

# DIRECTIVES

## DIRECTIVE (EU) 2023/958 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 10 May 2023

**amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and the appropriate implementation of 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 Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) Directive 2003/87/EC of the European Parliament and of the Council <sup>(4)</sup> 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 (EU ETS) by Directive 2008/101/EC of the European Parliament and of the Council <sup>(5)</sup>. The European Union has competence to extend the EU ETS to all flights which depart from or arrive at 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 <sup>(6)</sup>, adopted on 12 December 2015 under the United Nations Framework Convention on Climate Change (UNFCCC) (the 'Paris Agreement'), entered into force on 4 November 2016. 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. That commitment has been reinforced with the adoption under the UNFCCC of the Glasgow Climate Pact on 13 November 2021, in which the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Paris Agreement, recognises 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 those Parties 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 goals of the Paris Agreement, all sectors of the economy, including international aviation, need to contribute to achieving greenhouse gas emission reductions.

<sup>(1)</sup> OJ C 152, 6.4.2022, p. 152.

<sup>(2)</sup> OJ C 301, 5.8.2022, p. 116.

<sup>(3)</sup> Position of the European Parliament of 18 April 2023 (not yet published in the Official Journal) and decision of the Council of 25 April 2023.

<sup>(4)</sup> 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).

<sup>(5)</sup> 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).

<sup>(6)</sup> OJ L 282, 19.10.2016, p. 4.

- (3) Aviation accounts for 2 to 3 % of global CO<sub>2</sub> emissions and aviation's total climate impact is at least twice its impact from CO<sub>2</sub> 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 CO<sub>2</sub> emissions is becoming increasingly urgent, as stated by the Intergovernmental Panel on Climate Change 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'. That report of 4 April 2022 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 that urgent need for action by stepping up its efforts and establishing itself as an international leader in the fight against climate change.
- (4) On 27 June 2018, at the tenth meeting of its 214th session, the International Civil Aviation Organization (ICAO) Council adopted the First Edition of Annex 16, Volume IV, to the Convention on International Civil Aviation signed on 7 December 1944 (the 'Chicago Convention') – Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), establishing the International Standards and Recommended Practices on Environmental Protection for CORSIA (CORSIA SARPs). The Union and its Member States are implementing CORSIA from the start of the pilot phase 2021-2023 in accordance with Council Decision (EU) 2020/954 <sup>(7)</sup>.
- (5) In line with Council Decision (EU) 2018/2027 <sup>(8)</sup>, 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 prerogatives, 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 law. Following the adoption of this Directive, 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 Directive 2003/87/EC.
- (6) Tackling climate- and environmental-related challenges and reaching the goals of the Paris Agreement are at the core of the communication of the Commission of 11 December 2019 entitled 'The European Green Deal' (the 'European Green Deal').
- (7) The Union committed to reducing its economy-wide net greenhouse gas emissions by at least 55 % compared to 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 2020. Aviation should contribute to those emission reduction efforts.
- (8) Through the adoption of Regulation (EU) 2021/1119 of the European Parliament and of the Council <sup>(9)</sup>, the Union has enshrined in legislation the objective of reducing emissions to net zero at the latest by 2050 and the aim of achieving negative emissions thereafter. That Regulation also establishes a binding Union intermediate domestic reduction climate target for net greenhouse gas emissions (emissions after deduction of removals) of at least 55 % compared to 1990 levels by 2030.
- (9) Amendments introduced by this Directive are essential to ensuring the integrity of the EU ETS and effectively steering the EU ETS in order for it to contribute, as a policy tool, to achieving the Union's objectives of reducing net greenhouse gas emissions by at least 55 % by 2030 and becoming climate-neutral by 2050, at the latest, as well as the aim of achieving negative emissions thereafter as laid down in Article 2(1) of Regulation (EU) 2021/1119.
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- <sup>(7)</sup> 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).
- <sup>(8)</sup> 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).
- <sup>(9)</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) No 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

Those amendments are therefore also aimed at the implementation of the Union's contributions under the Paris Agreement as regards aviation. Therefore, the total quantity of allowances for aviation should be consolidated and subject to the linear reduction factor as referred to in Article 9 of Directive 2003/87/EC.

