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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 the Second Edition of the International Standards and Recommended Practices on Environmental Protection - Carbon Offsetting and Reduction Scheme for International Aviation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the European Union's (the “Union” or “EU”) behalf in respect of the notification of differences to Annex 16, Volume IV to the Chicago Convention, concerning Standards and Recommended Practices relating to environmental protection.

2. CONTEXT OF THE PROPOSAL

2.1. The Chicago Convention, ICAO and the Paris Agreement

The Chicago Convention (the “Chicago Convention” or the “Convention”) aims to regulate international air transport. The Convention entered into force on 4 April 1947 and formed the International Civil Aviation Organization (“ICAO”).

ICAO is a specialised agency of the United Nations that elaborates global standards, practices, and policies for international civil air transport in the area of safety, security, air navigation, environment, facilitation and economic matters.

The Member States of the European Union (the “EU Member States”) are contracting states of the Chicago Convention and members of ICAO, while the Union has an observer status in ICAO.

Pursuant to Article 54 of the Convention, the ICAO Council may adopt international Standards and Recommended Practices.

The Paris Agreement was adopted by the Conference of the Parties to the United Nations Framework Convention on Climate Change in December 2015. Its objective is to limit global temperature increase below 2°C compared to pre-industrial levels, and to pursue efforts to limit temperature increase to 1,5°C.

All EU Member States and the Union are parties to the Paris Agreement.

2.2. CORSIA – Annex 16, Volume IV to the Chicago Convention

The second edition of the International Standards and Recommended Practices, Environmental Protection — Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)¹ was adopted by the ICAO Council at its 228th Session in March 2023, following the adoption of Amendment 1 of Annex 16, Volume IV to the Chicago Convention.

The second edition became applicable on 1 January 2024.

The matter covered by Annex 16, Volume IV to the Chicago Convention is of Union competence and therefore implemented in the EU Member States via Union law.

In accordance with Article 38 of the Chicago Convention, ICAO contracting states are to notify ICAO of the differences between their own regulations or practices and that established by the corresponding international standard.

¹ Annex 16 - Environmental Protection - Volume IV - Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). 2nd Edition, July 2023.

Under ICAO guidance², there are three different categories of differences which can be filed through the Electronic Filing of Differences (EFOD) System: More exacting or exceeds the ICAO Standard or Recommended Practice (SARP) (Category A). This category applies when the national regulation is more demanding than the corresponding SARP or imposes an obligation within the scope of the Annex which is not covered by a SARP. This is of particular importance where an ICAO contracting state requires a higher standard which affects the operation of aircraft of other ICAO contracting states in and above its territory. Different in character or other means of compliance (Category B). This category applies when the national regulation is different in character from the corresponding ICAO SARP, or when the national regulation differs in principle, type, or system from the corresponding SARP, without necessarily imposing an additional obligation; and less protective or partially implemented/not implemented (Category C). This category applies when the national regulation is less protective than the corresponding SARP; or when no national regulation has been promulgated to address the corresponding SARP, in whole or in part.

3. POSITION TO BE ADOPTED ON BEHALF OF THE EU AND ITS MEMBER STATES

3.1 Compliance with EU ETS obligations

The EU implements a regional emission trading system (the “EU ETS”). The EU ETS is a cap-and-trade system that covers greenhouse gas emissions from aviation activities since 2012. It limits the overall emissions cap and allows emitters to buy and sell allowances to meet their obligations, thereby promoting a cost-effective emissions reduction.

In 2023, Directive (EU) 2023/958³ amending Directive 2003/87/EC⁴ was adopted. It strengthened the EU ETS for emissions from all large airlines flying within the EEA, to Switzerland and to the UK. It also included provisions on the implementation of the global market-based measure CORSIA for emissions from airlines based in the European Economic Area.

Pursuant to Article 25a(3) of Directive 2003/87/EC, the Commission adopts annually a list of states, other than EEA countries, Switzerland and the United Kingdom, which are considered to be applying CORSIA. These were namely Commission Implementing Regulation (EU) 2024/622 for 2023⁵ and Commission Implementing Regulation (EU) 2024/2850 for 2024⁶.

² Manual on Notification and Publication of Differences (Doc 10055)

³ 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. 115-133)

⁴ 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.32-46)

⁵ Commission Implementing Regulation (EU) 2024/622 of 22 February 2024 on the list of States which are considered to be applying CORSIA for the purpose of Directive 2003/87/EC of the European Parliament and of the Council for emissions in 2023 (OJ L, 2024/622, 23.2.2024)

⁶ Commission Implementing Regulation (EU) 2024/2850 of 11 November 2024 on the list of States which are considered to be applying CORSIA for the purposes of Directive 2003/87/EC of the European Parliament and of the Council for emissions in 2024 (OJ L, 2024/2850, 12.11.2024)

The Commission also adopted Implementing Regulation (EU) 2024/1879⁷ laying down rules for the application of Directive 2003/87/EC as regards the calculation of offsetting requirements for the purpose of CORSIA and updated the Monitoring and Reporting Implementing Regulation (EU) 2018/2066 on the monitoring and reporting of emissions⁸.

Moreover, pursuant to Article 28c of that Directive, the Commission is to adopt delegated acts concerning the appropriate monitoring, reporting and verification of emissions for the purpose of implementing CORSIA. The first such act was Commission Delegated Regulation (EU) 2019/1603⁹.

Following the adoption of these different acts, there are still differences between the relevant provisions of Directive 2003/87/EC, its relevant implementing regulations and Annex 16, Volume IV to the Chicago Convention, which have implications for how the EU and its Member States implement CORSIA.

