeroplane operators' offsetting requirements during the 2021-2023 period – it is proposed that the option of 2021, 2022 and 2023 emissions respectively, for each year of the pilot phase, is selected, rather than 2020 emissions for each respective year. This approach takes into account the expected environmental and international transport benefits, the need to provide incentives to operators to reduce their environmental impacts and the importance of early action, while also taking into consideration the size of potential offsetting costs for European operators and any impact on their international competitiveness., Indeed, compared to choosing the year 2020 as a reference, a reference to the years 2021, 2022 and 2023 respectively should lead to greater environmental effectiveness. This is because the emissions from international aviation are expected to be higher during 2021, 2022 and 2023 than during 2020, not least as a result of the significant impact of the COVID-19 pandemic on air traffic and emissions.

In this context, it is necessary to ensure that current and possible future differences between Union law and CORSIA be duly taken into account. The notification referred to above should therefore include a reference to the difference notified on the basis of Council Decision (EU) 2018/2027. Since that difference, insofar as still relevant, merely concerns the attribution of competence of States vis-à-vis the different operators, due to certain design differences between CORSIA and the EU ETS, the above-mentioned notification should also reserve the possibility to notify additional differences.

## 4. CONSISTENCY WITH OTHER UNION POLICIES

The proposed Decision is consistent with and complements other policies of the Union, notably energy, environmental and transport policies. It recalls the link between participation in CORSIA and a revision of the EU ETS Directive by the European Parliament and the Council, as set out in Regulation 2017/2392. However, the Commission has not yet presented the report foreseen under Article 28b of the ETS Directive and, more generally, the future decision of the legislator in this area is not yet known. Therefore, this notification is to be considered as an interim step, having regard to Chapter 3, Paragraphs 3.1.3 and 3.2.1 and Appendix 1 of Annex 16, Volume IV to the Chicago Convention.

In order to ensure that this interim step be without prejudice to future policy decisions of the co-legislators, the notification must include a reference to the difference already notified in accordance with Council Decision (EU) 2018/2027 and the possibility that other additional differences be notified, as referred to above.

[12] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, OJ L 328, 21.12.2018, p. 82.

## 5. LEGAL BASIS

### 5.1. Procedural legal basis

#### *5.1.1. Principles*

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement[13].

#### *5.1.2. Application to the present case*

Pursuant to Chapter 3, Paragraphs 3.1.3 and Appendix 1 ('Administration Procedures') of Annex 16, Volume IV to the Convention, States are required to notify ICAO by 30 June 2020 of their decision to voluntarily participate, or to discontinue the voluntary participation from 1 January 2021, and of which option they have selected, in accordance with paragraph 3.2.1 of Annex 16, Volume IV, for calculating the aeroplane operators' offsetting requirements during the 2021-2023 period.

It follows from those provisions that certain legal effects of CORSIA, adopted through a decision of the ICAO Council, a body set up by an agreement, depend on the submission of relevant notifications to ICAO, and on the terms of those notifications. Therefore, the adoption of a Union position in respect of such notifications falls within the scope of Article 218(9) TFEU.

### 5.2. Substantive legal basis

In accordance with Article 192(1) and 191 TFEU, the European Union shall contribute to the pursuit, *inter alia*, of the following objectives: preserving, protecting and improving the quality of the environment; promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

#### *5.2.1. Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

#### *5.2.2. Application to the present case*

The main objective and content of the envisaged act relate to climate policy, in the context of international aviation.

Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

### 5.3. Conclusion

The legal basis of the proposed decision should be Article 192(1) TFEU, in conjunction with Article 218(9) TFEU.

---

[13] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

2020/0078 (NLE)

Proposal for a

# COUNCIL DECISION

## on the position to be taken on behalf of the European Union in the International Civil Aviation Organization, in respect of notification of voluntary participation in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) from 1 January 2021 and of the option selected for calculating the aeroplane operators' offsetting requirements during the 2021-2023 period

**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Chicago Convention on International Civil Aviation ('the Convention') aiming to regulate international air transport, entered into force on 4 April 1947. It established the International Civil Aviation Organization (ICAO).