- (10) In addition to CO<sub>2</sub>, aviation affects the climate through non-CO<sub>2</sub> emissions such as oxides of nitrogen (NO<sub>x</sub>), soot particles, oxidised sulphur species, and effects from water vapour, 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-CO<sub>2</sub> 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. Based upon the Commission's impact assessment of 2006 on the inclusion of aviation in the EU ETS, Directive 2008/101/EC recognised that aviation has an impact on the global climate through the release of non-CO<sub>2</sub> emissions. Article 30(4) of Directive 2003/87/EC, as amended by Directive (EU) 2018/410 of the European Parliament and of the Council <sup>(10)</sup>, required the Commission to present an updated analysis of the non-CO<sub>2</sub> 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-CO<sub>2</sub> effects of aviation on climate change and published its study on 23 November 2020. The findings of that study confirmed what had been previously estimated, namely that the non-CO<sub>2</sub> climate impacts of aviation activities are, in total, at least as significant as those of CO<sub>2</sub> alone.
- (11) It follows from the findings of the EASA's study of 23 November 2020 that non-CO<sub>2</sub> aviation effects, 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 framework for non-CO<sub>2</sub> aviation effects. Building on the results of that framework, by 1 January 2028, the Commission should submit a report, and, where appropriate and based on an impact assessment, submit a legislative proposal containing mitigation measures for non-CO<sub>2</sub> aviation effects, by expanding the scope of the EU ETS to cover such effects.
- (12) Achieving the increased climate ambition will require channelling as many resources as possible to the climate transition, which should also be a just transition. As a result, all auction revenues that are not attributed to the Union budget should be used for climate-related purposes.
- (13) The total quantity of allowances for aviation should be consolidated at the level of allocation for flights for which allowances have to be surrendered in accordance with Directive 2003/87/EC. The allocation for the year 2024 should be based on the total allocation to active aircraft operators in the year 2023, reduced by the linear reduction factor as referred to in that Directive. 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 will be covered by the EU ETS from the year 2024 onwards.
- (14) An increased share of auctioning from the year after the entry into force of this Directive should be the rule for the allocation of allowances for the aviation sector, taking into account the sector's ability to pass on the increased cost of CO<sub>2</sub>. A gradual phase out of free allocation in 2024 and 2025 and full auctioning from 2026 should be implemented.
- (15) Directive 2003/87/EC 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 Union market for sustainable aviation fuels, and the significant 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 in order 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 for aviation and should be allocated, in a non-discriminatory manner, only for flights covered by the surrender obligation of Directive 2003/87/EC. Following an evaluation of the functioning of that reserve, the Commission could decide to submit a legislative proposal to allocate a capped and time-limited amount of allowances. Such allocation should only last until 31 December 2034.

<sup>(10)</sup> Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ L 76, 19.3.2018, p. 3).

- (16) Supersonic commercial flights ceased to be available, inter alia, due to the disproportionately elevated environmental damage they caused. Nevertheless, current trends show intensive research into the re-introduction of supersonic aviation. The positive correlation between the speed of travel and the level of emissions due to fuel burn justifies treating subsonic flights differently from supersonic flights. Therefore, it is appropriate to exclude possible future supersonic flights from the support provided under this Directive for non-fossil fuels.
- (17) Directive 2003/87/EC should also be amended with regard to acceptable units for compliance, to take into account the CORSIA Emissions Unit Eligibility Criteria adopted by the ICAO Council at its 216th session in March 2019 as an essential element of CORSIA. Aircraft operators based in the Union should be able to use units for compliance with CORSIA for flights to or from, or between, 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 in CORSIA, the units for compliance should originate from States that are Parties to the Paris Agreement and that participate in CORSIA, and double counting should be avoided.
- (18) In order to ensure uniform conditions for the use of units in accordance with Directive 2003/87/EC, implementing powers should be conferred on the Commission to adopt a list of units building on those which have been considered acceptable by the ICAO Council to use for compliance with CORSIA, and that fulfil the eligibility conditions provided for by this Directive. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(1)</sup>.
- (19) In order to ensure uniform conditions for the necessary arrangements for authorisation by the participating parties, for 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 for avoidance of 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.
- (20) In order to ensure uniform conditions for the calculation of the offsetting requirements for CORSIA for aircraft operators based in the Union, the corresponding implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (21) As CORSIA implementation and enforcement for aircraft operators based outside the Union is meant to be solely the responsibility of the home country of those aircraft operators, aircraft operators based outside the Union should not be required to cancel units for compliance with CORSIA under this Directive.
- (22) As CORSIA implementation and enforcement for aircraft operators based outside the Union is meant to be solely the responsibility of the home country of those aircraft operators, where an aircraft operator based outside the Union has significant emissions from flights within the European Economic Area (EEA), or departing from an aerodrome located in the EEA to an aerodrome located in Switzerland or in the United Kingdom, the State in which that aircraft operator is based can also notify differences regarding the application of CORSIA in respect of intra-European flights. Directive 2003/87/EC should be kept under review in light of developments in that regard.
- (23) To ensure equal treatment on routes, flights to and from States that are not implementing CORSIA for the purposes 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 obligations to surrender allowances or to cancel units. To incentivise full implementation of CORSIA starting in 2027, the exemption should only apply to emissions released until 31 December 2026 in relation to the surrender of allowances.