This Decision updates Council Decision 2018/2027¹⁰, which provided for the initial differences to be notified. The initial notification of differences stated that differences exist both to monitoring, reporting and verification requirements and to offsetting requirements.

The subject matter of the envisaged act concerns an area for which the Union has exclusive external competence by virtue of the last limb of Article 3(2) TFEU because the envisaged act concerns an area of emissions trading which is largely covered by Union rules, notably the EU Emission Trading System Directive, the Monitoring and Reporting Regulation, the Accreditation and Verification Regulation.

3.2 Compliance with the requirements under CORSIA

3.2.1 Administration

According to Article 51(1) of Implementing Regulation (EU) 2018/2066, each aircraft operator is to monitor and report emissions for all flights that are performed by that aircraft operator during the reporting period and for which the aircraft operator is responsible. Point 1.2.6 of Annex 16, Volume IV to the Chicago Convention provides for an exception which is not included in Directive 2003/87/EC: a wholly owned subsidiary aircraft operator that is legally registered in the same State can be treated together with its owner, as a single consolidated aircraft operator. EU ETS rules require each aircraft operator to have its own

⁷ Commission Implementing Regulation (EU) 2024/1879 of 9 July 2024 laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards the calculation of offsetting requirements for the purpose of CORSIA (OJ L, 2024/1879, 10.7/2024)

⁸ 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.1-93)

⁹ 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. 10–13)

¹⁰ 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. 25–28)

monitoring plan and report its emissions according to the standard procedure, meaning separately from other aircraft operators even if they are fully owned.

This restriction, additional to the standard in Annex 16, Volume IV to the Chicago Convention, should be filed to ICAO under “Category A - More exacting or exceeds the ICAO Standard or Recommended Practice (SARP)”. This triggers a notification pursuant to Article 38 of the Chicago Convention, regarding Point 1.2.6 of Chapter 1 of Annex 16, Volume IV to the Chicago Convention.

In addition, in accordance with Article 68 of Implementing Regulation (EU) 2018/2066, aircraft operators are to submit to the competent authority their annual emissions report by 31 March. However, point 1.2.7 of Annex 16, Volume IV provides that ICAO contracting states and aircraft operators should comply with the timeline defined in Appendix 1. For the periods 2024-2026, 2027-2029, 2030-2032 and 2033-2035, the deadline to submit the verified emissions report to the State is 30 April of each year. Accordingly, aircraft operators must submit the annual emissions report a month earlier under EU law.

This restriction, additional to the standard in Annex 16, Volume IV to the Chicago Convention, should be filed to ICAO under “Category A - More exacting or exceeds the ICAO Standard or Recommended Practice (SARP)”. This triggers a notification pursuant to Article 38 of the Chicago Convention, regarding point 1.5 of Chapter 1 of Annex 16, Volume IV to the Chicago Convention.

3.2.2 Monitoring, Reporting and Verification (MRV) of aircraft operator annual emissions.

Annex I to Directive 2003/87/EC outlines aviation activities in scope of the EU ETS. In addition to the flights specified in point 2.1.1 of Annex 16, Volume IV to the Chicago Convention, the following flights that are departing from or arriving to an EEA state, are also exempted from monitoring requirements: flights under visual flight rules, flights for scientific research and testing of aircrafts and public service obligation flights. Annex 16, Volume IV to the Chicago Convention exempts only State, military, humanitarian, medical and firefighting flights as well as flights preceding or following a humanitarian, medical or firefighting flight, provided such flights were conducted with the same aircraft, and were required to accomplish the related humanitarian, medical or firefighting activities or to reposition thereafter the aircraft for its next activity. This exemption is an additional difference to file to ICAO under “Category C - Partially implemented”. This triggers a notification pursuant to Article 38 of the Chicago Convention, regarding point 2.1.1 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention.

Pursuant to Annex IV to Directive 2003/87/EC, the actual fuel consumption for each flight is to be reported, that includes also fuel consumed by the auxiliary power unit. Therefore, according to Implementing Regulation (EU) 2018/2066, aircraft operators above the EU ETS small emitters’ threshold are to use Method A or Method B as their Fuel Use Monitoring Method to report their annual CO₂ emissions from international flights. The same method must be used whether the flights are subject or not to offsetting requirements.

However, in Appendix 2 of Annex 16, Volume IV to the Chicago Convention, aircraft operators can choose a Fuel Use Monitoring Method among five methods covered in the ICAO SARPs, including Method A and Method B. Moreover, according to Chapter 2 of Annex 16, Volume IV to the Chicago Convention, aircraft operators may choose to use the Fuel Use Monitoring Methods only to report flights subject to offsetting requirements and may use an emissions estimation tool to report flights not subject to offsetting requirements.

These restrictions under Union law, additional to the standard in Annex 16, Volume IV to the Chicago Convention, should be filed to ICAO under “Category A - More exacting or exceeds the ICAO Standard or Recommended Practice (SARP)”. These trigger a notification pursuant to Article 38 of the Chicago Convention on points 2.2.1.3.1, 2.2.1.3.2, 2.2.1.3.3, 2.2.1.3.4, 2.2.1.3.5 and 2.2.1.3.6 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention, which present derogations for when to use a Fuel Use Monitoring Method and when to submit updated Emissions Monitoring Plans.

The small emitters’ threshold, as provided in Article 55(1) of Implementing Regulation (EU) 2018/2066, differs from the one in the CORSIA SARPs. Aircraft operators operating fewer than 243 flights per period for three consecutive four-month periods and aircraft operators operating flights with total annual emissions lower than 25 000 tonnes CO₂ per year are considered small emitters.