(2) All Member States of the Union are Contracting States of the Convention and members of ICAO, whereas the Union has observer status in certain ICAO bodies.

(3) The 21st Conference of the Parties to the United Nations Framework Convention on Climate Change adopted in December 2015 the Paris Agreement whose objective is to limit global temperature increase well below 2°C compared to pre-industrial levels, and to pursue efforts to limit temperature increase to 1,5°C. All sectors of the economy should contribute to achieving these emission reductions, including international aviation.

(4) In 2016, the 39th ICAO Assembly decided, by means of Resolution A39-3, to develop a global market-based mechanism to limit greenhouse gas emissions from international aviation at their 2020 levels. The Union position in respect of the elaboration and adoption of that mechanism and its various detailed elements has been established by Council Decision (EU) 2016/915[1].

(5) On 27 June 2018, at the tenth meeting of its 214th session, the ICAO Council adopted the First Edition of Volume IV of Annex 16 to the Convention: the International Standards and Recommended Practices on Environmental Protection - Carbon Offsetting and Reduction Scheme for International Aviation ("CORSIA").

(6) In 2017, Directive 2003/87/EC[2] was revised by the European Parliament and Council through Regulation (EU) 2017/2392[3] in particular to prepare the implementation of a

[1] Council Decision (EU) 2016/915 of May 2016 on the position to be taken on behalf of the European Union with regard to the international instrument to be drawn up within the ICAO bodies and intended to lead to the implementation from 2020 of a single global market-based measure for international aviation emissions (OJ L 153, 10.6.2016, p. 32).

[2] 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).

global market-based measure from 2021, to provide for Union law requirements for the monitoring, reporting and verification of emissions for the purpose of CORSIA, and to specify reporting and review provisions in respect of CORSIA.

(7) The rules contained in CORSIA are liable to become binding in accordance with, and within the limits set out in, the Convention. They are also liable to become binding upon the Union and its Member States under existing international air transport agreements.

(8) In order for ICAO to take full account of the current legal situation at Union level, differences have been notified by the Member States in accordance with Council Decision (EU) 2018/2027[4]. According to those notifications, Directive 2003/87/EC, as it currently stands, applies irrespective of the nationality of the aeroplane operator and in principle covers flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies. Directive 2003/87/EC applies without distinction to flights within and between Member States and/or EEA countries. Those principles apply both to Monitoring, Reporting and Verification (MRV) requirements and to offsetting requirements,

(9) Subject to these differences, MRV requirements as set out in CORSIA, applicable as from 1 January 2019, have been incorporated into Union legislation[5]. Under this legislation, emissions data will be collected and transmitted to the ICAO Secretariat in respect of emissions during the pilot phase.

(10) Pursuant to Chapter 3, Paragraphs 3.1.3 and Appendix 1 ('Administration Procedures') of Annex 16, Volume IV to the Convention, States are required to notify ICAO by 30 June 2020 of their decision to voluntarily participate, or to discontinue the voluntary participation from 1 January 2021, and of which option they have selected, in accordance with paragraph 3.2.1 of Annex 16, Volume IV, for calculating the aeroplane operators' offsetting requirements during the 2021-2023 period.

(11) It follows from those provisions that certain legal effects of CORSIA, adopted through a decision of the ICAO Council, a body set up by an agreement, depend on the submission of relevant notifications to ICAO, and on the terms of those notifications. Therefore, the adoption of a Union position in respect of such notifications falls within the scope of Article 218(9) TFEU.

(12) In this respect, it is appropriate to establish the position to be taken on the Union's behalf, having regard to the above-mentioned notification requirement, in particular because the

---

3 Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021, OJ L 350, 29.12.2017, p.7.

4 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).

