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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

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

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

COMMISSION IMPLEMENTING REGULATION (EU) .../...

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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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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/EC¹, and in particular Article 12(8) thereof,

Whereas:

- (1) Directive 2003/87/EC was amended by Directive (EU) 2023/958 of the European Parliament and of the Council² in 2023 to increase aviation's contribution to the Union's economy-wide emission reduction target and appropriately implement the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) of the International Civil Aviation Organization (ICAO). That amendment maintains the scope of the EU Emissions Trading System for intra-European flights and applies CORSIA to flights other than flights within the EEA and flights between the EEA and Switzerland and the United Kingdom.
- (2) CORSIA has been in operation since 2019 for the monitoring, reporting and verification of emissions. It is intended to be a globally applied market-based measure aiming to offset international aviation carbon dioxide emissions from January 2021. The baseline for 2023 for offsetting is the level of 2019 aviation emissions. The baseline for offsetting is 85 % of the level of 2019 aviation emissions from 2024 onwards. The offsetting above the baseline is to be done through the cancellation of certain offset credits and the use of aviation fuels, reported in accordance with the provisions of the delegated act adopted pursuant to Article 28c of Directive 2003/87/EC ('CORSIA eligible fuels').
- (3) On 27 June 2018, at the tenth meeting of its 214th session, the ICAO Council adopted the First Edition of Annex 16, Volume IV, to the Convention on International Civil Aviation signed on 7 December 1944 – CORSIA, establishing the International Standards and Recommended Practices on Environmental Protection for CORSIA (CORSIA SARPs). The Union and its Member States are implementing CORSIA as appropriate from the start of 2021-2023 in accordance with Council Decision (EU)

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¹ OJ L 275, 25.10.2003, p. 32, ELI: <http://data.europa.eu/eli/dir/2003/87/oj>.

² 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, ELI: <http://data.europa.eu/eli/dir/2023/958/oj>).

2020/954³. ICAO adopted the Second Edition of the CORSIA SARPs on 20 March 2023. It became effective on 31 July 2023 and became applicable on 1 January 2024.

- (4) Pursuant to Article 28c of Directive 2003/87/EC, Commission Delegated Regulation (EU) 2019/1603⁴ was adopted to appropriately implement CORSIA for monitoring, reporting and verification of aviation emissions. Delegated Regulation (EU) 2019/1603 is to be updated to appropriately regulate the reporting of CORSIA eligible fuels as certified by CORSIA certification bodies and the reporting and verification of cancellation of eligible units for offsetting under CORSIA.
- (5) On 7 October 2022, the 41st ICAO Assembly decided to change the previous baseline of CORSIA from the average of 2019 and 2020 CO₂ emissions for the period from 2021 to 2023 to 2019 CO₂ emissions, and for the period from 2024 to 2035 to 85 % of 2019 CO₂ emissions.
- (6) To calculate offsetting requirements in regard of CORSIA, Member States should take into consideration the list of States which are considered to be applying CORSIA adopted by the Commission pursuant to Article 25a(3) and published for the relevant year. That list of States differs from the one published by the ICAO Secretariat, as it excludes EEA countries, Switzerland and the United Kingdom, and only takes into account those States which are considered to be implementing CORSIA for the purposes of Directive 2003/87/EC. In addition, the calculation should not include routes exempted pursuant to Article 25a(7) of Directive 2003/87/EC for reasons of equal treatment for operators based in the Union.
- (7) According to the CORSIA SARPs, new entrant aircraft operators, and aircraft operators that have small amount of emissions to offset, should have no offsetting requirement under CORSIA, with an optional offsetting for small emitters. The thresholds for these exemptions are set so that they will concern a minimal amount of emissions. Article 12(8) of Directive 2003/87/EC requires that rules defining the methodology to calculate the CORSIA offsetting requirement should follow the CORSIA SARPs to the extent possible in light of the relevant provisions of this Directive. To put the European aviation industry on a level playing field, the same exemptions should be included in the implementation of CORSIA in the Union.
- (8) In accordance with Article 12(7) and (9) of Directive 2003/87/EC, this Regulation should provide for the calculation of offsetting requirements in regard of CORSIA relevant to emissions taking place from 1 January 2023 to 31 December 2026. During that period, the calculation of the growth factor should only be based on the growth of the sector.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

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³ 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, ELI: <http://data.europa.eu/eli/dec/2020/954/oj>).