This definition, additional to the standard in point 2.2.1.3.1 of Annex 16, Volume IV to the Chicago Convention, is an additional difference to file to ICAO under “Category A - More exacting or exceeds the ICAO Standard or Recommended Practice (SARP)”. This triggers a notification pursuant to Article 38 of the Chicago Convention notification regarding point 2.2.1.3.1 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention, which applies for aircraft operators with annual CO₂ emissions from international flights above 50 000 tonnes.

Pursuant to Article 52 of Implementing Regulation (EU) 2018/2066, the aircraft operator is to submit its monitoring plan to the competent authority at the latest four months before it commences aviation activities covered by Annex I to Directive 2003/87/EC. Aircraft operators performing such activity for the first time (that could not be foreseen four months in advance of the activity), should submit a monitoring plan to the competent authority without undue delay, but no later than six weeks after performance of that activity.

The timeline set by the SARPs differs from Directive 2003/87/EC. Annex 16, Volume IV to the Chicago Convention provides that ICAO contracting states and aircraft operators should comply with the timeline defined in Appendix 1. Submission is required only once, unless in need of a review. New entrants should submit emissions monitoring plans within three months of falling within the scope of applicability. For other aircraft operators (falling within the scope of applicability for the first time without qualifying as new entrants), they should submit their plans within three months.

These restrictions, additional to the standard in Annex 16, Volume IV to the Chicago Convention, should be filed to ICAO under “Category A - More exacting or exceeds the ICAO Standard or Recommended Practice (SARP)”. These trigger a notification pursuant to Article 38 of the Chicago Convention regarding points 2.2.2.1, 2.2.2.2 and 2.2.2.3 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention.

In accordance with Article 68 of Implementing Regulation (EU) 2018/2066 and Article 27(2) of Implementing Regulation (EU) 2018/2067, only aircraft operators are to submit both the emissions report and the verification report to the competent authority of their administering State. Point 2.4.1.5 of Annex 16, Volume IV to the Chicago Convention requires from both the aircraft operator and the verification body to submit independently, a copy of the emissions report and associated verification report to the State.

This difference from the standard in Annex 16, Volume IV to the Chicago Convention, should be filed to ICAO under “Category B – other means of compliance to the ICAO Standard or Recommended Practice (SARP)”. This triggers a notification pursuant to Article 38 of the Chicago Convention regarding point 2.4.1.5 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention.

Article 3 of Implementing Regulation (EU) 2018/2067 sets the conditions to fulfil to be an accredited ‘verifier’: a legal person or another legal entity carrying out verification activities pursuant to the Implementing Regulation (EU) 2018/2067 and accredited by a national accreditation body pursuant to Regulation (EC) No 765/2008 and the Implementing Regulation (EU) 2018/2067 or a natural person otherwise authorised, without prejudice to Article 5(2) of the Implementing Regulation (EU) 2018/2067, at the time a verification report is issued. It implies that the emissions report is to be verified by verifiers based in the territory of the EEA, which is not a criterion in the SARPs.

This difference from the standard in Annex 16, Volume IV to the Chicago Convention, should be filed to ICAO under “Category A - More exacting or exceeds the ICAO Standard or Recommended Practice (SARP)”. This triggers a notification pursuant to Article 38 of the Chicago Convention regarding point 2.4.2.1 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention.

Finally, the aircraft operator is to fill data gaps in accordance with Article 66(2) of Implementing Regulation (EU) 2018/2066, using either conservative surrogate data values or data from an emissions estimation tool provided that the data gaps do not exceed 5% of all reported flights, i.e. all international flights. If it exceeds this threshold, the aircraft operator is to take remedial action to improve the monitoring methodology.

This difference, additional to the standard in Annex 16, Volume IV to the Chicago Convention, should be filed to ICAO under “Category A - More exacting or exceeds the ICAO Standard or Recommended Practice (SARP)”. This triggers a notification pursuant to Article 38 of the Chicago Convention regarding point 2.5.1.1 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention, which applies a threshold of 5% of international flights subject to offsetting requirements.

3.2.3 Offsetting requirements

Implementing Regulation (EU) 2024/1879, provides for the calculation of offsetting requirements relevant to emissions taking place from 1 January 2023 to 31 December 2026.

This calculation formula is the following:

$OR_y = OE_y * SGF_y$ where:

OR_y = aircraft operator’s offsetting requirements in the given year y ;

OE_y = aircraft operator’s CO₂ emissions from international flights covered in the given year y ;

SGF_y = Sector’s Growth Factor.

This formula follows the SARPs calculation method, however Article 25a(3) of Directive 2003/87/EC requires the publication of a list of states which are considered to be applying CORSIA. That list is updated every year to acknowledge new states volunteering in CORSIA but still differs from the ICAO list, as it excludes EEA countries, Switzerland and the United Kingdom as those states apply their regional emissions trading systems¹¹ for intra-EEA and flights between EEA countries and Switzerland and the United Kingdom.

¹¹ 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.32-46), Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (SI 2020 No.1557), Agreement between the European Union and the Swiss

It means that even if EEA states report their emissions to ICAO according to the SARPs methodology, to facilitate the calculation of the Sectoral Growth Factor, they do not calculate offsetting requirements for flights subject to the regional emissions trading systems.

The application of the regional emissions trading systems on international flights between EEA States and those between the EEA and Switzerland and the UK obliges aircraft operators to address the emissions from these flights. Environmentally, the EU ETS is a more stringent instrument than CORSIA, as it addresses not only emissions above the CORSIA baseline, but a much larger share of total emissions.