<sup>(1)</sup> 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 Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (24) Article 191 of the Treaty on the Functioning of the European Union (TFEU) provides that Union policy on the environment is to contribute to promoting measures at international level combating climate change and requires the Union and the Member States, within their respective spheres of competence, to cooperate with third countries and with the competent international organisations. Those objectives are also relevant for ICAO and the further development of CORSIA.
- (25) Data transparency and public access to information are essential to improve accountability and enforceability. Therefore, the Commission should publish in a user-friendly manner data on aircraft operators' emissions and offsetting. Such publication would facilitate assessing the impact of CORSIA on the global reduction of CO<sub>2</sub> emissions and its role in achieving the goals of the Paris Agreement.
- (26) Flights to and from least developed countries and small island developing States, as defined by the United Nations, not implementing CORSIA, for the purposes of Union law, other than those States whose GDP per capita equals or exceeds the Union average, should be exempt from obligations to surrender allowances or to cancel units. There should be no end date for that exemption.
- (27) In order to ensure uniform conditions for exempting aircraft operators from offsetting requirements as laid down under this Directive in respect of emissions from flights to and from States 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 this Directive, implementing powers should be conferred on the Commission to exempt aircraft operators based in the Union from offsetting requirements in respect of emissions from flights where a significant distortion of competition to the detriment of aircraft operators based in the Union occurs due to a less stringent implementation or enforcement of CORSIA in third countries. 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.
- (28) In order to ensure uniform conditions for the establishment of a level playing field on routes between two different States applying CORSIA where those States allow aircraft operators to use units other than those on the list of units for compliance adopted pursuant to an implementing act under this Directive, implementing powers should be conferred on the Commission to allow aircraft operators based in a Member State to use unit types additional to that list of units for compliance or not to be bound by the conditions for eligibility of units introduced by this Directive. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (29) The Commission should report on the implementation of CORSIA and of ICAO's basket of measures to meet the long-term global aspirational goal for international aviation of net-zero carbon emissions by 2050 (the 'long-term global aspirational goal'), adopted by the 41st ICAO Assembly on 7 October 2022.
- (30) In order to facilitate progress at ICAO, the Union has on three occasions adopted time-bound derogations to the EU ETS so as to limit compliance obligations to emissions from flights between aerodromes located in the EEA, 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 of the European Parliament and of the Council<sup>(12)</sup>, limited compliance obligations to intra-EEA flight emissions released until 2023, and envisaged potential changes to the scope of the system as regards activity to and from aerodromes located outside the EEA from 1 January 2024 onwards following the review set out in that Regulation. In order to assess the implementation of CORSIA, the pilot phase of which has begun, and how it is applied in practice, the current derogation from EU ETS obligations should be extended for surrender obligations until 31 December 2026 concerning flights operated by aircraft operators on routes 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 2027 and 30 September 2027. That should be the last time-bound derogation to the EU ETS. A review of CORSIA should take place by 1 July 2026. If the ICAO Assembly by 31 December 2025 has not strengthened CORSIA in line with achieving its long-term global aspirational goal towards meeting the Paris Agreement goals or if the States listed in an implementing act to be adopted by the

<sup>(12)</sup> 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).

Commission represent less than 70 % of international aviation emissions using the most recent available data, then the Commission should propose, as appropriate, that the EU ETS apply to emissions from departing flights from 2027, and that aircraft operators 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 CORSIA from 2027, the EU ETS should apply to emissions from flights departing to that third country.