⁴ Commission Delegated Regulation (EU) 2019/1603 of 18 July 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards measures adopted by the International Civil Aviation Organisation for the monitoring, reporting and verification of aviation emissions for the purpose of implementing a global market-based measure (OJ L 250, 30.9.2019, p. 10, ELI: http://data.europa.eu/eli/reg_del/2019/1603/oj).

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation shall apply to aircraft operators which fulfil the conditions set out in Article 12(6), third and fourth subparagraph of Directive 2003/87/EC.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'international flight' means the operation of an aeroplane from take-off at an aerodrome of a State or its territories, and landing at an aerodrome of another State or its territories;
- (2) 'CORSA eligible fuel' means an aviation fuel, which was reported in accordance with the provisions of the delegated act adopted pursuant to Article 28c of Directive 2003/87/EC and which an aircraft operator may therefore use to reduce its offsetting requirement in accordance with Article 3(3);
- (3) 'offsetting requirement' means the amount of CO₂ emissions required to be offset pursuant to Article 12(9) of Directive 2003/87/EC;
- (4) 'Sector's Growth Factor' or 'SGF' means a multiplier that is published in the International Civil Aviation Organization (ICAO) document entitled 'CORSA Annual Sector's Growth Factor (SGF)' and calculated by the Secretariat of ICAO according to the following methodology:
 - (a) SGF applicable for CO₂ emissions occurring until 31 December 2023:

$$SGF_y = (SE_y - SE_{B,y}) / SE_y$$

where:

SE_y = Total sectoral CO₂ emissions from international flights performed by aircraft operators between two States participating in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) in the given year y ; and

$SE_{B,y}$ = Total annual sectoral CO₂ emissions in 2019 from international flights performed by aircraft operators between States participating in CORSA in the given year y ;

- (b) SGF applicable for CO₂ emissions occurring from 1 January 2024 until 31 December 2026:

$$SGF_y = (SE_y - SE_{B,y}) / SE_y$$

where:

SE_y = Total sectoral CO₂ emissions from international flights performed by aircraft operators between two States participating in CORSIA in the given year y ; and
 $SE_{B,y}$ = 85 per cent of total annual sectoral CO₂ emissions in 2019 from international flights performed by aircraft operators between two States participating in CORSIA in the given year y .

Article 2

Yearly CO₂ offsetting requirements

- (1) Member States shall calculate the offsetting requirements each year for the preceding calendar year in respect of flights on routes between a Member State and States that are listed in the implementing act adopted pursuant to Article 25a(3) of Directive 2003/87/EC as well as flights between States that are listed in the implementing act adopted pursuant to Article 25a(3) of Directive 2003/87/EC, and flights between Switzerland or the United Kingdom and States that are listed in the implementing act adopted pursuant to Article 25a(3) of Directive 2003/87/EC, and excluding routes exempted pursuant to Article 25a(7) of Directive 2003/87/EC.
- (2) Member States may calculate the offsetting requirements each year for the preceding calendar year in respect of international flights between an aerodrome situated in one of the overseas countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and an aerodrome situated in a Member State, another one of the overseas countries and territories, Switzerland, United Kingdom or the States that are listed in the implementing act adopted pursuant to Article 25a(3) of Directive 2003/87/EC.
- (3) Member States shall calculate, for each of the aircraft operators that reported emissions to them pursuant to the delegated act adopted pursuant to Article 28c of Directive 2003/87/EC, the offsetting requirements in a given year, in the period starting on 1 January 2023 and ending on 31 December 2026, prior to the consideration of the use of CORSIA eligible fuels, every year as follows:

$$OR_y = OE_y * SGF_y$$

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.

From 1 January 2023 up until 31 December 2026, Member States shall consider the aircraft operator's CO₂ emissions covered in the given year y as the emissions from flights between a Member State and States that are listed in the implementing act adopted pursuant to Article 25a(3) of Directive 2003/87/EC, as well as flights between States that are listed in the implementing act adopted pursuant to Article 25a(3) of Directive 2003/87/EC, and flights between Switzerland or the United Kingdom and States that are listed in the implementing act adopted pursuant to Article 25a(3) of Directive 2003/87/EC.