In 2022, emissions under the EU ETS intra-EEA scope amounted to 49.1 Mt CO₂. The total number of allowances issued was around 27 million. Free allocation amounted to 23.1 million allowances and approximatively 3.7 million aviation allowances were auctioned in 2022¹². Therefore, over 50% of emissions were addressed in 2022, and the stringency of the EU ETS will be further increased by the gradual phasing out of free allowances for the aviation sector during the 2024-2026 period, with 25% reduction in 2024, 50% reduction in 2025 and complete removal of free allocation as of 2026.

Until at least 31 December 2026, these emissions covered by the regional emissions trading systems and thus not covered by a CORSIA offsetting obligation for EEA based aircraft operators concern flights between EEA countries and those between the EEA and Switzerland and the UK.

In comparison, if CORSIA offsetting requirements were to apply to flights already covered by the EU ETS, they would amount to 5Mt CO₂ for 2024 based on AERO-MS modelling.

The coverage of the flights between EEA countries and those between the EEA and Switzerland and the UK is therefore more stringent from an environmental perspective.

This restriction, additional to the standard in Annex 16, Volume IV to the Chicago Convention, should be filed to ICAO under “Category A - More exacting or exceeds the ICAO Standard or Recommended Practice (SARP)”. This triggers a notification pursuant to Article 38 of the Chicago Convention, regarding points 3.1.4 and 3.2.1 of Chapter 3 Annex 16, Volume IV to the Chicago Convention.

In addition, in accordance with Article 4(4) of Implementing Regulation (EU) 2024/1879, where the sum of the aircraft operator’s offsetting requirements in the 3 years of a given compliance period (OR1 + OR2 + OR3) is less than 3 000 tonnes of CO₂, EEA Member States may, on a request from the aircraft operator, calculate no offsetting requirements for that period for that aircraft operator. While in Annex 16, Volume IV to the Chicago Convention, the aircraft operator meeting the conditions of point 3.4.2 thereof has no offsetting requirements but can opt to voluntarily offset those emissions. The only difference is that instead of voluntarily opting in, the aircraft operator has the possibility of opting out.

This restriction, additional to the standard in Annex 16, Volume IV to the Chicago Convention, should be filed to ICAO under “Category A - More exacting or exceeds the ICAO Standard or Recommended Practice (SARP)”. This triggers a notification pursuant to Article 38 of the Chicago Convention, regarding point 3.4.2 of Chapter 3 Annex 16, Volume IV to the Chicago Convention.

Confederation on the linking of their greenhouse gas emissions trading systems (OJ L 322, 7.12.2017, p. 3–26)

¹² Report from the Commission to the European Parliament and the Council on the functioning of the European carbon market in 2022 pursuant to Articles 10(5) and 21(2) of Directive 2003/87/EC.

3.2.4 Eligible Units

In accordance with Article 11a of Directive 2003/87/EC on project activities, credits must be compliant with a certain number of criteria to be considered eligible for compliance with the offsetting requirements for CORSIA.

Pursuant to Article 11a(8) of Directive 2003/87/EC, the Commission is to adopt implementing acts listing units eligible for compliance with CORSIA for EEA aircraft operators. These include units considered eligible by the ICAO Council, if they originate from States participating in CORSIA and being a party to the Paris Agreement.

This restriction, additional to the standard in point 4.2.1 of Annex 16, Volume IV to the Chicago Convention should be filed to ICAO under “Category A - More exacting or exceeds the ICAO Standard or Recommended Practice (SARP)”. This triggers a notification pursuant to Article 38 of the Chicago Convention, regarding point 4.2.1 of Chapter 4 of Annex 16, Volume IV to the Chicago Convention, which specifies: “The CORSIA Eligible Emissions Units are only those units described in the ICAO document entitled “CORSIA Eligible Emissions Units”, which meet the CORSIA Emissions Unit Eligibility Criteria contained in the ICAO document entitled “CORSIA Emissions Unit Eligibility Criteria”.

In addition to the requirements mentioned above, Article 11a(1) of Directive 2003/87/EC provides for the acceptance of two other sorts of credits:

- credits authorised by parties to agreements pursuant to paragraph 5 of Directive 2003/87/EC;
- credits issued in respect of Union level projects pursuant to Article 24a of Directive 2003/87/EC.

More specifically, Article 11a(5) refers to agreements concluded with third countries, specifying levels of use. To this date, there are no such agreements with third countries.

Article 11a(1)[d] refers to credits issued in respect of Union level projects pursuant to Article 24a of Directive 2003/87/EC. To this date, there are no projects pursuant to Article 24a of Directive 2003/87/EC.

Given that those credits have not yet been authorised or issued, ICAO does not have to be immediately informed about the possible difference in Union law, which has not yet materialised in practice.

The EU Member States are obliged to provide immediate notification to ICAO once the authorisation or issuance of these credits is legally possible. In such case, the Commission should inform the Council accordingly with an information note and EU Member States should promptly notify ICAO pursuant to Article 38 of the Chicago Convention of the resulting differences to point 4.2.1 of Chapter 4 of Annex 16, Volume IV to the Chicago Convention, as per Article 3(13) and Article 3(14) of this Council Decision. Those differences will be labelled as a Category B difference, “Other means of compliance” in the EFOD (Electronic Filing of Differences) System.

3.3 Reporting of the Difference to the Commission

Following the filing of the differences to ICAO, and no later than two months after the adoption of this Council Decision, EU Member States will inform the Commission of the differences filed. This is necessary to ensure the provisions of this Council Decision have been respected.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. 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 agreement¹³.