- (31) Information on the use of units for compliance with offsetting requirements under CORSIA should be made publicly available in a no less transparent manner than that for information on the use of international credits under Directive 2003/87/EC until 2020 pursuant to Annex XIV of Commission Regulation (EU) No 389/2013 <sup>(13)</sup>.
- (32) On 7 October 2022 and in the context of the COVID-19 pandemic, the 41st ICAO Assembly decided to change the previous baseline of CORSIA for the period from 2024 to 2035 from the average of 2019 and 2020 CO<sub>2</sub> emissions to 85 % of 2019 CO<sub>2</sub> emissions. The average of all reported 2019 and 2020 CO<sub>2</sub> emissions was 435 859 594 tonnes. 2019 CO<sub>2</sub> emissions were 608 076 604 tonnes, and 85 % of that figure is 516 865 113 tonnes. However, the actual baseline that ICAO uses to calculate the sector growth factor is determined by using a subset of CO<sub>2</sub> 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 CO<sub>2</sub> emissions is not published by ICAO but is estimated to be 245 million tonnes, and the 2019 CO<sub>2</sub> 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 and 2020 CO<sub>2</sub> emissions is estimated to be around 373 million tonnes, while 85 % of the corresponding 2019 CO<sub>2</sub> emissions is estimated to be around 439 million tonnes.
- (33) In order to ensure uniform conditions for establishing a list of States which are considered to be applying CORSIA for the purposes of Directive 2003/87/EC, 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.
- (34) The transition of the aviation sector towards sustainable aviation has to take into account the social dimension of the sector and its competitiveness, in order to ensure that that transition is socially just and provides training, reskilling and upskilling for workers. The Commission should submit a report to the European Parliament and to the Council on the application of this Directive and its social impacts on the aviation sector.
- (35) Flights spanning 1 000 kilometers and less account for 6 to 9 % of total aviation CO<sub>2</sub> emissions. The Commission should submit a report on measures to promote a modal shift towards alternative, more sustainable modes of transport, pending technological breakthroughs and availability of zero-emission aviation fuels and aircraft.
- (36) While the EU ETS has applied 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, the mechanism under this Directive, which is designed to bridge the remaining price differential between fossil fuels 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 air connectivity.
- (37) The emission factor of jet kerosene (Jet A1 or Jet A) under the EU ETS should be aligned with the emission factor for that fuel established in CORSIA SARPs. No change in allocation levels should be made as a result of the increase in the emission factor of jet kerosene because free allocation to aviation is being gradually phased out as a result of this Directive in favour of auctioning to deliver greater emission reductions.

<sup>(13)</sup> Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and (EU) No 1193/2011 (OJ L 122, 3.5.2013, p. 1).

- (38) Renewable fuels of non-biological origin using hydrogen from renewable sources, compliant with Article 25 of Directive (EU) 2018/2001 of the European Parliament and of the Council <sup>(14)</sup>, should be rated as producing zero emissions for the aircraft operators using them until the detailed rules for the appropriate accounting are set under this Directive.
- (39) In order to establish detailed rules for the yearly calculation of the cost difference between fossil kerosene and eligible fuels in accordance with a regulation on ensuring a level playing field for sustainable air transport, for the allocation of allowances for the use of such eligible fuels, and for the calculation of the greenhouse gas emissions saved as a result of the use of such eligible fuels, as well as to establish arrangements for taking account of incentives deriving from the price of carbon and from harmonised minimum levels of taxation on fossil fuels, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. In addition, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in order to set out the detailed arrangements for the auctioning by Member States of aviation allowances, including the detailed arrangements for the auctioning necessary for the transfer of a share of revenue from such auctioning to the general budget of the Union as own resources. 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-Making <sup>(15)</sup>. 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.
- (40) 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 31 December 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. That 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.
- (41) Decision (EU) 2023/136 of the European Parliament and of the Council <sup>(16)</sup> is to apply as regards the notification to aircraft operators to be carried out by Member States by 30 November 2023 under Directive 2003/87/EC provided that the sector growth factor for 2022 emissions, to be published by ICAO, equals zero.
- (42) 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 sectors that are hard to decarbonise, 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 Union level, the necessary research and innovation efforts are supported, among other things, through Horizon Europe – the Framework Programme for Research and Innovation, which includes significant funding and new instruments for the sectors coming under the EU ETS.
- (43) The Innovation Fund established by Directive 2003/87/EC is to support research on, and the development and deployment of, decarbonisation solutions, including zero-emission technologies, and reduce the climate and environmental impacts of the aviation sector. It is also to support electrification and actions to reduce the overall impacts of aviation.

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<sup>(14)</sup> 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).

<sup>(15)</sup> OJ L 123, 12.5.2016, p. 1.

<sup>(16)</sup> 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, 20.1.2023, p. 1).