5 Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012 (OJ L 334, 31.12.2018, p. 1), Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 334, 31.12.2018, p. 94) and 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).

voluntary participation in CORSIA and the choice of the option under paragraph 3.2.1 of Annex 16, Volume IV to the Convention may decisively influence rights and obligations in an area covered by Union law, notably Directive 2003/87/EC of the European Parliament and of the Council and Directive (EU) 2018/2001 of the European Parliament and of the Council on the promotion of the use of energy from renewable sources[6].

(13) The Union and its Member States have repeatedly declared[7] that they are willing to participate in CORSIA from 1 January 2021.

(14) Voluntary participation in CORSIA also implies that an option must be selected, in accordance with paragraph 3.2.1 of Annex 16, Volume IV, of the Convention, for calculating the aeroplane operators' offsetting requirements during the 2021-2023 period. In this respect, it is appropriate to base the calculations on the emissions during 2021, 2022 and 2023 respectively. This option is likely to entail a greater environmental and international transport benefit than the other option available, i.e. basing the calculations on the emissions during 2020, since the emissions from international aviation are expected to be higher during 2021, 2022 and 2023 than during 2020 thus leading to greater offsetting requirements. It would also ensure greater continuity bearing in mind that, for the years from 2024, point 3.2.2 of Annex 16, Volume IV, equally provides for a calculation based on the resepective year.

(15) The selection of 2021, 2022 and 2023 emissions respectively for the calculation of offsetting requirements would apply during the 2021-2023 period to all aeroplane operators that have been attributed to the Member State concerned.

(16) As mentioned above, the system of Directive 2003/87/EC currently differs in certain ways from CORSIA. Article 28b of Directive 2003/87/EC requires the Commission to present a report to the European Parliament and the Council considering ways for CORSIA to be implemented in the Union through a revision of the Directive, consistent with the Union economy-wide greenhouse gas emission reduction commitment for 2030 with the aim of preserving the environmental integrity and effectiveness of Union climate action. To that end, within one year of the adoption by ICAO of the relevant legal instruments and before these become operational, the Commission is to present a report to the European Parliament and the Council in which it assesses, inter alia, the ambition and environmental integrity of the ICAO instrument. Where appropriate, the report is to be accompanied by a legislative proposal. The Commission has not yet presented the said report.

(17) In this context, it is necessary to ensure that current and possible future differences between Union law and CORSIA be duly taken into account, with a view to preserving the Union system as necessary, including the legislator's latitude to decide on the future Union scheme applicable to the area concerned. In this respect, the European Parliament has called on the Commission and the Member States[8] to safeguard the EU's legislative autonomy in implementing the Directive 2003/87/EC.

(18) The notification referred to above should therefore include a reference to the difference notified on the basis of Council Decision (EU) 2018/2027, which applies to the matters covered by the voluntary participation. Since that difference, insofar as still relevant,

---

6 Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, OJ L 328, 21.12.2018, p. 82.

7 E.g. 'Bratislava Declaration' (endorsed by the COREPER, ST 12029/16 (Annex I)), ICAO A39- WP/414 (endorsed by the COREPER, ST 12029/16 (Annex II)), ICAO A40- WP/102 (endorsed by the Council, ST 10227/1/19 (attachment H)).

8 European Parliament resolution of 28 November 2019 on the 2019 UN Climate Change Conference in Madrid, Spain (COP 25), P9_TA(2019)0079.

merely concerns the attribution of competence of States vis-à-vis the different operators, the above mentioned notification should also reserve the possibility to notify additional differences.

(19) The Union's position should be expressed by the Member States of the Union that are members of ICAO.

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in view of Chapter 3, Paragraphs 3.1.3 and 3.2.1 and Appendix 1 of Annex 16, Volume IV, to the Chicago Convention on International Civil Aviation and concerning the notification to the International Civil Aviation Organization in respect of

- the voluntarily participation of the Member States in the Carbon Offsetting and Reduction Scheme for International Aviation as of January 2021 and

- the option selected for the calculation of the aeroplane operators' offsetting requirements during the 2021-2023 period,

is set out in the Annex to this Decision.

*Article 2*

The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the International Civil Aviation Organization.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council*
*The President*