The concept of “acts having legal effects” includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are “capable of decisively influencing the content of the legislation adopted by the EU legislature”¹⁴.

4.1.2. Application to the present case

ICAO is a body set up by an international agreement, namely the Chicago Convention.

The adoption of the second edition of Annex 16, Volume IV to the Chicago Convention is binding on the Union in accordance with Article 90 of the Chicago Convention.

The notification of differences to be made by EU Member States has legal effects because it may influence how ICAO standards will be implemented by Member States, in a matter covered by common rules.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

In accordance with Article 192(1) and Article 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.

4.2.1. 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.

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

¹⁴ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

4.2.2. Application to the present case

The notification of differences to be made by EU Member States has legal effects because it may influence how ICAO standards will be implemented by Member States, in a matter covered by common rules.

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.

4.3. Conclusions

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

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 the Second Edition of the International Standards and Recommended Practices on Environmental Protection - Carbon Offsetting and Reduction Scheme for International Aviation

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) The Member States of the Union (the “EU Member States”) are contracting states of that Convention and members of ICAO, while the Union has observer status in certain ICAO bodies.
- (3) Pursuant to Article 54 of the Convention, the ICAO Council may adopt International Standards and Recommended Practices (“SARPs”).
- (4) The 21st Conference of the Parties to the United Nations Framework Convention on Climate Change was concluded in December 2015 by the adoption of the Paris Agreement whose objective is to limit global temperature increase 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.
- (5) The 39th ICAO General Assembly in 2016 decided to develop a global market-based mechanism to limit greenhouse gas emissions from international aviation at their 2020 levels¹⁵. The Union position in that regard was established by Council Decision (EU) 2016/915¹⁶.
- (6) The ICAO Council, at the tenth meeting of its 214th session, adopted the first edition of Annex 16, Volume IV to the Convention: the International Standards and Recommended Practices on Environmental Protection - Carbon Offsetting and Reduction Scheme for International Aviation (“CORSIA”).

¹⁵ https://www.icao.int/environmental-protection/Documents/Resolution_A39_3.pdf

¹⁶ 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)

- (7) The ICAO Council, at its 228th Session, adopted Amendment 1 to Annex 16, Volume IV to the Chicago Convention, resulting from proposed amendments by the Committee on Aviation Environmental Protection and from the outcome of the 2022 CORSIA periodic review. The resulting second edition of Annex 16, Volume IV to the Chicago Convention became applicable on 1 January 2024.
- (8) Given that there are certain differences between Union law and the second edition of Annex 16, Volume IV to the Chicago Convention, a Union position should be established on the notification of differences pursuant to Article 38 of the Chicago Convention.
- (9) The following notification of the resulting differences is proposed at this stage because the relevant EU legislation as regard the implementation of CORSIA in the EU has been adopted.
- (10) As communicated to the ICAO Secretariat, and acknowledged by the Secretariat, the annual CO₂ emissions for all State pairs reported by Member States to the ICAO Secretariat as subject to offsetting requirements is without prejudice to the calculation of offsetting requirements and the quantity of CORSIA Eligible Units to be cancelled to demonstrate compliance.
- (11) Article 38 of the Convention covers departures from international standards and procedures. In accordance with its terms, any ICAO contracting state which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, needs to give immediate notification to ICAO of the differences between its own practice and that established by the international standard.
- (12) Council Decision (EU) 2018/2027 notified differences between Directive 2003/87/EC and the first edition of Annex 16, Volume IV to the Chicago Convention. These apply to both the monitoring, reporting and verification (MRV) requirements and to offsetting requirements and are still valid.
- (13) With the adoption of Commission Delegated Regulation (EU) 2019/1603¹⁷, as regards measures adopted by the International Civil Aviation Organization for the monitoring, reporting and verification (MRV) of aviation emissions for the purpose of implementing a global market-based measure, the Union applies MRV requirements as per Annex 16, Volume IV to the Chicago Convention. The full application of MRV requirements guarantees the inclusion of the state pairs emissions in Chapter 3 point 3.1 of Annex 16, Volume IV to the Chicago Convention. In consequence, the Sectoral Growth Factor is not affected by any difference in the implementation of Annex 16, Volume IV to the Chicago Convention by EEA States.

¹⁷ 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. 10–13)