- (44) Since the objectives of this Directive, namely to ensure aviation's contribution to the Union's economy-wide emission reduction target and to appropriately implement CORSIA in Union law, 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.
- (45) Member States should transpose this Directive by 31 December 2023 in view of the need for urgent climate action and for all sectors to contribute to emission reduction in a cost-effective manner.
- (46) Simplifications of administrative procedures and adaptation of those procedures to best practice would keep the administrative burden to a minimum.
- (47) Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

#### Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

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

'(v) "non-CO<sub>2</sub> aviation effects" means the effects on the climate of the release, during fuel combustion, of oxides of nitrogen (NO<sub>x</sub>), soot particles, oxidised sulphur species, and effects from water vapour, including contrails, from an aircraft performing an aviation activity listed in Annex I;'

- (2) 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 listed in Annex I in the year 2023, reduced by the linear reduction factor as referred to in Article 9, and shall publish that quantity, as well as the amount of free allocation which would have taken place in 2024 under the rules for free allocation in force prior to the amendments introduced by Directive (EU) 2023/958 of the European Parliament and of the Council (\*).

6. 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 use of sustainable aviation fuels, and other aviation fuels that are not derived from fossil fuels, identified in a regulation on ensuring a level playing field for sustainable air transport as counting towards reaching the minimum share of sustainable aviation fuels that aviation fuel made available to aircraft operators at Union airports by aviation fuel suppliers is required to contain under that Regulation, for subsonic flights for which allowances have to be surrendered in accordance with Article 12(3) of this Directive. Where eligible aviation fuel cannot be physically attributed in an airport to a specific flight, the allowances reserved under this subparagraph 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) of this Directive.

The allowances reserved under the first subparagraph of this paragraph shall be allocated by the Member States to cover part of or all of the price differential between the use of fossil kerosene and the use 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 that price differential, the Commission shall take into account the technical report published by the European Union Aviation Safety Agency under a regulation on ensuring a level playing field for sustainable air transport. Member States shall ensure the visibility of funding under this paragraph in a manner corresponding to the requirements in Article 30m(1), points (a) and (b), of this Directive.



The allowances allocated under this paragraph shall cover:

- (a) 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 of the European Parliament and of the Council (\*\*), for which the emission factor is zero under Annex IV or under the implementing act adopted pursuant to Article 14 of this Directive;
- (b) 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, for which the emission factor is zero under Annex IV or under the implementing act adopted pursuant to Article 14 of this Directive;
- (c) 100 % of the remaining price differential between the use of fossil kerosene and any eligible aviation fuel that is not derived from fossil fuels covered by the first subparagraph of this paragraph, at airports situated on islands smaller than 10 000 km<sup>2</sup> and with no road or rail link with the mainland, at airports which are insufficiently large to be defined as Union airports in accordance with a regulation on ensuring a level playing field for sustainable air transport and at airports located in an outermost region;
- (d) in cases other than those referred to in points (a), (b) and (c), 50 % of the remaining price differential between the use of fossil kerosene and any eligible aviation fuel that is not derived from fossil fuels covered by the first subparagraph of this paragraph.

The allocation of allowances under this paragraph 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 quantity of each eligible aviation fuel referred to in this paragraph used on flights for which allowances have to be surrendered in accordance with Article 12(3) between 1 January 2024 and 31 December 2030, excluding flights for which that requirement is considered to be satisfied pursuant to Article 28a(1). If, for a given year, the demand for allowances for the use of such fuels is higher than the availability of allowances, the quantity of allowances shall be reduced in a uniform manner for all aircraft operators concerned by the allocation for that year.

The Commission shall publish in the *Official Journal of the European Union* 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 is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive by establishing the detailed rules for the yearly calculation of the cost difference referred to in the sixth subparagraph of this paragraph, for the allocation of allowances for the use of the fuels identified in the first subparagraph of this paragraph and for the calculation of the greenhouse gas emissions saved as a result of the use of fuels as reported under the implementing act adopted pursuant to Article 14(1), and establishing the arrangements for taking into account incentives from the price of carbon and from harmonised minimum levels of taxation on fossil fuels.

By 1 January 2028, the Commission shall carry out an evaluation regarding the application of this paragraph and submit the results of that evaluation in a report to the European Parliament and to the Council in a timely manner. The report may, where appropriate, be accompanied by a legislative proposal to allocate a capped and time-limited amount of allowances until 31 December 2034 to further incentivise the use of the fuels identified in the first subparagraph of this paragraph, in particular the use of renewable fuels of non-biological origin compliant with Article 25 of Directive (EU) 2018/2001, used in aviation, for which the emission factor is zero under Annex IV or under the implementing act adopted pursuant to Article 14 of this Directive.

From 1 January 2028, the Commission shall evaluate the application of this paragraph in the annual report it is required to submit pursuant to Article 10(5).

7. 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, and 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 as referred to in Article 9.

