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Subject: COUNCIL DECISION 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 (CORSA) from 1 January 2021 and the option selected for calculating aeroplane operators' offsetting requirements during the 2021-2023 period

COUNCIL DECISION (EU) .../...

of ...

**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 (CORSA) from 1 January 2021 and the option
selected for calculating 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 Chicago Convention') entered into force on 4 April 1947. It established the International Civil Aviation Organization (ICAO) and aims to regulate international air transport.
- (2) All Member States of the Union are contracting States of the Chicago Convention and members of the ICAO, whereas the Union has observer status in certain ICAO bodies.
- (3) In December 2015, the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change adopted the Paris Agreement¹. The objectives of the Paris Agreement include holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit temperature increase to 1,5 °C above pre-industrial levels. All sectors of the economy should contribute to achieving emission reductions, including international aviation.
- (4) In 2016, by means of its Resolution A39-3, the 39th ICAO Assembly decided to implement a global market-based measure scheme in the form of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) to limit greenhouse gas emissions from international aviation at their 2020 levels. The Union position in respect of the elaboration and adoption of that scheme and its various detailed elements has been established by Council Decision (EU) 2016/915².

¹ OJ L 282, 19.10.2016, p. 4.

² 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).

- (5) On 27 June 2018, at the tenth meeting of its 214th session, the ICAO Council adopted the First Edition of Annex 16, Volume IV to the Chicago Convention: Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) (‘Annex 16, Volume IV’).
- (6) In 2017, Regulation (EU) 2017/2392 of the European Parliament and of the Council¹ amended Directive 2003/87/EC of the European Parliament and of the Council². One of the purposes of that Regulation was to prepare for the implementation of CORSA from 2021, to lay down requirements under Union law for the monitoring, reporting and verification for the purpose of CORSA, and reporting on and the review of the implementation of CORSA.
- (7) The rules contained in Annex 16, Volume IV are to become binding in accordance with, and within the limits set out in, the Chicago Convention. Those rules are also to become binding upon the Union and its Member States under existing international air transport agreements.

¹ 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).

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).

- (8) In order for ICAO to take full account of the current legal framework at Union level, differences have been notified by the Member States in accordance with Council Decision (EU) 2018/2027¹. Under Decision (EU) 2018/2027, 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 on the Functioning of the European Union (‘TFEU’) applies. Directive 2003/87/EC applies without distinction to flights within and between Member States and/or European Economic Area countries. At this stage, those rules apply both to monitoring, reporting and verification (MRV) requirements and offsetting requirements.

¹ 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) Subject to the differences notified in accordance with Decision (EU) 2018/2027, the MRV requirements which are set out in Annex 16, Volume IV and applicable as from 1 January 2019 have been incorporated into Union law by means of Commission Implementing Regulations (EU) 2018/2066¹ and (EU) 2018/2067² and Commission Delegated Regulation (EU) 2019/1603³. Under those Regulations, emissions data will be collected and transmitted to the ICAO Secretariat in respect of emissions during the pilot phase.
- (10) Pursuant to paragraphs 3.1.3 and 3.2.1 of Chapter 3 of Part II and Appendix 1 of Annex 16, Volume IV, contracting States are required to notify ICAO of their decision to voluntarily participate or to discontinue the voluntary participation in CORSIA from 1 January 2021. Contracting States are also required to notify ICAO of which option they have selected for calculating aeroplane operators' offsetting requirements during the 2021-2023 period. They are required to submit those notifications by 30 June 2020.

¹ 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).

² 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).

³ 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).

- (11) It follows from those provisions that certain legal effects of Annex 16, Volume IV depend on the submission of and the terms of relevant notifications to ICAO. 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 within the ICAO, having regard to the notification requirements under Annex 16, Volume IV, in particular because the voluntary participation in CORSIA and the choice of the option under paragraph 3.2.1 of Annex 16, Volume IV may decisively influence rights and obligations in an area covered by Union law, notably Directive 2003/87/EC and, to a certain extent, Directive (EU) 2018/2001 of the European Parliament and of the Council¹.
- (13) The Union and the Member States have repeatedly declared² that they are willing to participate in CORSIA from 1 January 2021.

¹ 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).