- (14) In 2023, Directive (EU) 2023/958 of the European Parliament and of the Council amended Directive 2003/87/EC. One of its objectives was to pursue the implementation of CORSIA in the European Union.
- (15) Directive 2003/87/EC applies irrespective of the nationality of the aircraft operator and applies without distinction to flights within and between EU Member States and/or EEA countries.
- (16) Article 12 of Directive 2003/87/EC provides for the adoption by the European Commission of implementing acts specifying the methodology for the calculation of offsetting requirements for aircraft operators.
- (17) On 9 July 2024, Commission Implementing Regulation (EU) 2024/1879 laying down rules for the application of Directive 2003/87/EC as regards the calculation of offsetting requirements for the purpose of CORSIA (the “Implementing Regulation (EU) 2024/1879”) was adopted.
- (18) Pursuant to Article 25a(3) of Directive 2003/87/EC, the Commission adopts annually a list of states, other than EEA countries, Switzerland and the United Kingdom, which are considered to be applying CORSIA. In accordance with Directive 2003/87/EC, offsetting requirements will be calculated for operators based in EU Member States for all flights between states participating in CORSIA, with the exception of flights within the EEA and between the EEA and Switzerland and the United Kingdom. This difference should be communicated to ICAO.
- (19) According to Implementing Regulation (EU) 2024/1879, small operators are to opt out of obligations to offset emissions, while Annex 16, Volume IV to the Chicago Convention exempts them by default and they may opt in. This difference should be communicated to ICAO.
- (20) In accordance with Directive 2003/87/EC, CORSIA eligible units are those determined by the ICAO Council, provided they originate from a state implementing the Paris Agreement and participating in CORSIA. This difference should be communicated to ICAO.
- (21) According to Implementing Regulation (EU) 2018/2066 and Implementing Regulation (EU) 2018/2067, the emissions report and the independent verification report do not need to be transmitted directly by the verifier to the national authorities, as opposed to Annex 16, Volume IV to the Chicago Convention, which requires direct transmission. This difference should be communicated to ICAO.
- (22) According to Implementing Regulation (EU) 2018/2066, aircraft operators are to use surrogate data for a maximum of 5% of all their reported flights. Annex 16, Volume IV limits this to 5% of flights subject to offsetting requirements. This difference should be communicated to ICAO.
- (23) Pursuant to Directive 2003/87/EC, in addition to the flights specified in Annex 16, Volume IV to the Chicago Convention, the following flights are also exempted from monitoring requirements: flights under visual flight rules, flights for scientific research and testing of aircrafts and public service obligation flights. This difference should be communicated to ICAO.
- (24) According to Implementing Regulation (EU) 2018/2066, aircraft operators not eligible to use emissions estimation tools are to use Method A or Method B as their Fuel Use Monitoring Methods. They are to use the same methods to report all flights, including

flights which are not subject to offsetting requirements. This difference should be communicated to ICAO.

- (25) According to Implementing Regulation (EU) 2018/2066, the timing when an aircraft operator can submit an updated Emissions Monitoring Plan in case of significant change is shorter than that foreseen by the SARPs. This difference should be communicated to ICAO.
- (26) In accordance with Implementing Regulation (EU) 2018/2066, each aircraft operator is to have its own distinct monitoring plan and submit separate reports, regardless of whether it is a subsidiary or a wholly owned entity of another aircraft operator. This difference should be communicated to ICAO.
- (27) According to Implementing Regulation (EU) 2018/2066, the reporting deadline for aircraft operators is 31 March each year, for the submission of emissions data from the preceding calendar year, while the CORSIA SARPs require the submission by 30 April each year. This difference should be communicated to ICAO.
- (28) In accordance with Implementing Regulation (EU) 2018/2066, the aircraft operator submits its monitoring plan: (i) at least four months prior to commencing aviation activities covered by Annex I to Directive 2003/87/EC, or (ii) without undue delay after the start of such activities, but no later than six weeks thereafter. This difference should be communicated to ICAO.
- (29) Pursuant to Implementing Regulation (EU) 2018/2067, the emissions report is to be verified by verifiers accredited by national accreditation body of one of the states of the European Economic Area, while the CORSIA SARPs do not contain such restriction. This difference should be communicated to ICAO.
- (30) To this date, there are no credits authorised by parties to agreements pursuant to paragraph 5 of Directive 2003/87/EC, nor credits issued in respect of Union level projects pursuant to Article 24a of Directive 2003/87/EC. There is no difference in practice. Upon authorisation of credits from projects in accordance with agreements concluded with third countries or the issuance of credits from projects administered by EU Member States aimed at reducing greenhouse gas emissions not already covered by Directive 2003/87/EC, or both, Member States should notify ICAO of differences that such credits may be used for compliance with CORSIA.
- (31) In such case the Commission should inform the Council accordingly with an information note and EU Member States should promptly notify ICAO.
- (32) The EU Member States should inform the Commission of the differences they filed to ICAO once they are filed, no later than two months following the entry into force of this act.
- (33) It is appropriate to establish the position to be taken on the Union's behalf in the ICAO Council, as the adoption of the second edition of Annex 16, Volume IV is binding on the Member States pursuant to Article 90 of the Chicago Convention.
- (34) The Union's position is to be expressed by all Member States of the Union, acting jointly in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken as regards differences to be filed to Annex 16, Volume IV to the Chicago Convention shall be the following: each Member State shall give the explanation set out in Article 2 and shall fill in the ICAO Electronic Filing of Differences System the differences, under the conditions described in paragraphs 1-15 of Article 3 of this Decision.

Article 2

The following explanation shall be given for the below differences:

“As regards offsetting, differences exist between Directive 2003/87/EC and detailed rules adopted by the Commission, on the one hand, and CORSIA on the other hand. The rules of the European Union applicable in this respect on [20 December 2024] are mainly contained in Directive 2003/87/EC, as most recently amended by Directive (EU) 2023/958, Directive (EU) 2023/959 and Decision No 334/2023 of the EEA Joint Committee.

The differences notified by [Member State] on [date] pursuant to Council Decision (EU) 2018/2027 remain valid.”

Article 3

1. A difference relative to points 3.1.4 and 3.2 of Chapter 3 Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “CO₂ Offsetting requirements”, with the following Difference Details:

“In accordance with Directive 2003/87/EC, [Member State] notifies ICAO that emissions from flights operated by operators based in [Member State], within the European Economic Area or from flights operated from the European Economic Area to and from Switzerland or the UK are not subject to offsetting requirements. The emissions from these flights are not included in the calculation of the variable OE in point 3.2.1. for operators administered by [Member State].”

Participation in the regional trading schemes obliges operators from [Member State] to address these emissions.

These regional emissions trading systems covering those emissions result in a higher level of environmental stringency than CORSIA, because they cover a larger share of the emissions from flights between EEA States and flights between the EEA and the United Kingdom and Switzerland.