8. By way of derogation from Article 12(3), Article 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 released until 31 December 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 located in the same outermost region or in another outermost region of the same Member State.

(\*) Directive (EU) 2023/958 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and the appropriate implementation of a global market-based measure (OJ L 130, 16.5.2023, p. 115).

(\*\*) 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);

(3) 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 (7), as well as 25 % in 2024 and 50 % in 2025, respectively, 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(6) and Article 10a(8), fourth subparagraph. The remainder of the allowances for those years shall be allocated for free.

From 1 January 2026, the entire 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(6) and Article 10a(8), fourth subparagraph.;

(b) the following paragraph is inserted:

'1a. Allowances which are allocated for free shall be allocated to aircraft operators proportionately to their share of verified emissions from aviation activities reported for 2023. That 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) paragraphs 3 and 4 are replaced by the following:

'3. 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 detailed arrangements for the auctioning which are 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, third paragraph, of the Treaty on the Functioning of the European Union (TFEU). The quantity of allowances to be auctioned in each period by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year reported pursuant to Article 14(3) and verified pursuant to Article 15. For each period referred to in Article 13, the reference year shall be the calendar year ending 24 months before the start of the period to which the auction relates. The delegated acts shall ensure that the principles set out in the first subparagraph of Article 10(4) are respected.

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, third paragraph, 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 those revenues in accordance with Article 10(3) of this Directive.;

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

(5) Article 11a is amended as follows:

(a) paragraphs 1, 2 and 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 pursuant to Article 12(6) as laid down in Article 12(9):

- (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 to 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 State that is a Party to the Paris Agreement at the time of use;
- (b) they originate from a State that is listed in the implementing act adopted pursuant to Article 25a(3) as participating in ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). This condition shall not apply in respect of emissions released before 2027, nor shall it apply in respect of least developed countries or small island developing States, as defined by the United Nations, except for those States 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 double counting and a net increase in global emissions are avoided.

The Commission shall adopt implementing acts laying down detailed requirements for the arrangements referred to in the first subparagraph of this paragraph, which may include reporting and registry requirements, and for listing the States or programmes which apply those arrangements. Those arrangements shall take account of flexibilities accorded to least developed countries and small island developing States in accordance with paragraph 2 of this Article. 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 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 set out in paragraphs 2 and 3 of this Article. The Commission shall also adopt implementing acts to update 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 set out in the implementing act referred to in paragraph 8 of this Article, Member States shall calculate the offsetting requirements each year for the preceding calendar year in respect of flights to, from and between States that are listed in the implementing act adopted pursuant to Article 25a(3), and in respect of flights between Switzerland or the United Kingdom and States 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 set out in the implementing act referred to in paragraph 8 of this Article, Member States shall also calculate the total final offsetting requirements for a given CORSIA compliance period and, by 30 November of the year following the last year of the relevant CORSIA compliance period, inform aircraft operators that fulfil the conditions set out in the third subparagraph of this paragraph of those requirements.

Member States shall inform aircraft operators that fulfil all of the following conditions of the level of offsetting:

- (a) the aircraft operators hold an air operator certificate issued by a Member State or are registered in a Member State, including in the outermost regions, dependencies and territories of that Member State; and
- (b) they produce annual CO<sub>2</sub> 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), CO<sub>2</sub> 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:

‘8. The calculation of offsetting requirements referred to in paragraph 6 of this Article for the purposes of CORSIA shall be made in accordance with a methodology to be specified by the Commission in respect of flights to, from and between States that are listed in the implementing act adopted pursuant to Article 25a(3), and of flights between Switzerland or the United Kingdom and States that are listed in the implementing act adopted pursuant to Article 25a(3).

The Commission shall adopt implementing acts specifying the methodology for the calculation of offsetting requirements for aircraft operators referred to in the first subparagraph of this paragraph.

Those 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 CORSIA (CORSIA SARPs).

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.

9. 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 cancellation 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.;

(7) in Article 14, the following paragraphs are added:

‘5. Aircraft operators shall report once a year on the non-CO<sub>2</sub> aviation effects occurring from 1 January 2025. For that purpose, the Commission shall adopt by 31 August 2024 an implementing act pursuant to paragraph 1 in order to include non-CO<sub>2</sub> aviation effects in a monitoring, reporting and verification framework. That monitoring, reporting and verification framework shall contain, at a minimum, the three-dimensional aircraft trajectory data available, and ambient humidity and temperature to enable a CO<sub>2</sub> equivalent per flight to be produced. The Commission shall ensure, subject to available resources, that tools are available to facilitate and, to the extent possible, automatise monitoring, reporting and verification in order to minimise any administrative burden.