² E.g. 'Bratislava Declaration', ICAO A39- WP/414 (<https://data.consilium.europa.eu/doc/document/ST-12029-2016-INIT/en/pdf>) and ICAO A40-WP/102 (<https://data.consilium.europa.eu/doc/document/ST-10227-2019-REV-1/en/pdf>).

- (14) Voluntary participation in CORSIA implies that, in accordance with paragraph 3.2.1 of Annex 16, Volume IV, an option must be selected for calculating 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. That option is likely to entail a greater environmental and international transport benefit than the other option available, which is to base 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, paragraph 3.2.2 of Annex 16, Volume IV equally provides for a calculation based on the respective year.
- (15) The selection of emissions during 2021, 2022 and 2023, respectively, for the calculation of aeroplane operators' offsetting requirements would apply during the 2021-2023 period to all aeroplane operators that have been attributed to the Member State concerned in line with the latest edition of the ICAO document 'CORSIA Aeroplane Operator to State Attributions'¹.

¹ <https://www.icao.int/environmental-protection/CORSIA/Pages/CCR.aspx>

- (16) The framework of Directive 2003/87/EC currently differs from Annex 16, Volume IV in certain ways. Under Article 28b(2) of Directive 2003/87/EC, within 12 months of the adoption by ICAO of the relevant instruments and before CORSIA becomes operational, the Commission is to present a report to the European Parliament and to the Council in which it is to consider ways for those instruments to be implemented in Union law through a revision of Directive 2003/87/EC and in which it is to examine, amongst other things, the ambition and overall environmental integrity of CORSIA, 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. Under Article 28b(3) of Directive 2003/87/EC, where appropriate, the Commission is to accompany the report with a proposal to the European Parliament and to the Council to amend, delete, extend or replace the derogations provided for in Article 28a of that Directive, that is consistent with the Union economy-wide greenhouse gas emission reduction commitment for 2030 with the aim of preserving the environmental integrity and effectiveness of Union climate action.
- (17) The Commission has not yet presented the report. There is therefore an urgent need for the Commission to present the report referred to Article 28b(2) of Directive 2003/87/EC, accompanied by the corresponding proposal to the European Parliament and to the Council, as soon as possible and before the end of 2020.

- (18) In this context, it is necessary to ensure that current and possible future differences between Union law and Annex 16, Volume IV be taken into account effectively, with a view to preserving the Union legal framework as necessary, including the legislator's latitude to decide on the future Union scheme applicable to the area concerned.
- (19) The relevant notifications to ICAO should therefore include a reference to the difference notified in accordance with Decision (EU) 2018/2027, which applies to the matters covered by the voluntary participation. Since such difference, insofar as still relevant, merely concerns the attribution of competence of States vis-à-vis the different operators, the relevant notifications to ICAO should also reserve the possibility to notify additional differences.
- (20) The positions to be taken on the Union's behalf within the ICAO should be expressed by each Member State of the Union that is a member of the ICAO,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf within the International Civil Aviation Organization (ICAO) as regards the notification to the ICAO in respect of the voluntarily participation of the Member States in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) from January 2021 shall be the following: each Member State that is a member of the ICAO shall notify ICAO the following text, by 30 June 2020:

‘Pursuant to paragraph 3.1.3 of Chapter 3 of Part II and Appendix 1 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSA), [Member State] notifies the ICAO of its voluntary participation in CORSA from 1 January 2021.’.

2. The position to be taken on the Union's behalf within the ICAO as regards the notification to the ICAO in respect of the option selected for calculating aeroplane operators' offsetting requirements during the 2021-2023 period shall be the following: each Member State that is a member of the ICAO shall notify ICAO the following text, by 30 June 2020:

‘Pursuant to paragraph 3.2.1 of Chapter 3 of Part II and Appendix 1 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSA), [Member State] notifies the ICAO that for the purpose of calculating aeroplane operators' offsetting requirements during the 2021-2023 period the selected option is OE = Aeroplane operator's CO₂ emissions covered by 3.1 in the given year *y*.’.

3. The notifications referred to in paragraphs 1 and 2 of this Article shall be accompanied by the following text:

‘This notification is without prejudice to differences, under Article 38 of the Chicago Convention, with the provisions of Annex 16, Volume IV to the Chicago Convention.’

Article 2

The positions referred to in Article 1 shall be expressed by each Member State of the Union that is a member of the ICAO.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at ...,

For the Council
The President