The European union Emissions Trading System as established by Directive 2003/87/EC applies to airline operators irrespective of the nationality of the airline operator, ensuring equal treatment on routes in respect to the obligation of surrendering ETS allowances.”

This difference shall be labelled a Category A difference, “More exacting or exceeds the ICAO standard or recommended practice” in the EFOD (Electronic Filing of Differences) System, and a “Significant Difference”.

2. A difference relative to point 3.4.2 of Chapter 3 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and

Reduction Scheme for International Aviation (CORSIA), “CO₂ Offsetting requirements”, with the following Difference Details:

“In accordance with Article 4(4) of Implementing Regulation (EU) 2024/1879, [Member State] notifies ICAO that aircraft operators with less than 3 000 tonnes of final offsetting requirement for the three-year compliance period have offsetting requirement. However, those aircraft operators may request from the state to be exempt from offsetting requirements. This differs from Annex 16, Volume IV to the Chicago Convention, whereby the aircraft operator meeting the conditions of point 3.4.2 has no offsetting requirements but can choose to voluntarily offset those emissions.”

This difference shall be labelled a Category A difference, “More exacting or exceeds the ICAO standard or recommended practice” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

3. A difference relative to point 4.2.1 of Chapter 4 Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Cancelling CORSIA Eligible Emissions Units”, with the following Difference Details:

“In accordance with Article 11a of Directive 2003/87/EC [Member State] notifies ICAO that in addition to the criteria included in the ICAO document entitled ‘CORSIA Emissions Unit Eligibility Criteria’, the following conditions must be fulfilled for units to be considered eligible for compliance to CORSIA for operators administered by [Member State].

- (a) Units must originate from a State that is a Party to the Paris Agreement at the time of use.
- (b) Units must originate from a State participating in CORSIA offsetting.

This results in a higher level of environmental stringency.”

This difference shall be labelled a Category A difference, “More exacting or exceeds the ICAO standard or recommended practice” in the EFOD (Electronic Filing of Differences) System, and a “Significant Difference”.

4. A difference relative to point 2.4.1.5 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Monitoring, Reporting and Verification (MRV) of Aeroplane Operator Annual CO₂ emissions”, with the following Difference Details:

“In accordance with Article 68 of Implementing Regulation (EU) 2018/2066 and Article 27(2) of Implementing Regulation (EU) 2018/2067, [Member State] notifies ICAO that the emissions report and the corresponding verification report are submitted to the State by the aircraft operator only. This is equivalent to the requirement in point 2.4.1.5 of Chapter 2 of Annex 16, Volume IV where in addition, the verification body needs to submit independently, a copy of the Emissions Report and associated Verification Report to the State.”

This difference shall be labelled a Category B difference “Other means of compliance” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

5. A difference relative to point 2.1.1 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Monitoring, Reporting and Verification (MRV) of Aeroplane Operator Annual CO₂ emissions”, with the following Difference Details:

“In accordance with Annex I of Directive 2003/87/EC, [Member State] notifies ICAO that in addition to the exemptions set in points 2.1.1 and 2.1.3 of Annex 16, Volume IV to the Chicago Convention, the Standards and Recommended Practices will not apply to the following flights departing from or arriving to the EEA:

- (a) Any flights performed exclusively under visual flight rules as defined in Annex 2 to the Chicago Convention;
- (b) flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;
- (c) flights performed in the framework of public service obligations imposed in accordance with Regulation (EC) No 1008/2008¹⁸.”

This difference shall be labelled a Category C difference, “Partially implemented in the EFOD (Electronic Filing of Differences) System” and not a “Significant Difference”.

6. A difference relative to points 2.2.1.3.1, 2.2.1.3.2 and 2.2.1.3.6 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Monitoring, Reporting and Verification (MRV) of Aeroplane Operator Annual CO₂ emissions”, with the following Difference Details:

“In accordance with Article 55(1) of Implementing Regulation (EU) 2018/2066, aircraft operators operating fewer than 243 flights per period for three consecutive four-month periods and aircraft operators operating flights with total annual emissions lower than 25 000 tonnes CO₂ per year shall be considered small emitters. [Member State] notifies ICAO, aircraft operators above the small emitters’ threshold shall use Method A or Method B as a Fuel Use Monitoring Method.”

“In accordance with Implementing Regulation (EU) 2018/2066, [Member State] notifies ICAO that aircraft operators shall use the selected Fuel Use Monitoring method for all their reported flights, including for international flights not subject to offsetting requirements.”

“In accordance with Directive 2003/87/EC, [Member State] notifies ICAO that aircraft operators that meet the requirements of 2.1.1 and 2.1.3 of Annex 16, Volume IV to the Chicago Convention, after 1 January 2021 for the first time without qualifying as a new entrant and that are not small emitters shall directly use a Fuel Use Monitoring Method.”

This difference shall be labelled a Category A difference, “More exacting or exceeds the ICAO standard or recommended practice” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

¹⁸ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3-20)

7. A difference relative to points 2.5.1.1 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Monitoring, Reporting and Verification (MRV) of Aeroplane Operator Annual CO₂ emissions”, with the following Difference Details:

“In accordance with Article 66(2) of Implementing Regulation (EU) 2018/2066, the aircraft operator shall use surrogate data for the respective time period calculated in accordance with the alternative method defined in the monitoring plan provided that the data gaps do not exceed 5% of all reported flights. If data gaps are identified for over 5% of annual flights, the operator must inform the competent authority and take corrective action to improve data collection.”