From 1 January 2025, Member States shall ensure that each aircraft operator monitors and reports the non-CO<sub>2</sub> 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 implementing 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 on the results from the application of the monitoring, reporting and verification framework referred to in the first subparagraph of this paragraph.

By 31 December 2027, based on the results from the application of the monitoring, reporting and verification framework for non-CO<sub>2</sub> aviation effects, the Commission shall submit a report and, where appropriate and after having first carried out an impact assessment, a legislative proposal to mitigate non-CO<sub>2</sub> aviation effects by expanding the scope of the EU ETS to include non-CO<sub>2</sub> aviation effects.

6. 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 Commission Implementing Regulation (EU) 2018/2066 (\*) and Article 7 of Commission Delegated Regulation (EU) 2019/1603 (\*\*), at the latest three months after the respective reporting deadline and 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 from the EEA, flights arriving in the EEA and flights between two third countries, broken down by State pair, and data on emissions subject to the obligation to cancel CORSIA eligible emission units;
- (ii) the amount of offsetting requirements, calculated in accordance with Article 12(8);
- (iii) the amount and type of credits pursuant to Article 11a used to comply with the aircraft operator's offsetting requirements referred to in point (ii) of this point;
- (iv) the amount and type of fuels used for which the emission factor is zero under this Directive or which entitle the aircraft operator to receive allowances pursuant to Article 3c(6).

For points (a) and (b) of the first subparagraph, in specific circumstances where an 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, that aircraft operator may request the administering Member State not to publish such data at the aircraft operator level, explaining why disclosure would be considered to harm its commercial interests. Based on that request, the administering Member State may request the Commission to publish those data at a higher level of aggregation. The Commission shall decide on the request.

(\*) 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 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).;

(8) Article 18a is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Where in the first two years of any period referred to in Article 13, none of the attributed aviation emissions from flights performed by an aircraft operator falling within point (b) of paragraph 1 of this Article are attributed to its administering Member State, the aircraft operator shall be transferred to another administering Member State in respect of the next period. The new administering Member State shall be the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator during the first two years of the previous period.’;

(b) in paragraph 3, point (b) is replaced by the following:

‘(b) 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 updating of the list, that aircraft operator shall not be included in the list.’;

(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 States 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 released until 31 December 2026 from flights to or from States that are listed in the implementing act adopted pursuant to paragraph 3 of this Article, aircraft operators shall not be required to surrender allowances in accordance with Article 12(3) in respect of those emissions.

5. In respect of emissions released until 31 December 2026 from flights between the EEA and States that are not listed in the implementing act adopted pursuant to paragraph 3 of this Article, other than flights to Switzerland and to the United Kingdom, aircraft operators shall not be required to surrender allowances in accordance with 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 of this Article and those States whose GDP per capita equals or exceeds the Union average, aircraft operators shall not be required to surrender allowances in accordance with Article 12(3) in respect of those emissions.

7. Where the Commission determines that there is a significant distortion of competition, such as a distortion caused by a third country applying CORSIA in a less stringent manner in its domestic law or failing to enforce CORSIA provisions in an equal manner for all aircraft operators, 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 adopt implementing acts to exempt those aircraft operators from offsetting requirements as laid down in Article 12(9) in respect of emissions from flights to and from such States. 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, operate flights between two different States listed in the implementing act adopted pursuant to paragraph 3 of this Article, including flights that take place between Switzerland, the United Kingdom and States listed in the implementing act adopted pursuant to paragraph 3 of this Article, and those States allow aircraft operators to use units other 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 those on the 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).;

(10) Articles 28a and 28b are replaced by the following:

*'Article 28a*

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

1. By way of derogation from Article 12(3), Article 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 States outside the EEA, with the exception of flights to aerodromes located in the United Kingdom or 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 TFEU 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 of this paragraph shall be considered to be the verified emissions of the aircraft operator.

2. By way of derogation from Article 3d(3), the quantity 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 3g, 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 3g, 12, 15 and 18a, where an aircraft operator has total annual emissions lower than 25 000 tonnes of CO<sub>2</sub>, or where an aircraft operator has total annual emissions lower than 3 000 tonnes of CO<sub>2</sub> 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.