Member States may additionally consider CO₂ emissions covered in the given year y from international flights as referred to in paragraph 2.

- (4) This Article shall not be applicable to a new entrant aircraft operator for 3 years starting in the year when it meets the requirements of the definition of an aircraft operator, or until its annual CO₂ emissions exceed 0,1 per cent of total CO₂ emissions from international flights reported to ICAO and published by ICAO in 2019, whichever occurs earlier. This Article shall then be applicable to those operators in the subsequent year.
- (5) By 30 November 2024, 30 November 2025, 30 November 2026 and 30 November 2027, Member States shall inform aircraft operators that reported emissions to them pursuant to the delegated act adopted pursuant to Article 28c of Directive 2003/87/EC of their offsetting requirements for the previous year.

Article 3

Total final CO₂ offsetting requirements for a given period with reductions from the use of CORSIA eligible fuels

- (1) Member States shall calculate the total final CO₂ offsetting requirements separately for the 2021-2023 and 2024-2026 periods.
- (2) Member States shall calculate the total final CO₂ offsetting requirements for the aircraft operator, after taking into account reductions from the use of CORSIA eligible fuels, as follows:

$$FOR_c = (OR_{1,c} + OR_{2,c} + OR_{3,c}) - (ER_{1,c} + ER_{2,c} + ER_{3,c})$$

where:

FOR_c = aircraft operator's total final CO₂ offsetting requirements in the given period *c*;

OR_{y,c} = aircraft operator's offsetting requirements in the given year *y* (where *y* = 1, 2 or 3) of the period *c*; and

ER_{y,c} = reductions due to the use of CORSIA eligible fuels in the given year *y* (where *y* = 1, 2 or 3) of the period *c*.

- (3) When calculating the reductions from the use of CORSIA eligible fuels, Member States shall use the following formula:

$$ER_y = EF * \left[\sum_f MS_{f,y} * \left(1 - \frac{L_{CEF}}{LC} \right) \right]$$

where:

ER_y = reductions from the use of CORSIA eligible fuels in the given year *y* (in tonnes);

EF = emission factor as specified in Table 1, Annex III to Commission Implementing Regulation (EU) 2018/2066⁵;

MS_{f,y} = total mass of a neat CORSIA eligible fuel claimed in the given year y (in tonnes), as reported in accordance with the provisions of the delegated act adopted pursuant to Article 28c of Directive 2003/87/EC;

L_{CEF} = life cycle emissions value for a CORSIA eligible fuel (in gCO_{2e}/MJ) as reported in accordance with the provisions of the implementing act adopted pursuant to Article 28c of Directive 2003/87/EC; and

LC = baseline life cycle emissions values for aviation fuel, equal to 89 gCO_{2e}/MJ for Jet-A fuel, Jet-A1 fuel or Jet-B fuel and equal to 95 gCO_{2e}/MJ for AvGas.

- (4) Where the sum of the aircraft operator's offsetting requirements in the 3 years of a given period (OR_{1,C} + OR_{2,C} + OR_{3,C}) is less than 3 000 tonnes of CO₂, Member States may, on a request from the aircraft operator, calculate no offsetting requirements for that period for that aircraft operator.
- (5) Where the aircraft operator's total final CO₂ offsetting requirement during a period (FOR_c) is negative, the aircraft operator shall have no offsetting requirements for that period. Those negative offsetting requirements shall not be carried forward to the subsequent period.
- (6) The aircraft operator's total final CO₂ offsetting requirements during a period (FOR_c) shall be rounded up to the nearest tonne of CO₂.
- (7) Member States shall inform the aircraft operator of its total final CO₂ offsetting requirements by 30 November 2024 for the CORSIA period 2021-2023, and by 30 November 2027 for the CORSIA period 2024-2026.

Article 4

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

Ursula VON DER LEYEN

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⁵ Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012 (OJ L 334, 31.12.2018, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2018/2066/oj).