This difference shall be labelled a Category A difference, “More exacting or exceeds the ICAO standard or recommended practice” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

8. The following difference shall apply to points 2.2.1.3.3, 2.2.1.3.4 and 2.2.1.3.5 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Monitoring, Reporting and Verification (MRV) of Aeroplane Operator Annual CO₂ emissions”, with the following Difference Details:

“In accordance with Article 55(4) of Implementing Regulation (EU) 2018/2066, [Member State] notifies ICAO that if the aircraft operator exceeds the small emitters’ threshold in a given year (y), the aircraft operator shall submit an updated Emissions Monitoring Plan without undue delay unless otherwise agreed with the CORSIA Authority of [Member State].”

This difference shall be labelled a Category A difference, “More exacting or exceeds the ICAO standard or recommended practice” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

9. The following difference shall apply to point 1.2.6 of Chapter 1 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Administration”, with the following Difference Details:

“Pursuant to Article 51(1) of Implementing Regulation (EU) 2018/2066, [Member State] notifies ICAO that each aircraft operator shall have their own monitoring plan and report separately, even if it is a wholly owned subsidiary of another aircraft operator, as provided by Annex 16, Volume IV to the Chicago Convention.”

This difference shall be labelled a Category A difference, “More exacting or exceeds the ICAO standard or recommended practice” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

10. The following difference shall apply to point 1.5 of Chapter 1 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Administration”, with the following Difference Details:

“In accordance with Article 68 of Implementing Regulation (EU) 2018/2066, [Member State] notifies ICAO that the reporting deadline for aircraft operators is 31 March and not 30 April of each year, for the submission of emissions of the previous calendar year, as provided by Annex 16, Volume IV to the Chicago Convention.”

This difference shall be labelled a Category A difference, “More exacting or exceeds the ICAO standard or recommended practice” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

11. The following difference shall apply to points 2.2.2.1, 2.2.2.2 and 2.2.2.3 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Monitoring, Reporting and Verification (MRV) of Aeroplane Operator Annual CO₂ emissions”, with the following Difference Details:

“In accordance with Article 52 of Implementing Regulation (EU) 2018/2066, [Member State] notifies ICAO that the aircraft operators shall submit the monitoring plan the latest four months before it commences aviation activities covered by Annex I to Directive 2003/87/EC or without undue delay after the start of aviation activities and no later than six weeks thereafter. This timeline differs from Annex 16, Volume IV to the Chicago Convention where new entrants shall submit emissions monitoring plans within three months of falling within the scope of its applicability. In addition, aircraft operators falling within the scope of applicability for the first time (without qualifying as new entrants), shall submit their plans within three months.”

This difference shall be labelled a Category A difference, “More exacting or exceeds the ICAO standard or recommended practice” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

12. The following difference shall apply to point 2.4.2.1 of Chapter 2 of Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Monitoring, Reporting and Verification (MRV) of Aeroplane Operator Annual CO₂ emissions”, with the following Difference Details:

“In accordance with Implementing Regulation (EU) 2018/2067, and in addition to the conditions set in point 2.4.2.1 of Annex 16, Volume IV to the Chicago Convention, [Member State] notifies ICAO that the emissions report shall be verified by verifiers accredited in accordance with this regulation and by a national accreditation body of one of the states of the European Economic Area.”

This difference shall be labelled a Category A difference, “More exacting or exceeds the ICAO standard or recommended practice” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

13. A difference relative to point 4.2.1 of Chapter 4 Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Cancelling CORSIA Eligible Emissions Units”, with the following Difference Details:

“In accordance with Article 11a of Directive 2003/87/EC, [Member State] notifies to ICAO that in addition to the units approved by the ICAO Council and in accordance with [third difference on additional units’ criteria], the following units can be used by operators registered in [Member State] to comply with their obligations under CORSIA:

Credits that have been issued in respect of Union level projects pursuant to Article 24a of Directive 2003/87/EC. Those would be credits issued in respect of projects administered by EU Member States that reduce greenhouse gas emissions not covered by the EU ETS. They shall not lead to double claiming or hinder the

implementation of other policy measures aimed at reducing emissions not covered by Directive 2003/87/EC.”

This difference shall be notified when the conditions of Article 24a of Directive 2003/87/EC are met, and these credits are issued. When the difference is filed, it shall be labelled as a Category B difference, “Other means of compliance” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

14. A difference relative to point 4.2.1 of Chapter 4 Annex 16, Volume IV to the Chicago Convention on International Civil Aviation: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), “Cancelling CORSIA Eligible Emissions Units”, with the following Difference Details:

“In accordance with Article 11a of Directive 2003/87/EC, [Member State] notifies to ICAO that in addition to the units approved by the ICAO Council and in accordance with [third difference on additional units’ criteria], the following units can be used by operators registered in [Member State] to comply with their obligations under CORSIA:

Credits that have been authorised by parties to agreements pursuant to paragraph 5 of Article 11a of Directive 2003/87/EC. Those would be credits authorised in respect of agreements concluded bilaterally with third countries [specify the agreement].”

This difference shall be notified when the conditions of paragraph 5 of Article 11a of Directive 2003/87/EC are met and these credits are issued. When the difference is filed, it shall be labelled as a Category B difference, “Other means of compliance” in the EFOD (Electronic Filing of Differences) System, and not a “Significant Difference”.

15. With the exception of paragraph 13 and 14, each Member State shall file the differences in this Article no later than two months following the entry into force of this Decision and shall inform the Commission accordingly. The Commission shall inform the Council accordingly as soon as the conditions set out in Paragraphs 13 and 14 are realised with an information note. EU Member States shall thereafter promptly notify ICAO.

Article 4

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

Article 5

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*