#### *Article 28b*

### **Reporting and review by the Commission concerning the implementation of ICAO's global market-based measure**

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:

- (a) the relevant ICAO instruments, including standards and recommended practices, as well as the progress in the implementation of all elements of the ICAO basket of measures towards the achievement of the long-term global aspirational goal adopted at ICAO's 41st Assembly;
- (b) ICAO Council-approved recommendations relevant to the global market-based measure, including any possible changes to baselines;
- (c) the establishment of a global registry;
- (d) domestic measures taken by third countries to implement the global market-based measure to be applied to emissions from 2021;
- (e) the level of participation in offsetting under CORSIA by third countries, including the implications of their reservations as regards such participation; and
- (f) 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 long-term global aspirational goal of reducing aviation CO<sub>2</sub> emissions to net zero by 2050, assessed in line with the criteria referred to in the first subparagraph, points (a) to (f).

2. By 1 July 2026, the Commission shall submit to the European Parliament and to the Council a report 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 under CORSIA, 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. The Commission shall publish that report also by 1 July 2026.

3. The Commission's report referred to in paragraph 2 shall be accompanied by a legislative proposal, where appropriate, to amend this Directive in a way that is consistent with the Paris Agreement temperature goal, the Union's economy-wide greenhouse gas emission reduction commitment for 2030 and the objective of achieving climate neutrality by 2050 at the latest, and with the aim of preserving the environmental integrity and effectiveness of the Union's climate action. An accompanying proposal shall, as appropriate, include the application of the EU ETS to departing flights from aerodromes located in States in the EEA to aerodromes located outside the EEA from January 2027 and exclude arriving flights from aerodromes located outside the EEA where the report referred to in paragraph 2 shows that:

- (a) the ICAO Assembly by 31 December 2025 has not strengthened CORSIA in line with achieving its long-term global aspirational goal, towards meeting the Paris Agreement goals; or



- (b) States listed in the implementing act adopted pursuant to Article 25a(3) represent less than 70 % of international aviation emissions using the most recent available data.

The accompanying proposal shall also, as appropriate, allow the possibility for aircraft operators to deduct any costs incurred from CORSIA offsetting on those routes, to avoid double charging. If the conditions referred to in the first subparagraph, points (a) and (b) of this paragraph 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 States not listed in the implementing act adopted pursuant to Article 25a(3).

- (\*) Commission Regulation (EU) No 606/2010 of 9 July 2010 on the approval of a simplified tool developed by the European organisation for air safety navigation (Eurocontrol) to estimate the fuel consumption of certain small emitting aircraft operators (OJ L 175, 10.7.2010, p. 25).;

(11) in Article 30, the following paragraph is added:

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

- (a) an evaluation of the environmental and climate impacts of flights of less than 1 000 km and consideration of options to reduce those impacts, including an examination of the alternative modes of public transport available and the increased use of sustainable aviation fuels;
- (b) an evaluation of the environmental and climate impacts of flights performed by operators exempted pursuant to point (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;
- (c) an evaluation of the social impacts of this Directive in the aviation sector, including on its work force and air travel costs; and
- (d) an evaluation of the air connectivity of islands and remote territories, including consideration of competitiveness and carbon leakage, as well as environmental and climate impacts.

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

(12) Annexes I and IV are amended in accordance with the Annex to this Directive.

## Article 2

### Transposition

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 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 measures of national law which they adopt in the field covered by this Directive.

*Article 3***Entry into force**

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***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 10 May 2023.

*For the European Parliament*  
*The President*  
R. METSOLA

*For the Council*  
*The President*  
J. ROSWALL

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## ANNEX

(1) In the column 'Activities' in the table in Annex I to Directive 2003/87/EC, the entry 'Aviation' is amended as follows:

(a) the following paragraph is inserted after the first paragraph:

'Flights between aerodromes that are located in two different States that are listed in the implementing act adopted pursuant to Article 25a(3) and flights between Switzerland or the United Kingdom and States that are listed in the implementing act adopted pursuant to Article 25a(3) and, for the purposes of Article 12(6) and (8) and Article 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 operators hold an air operator certificate issued by a Member State or are registered in a Member State, including in the outermost regions, dependencies and territories of that Member State; and

(b) they produce annual CO<sub>2</sub> 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 this Annex, 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.;

(b) in point (i), the number '30 000' is replaced by the number '50 000'.

(2) In Part B of Annex IV to Directive 2003/87/EC, the section 'Monitoring of carbon dioxide emissions' is amended as follows:

(a) the following sentence is added at the end of the fourth paragraph:

'The emission factor for jet kerosene (Jet A1 or Jet A) shall be 3,16 (t CO<sub>2</sub>/t fuel).';

(b) the following paragraph is inserted after the fourth paragraph:

'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) of this Directive is adopted.'

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