DECISIONS

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)

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'), which aims 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 are contracting States to the Convention and members of the ICAO, whereas the Union has observer status in certain ICAO bodies.

(3) Pursuant to Article 54 of the Convention, the ICAO Council is to adopt international standards and recommended practices.

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

(5) In 2016 the 39th ICAO General Assembly decided, by means of Resolution A39-3, to develop a global market-based mechanism to limit greenhouse gas emissions from international aviation at their 2020 levels. The Union position in that regard was established by Council Decision (EU) 2016/915 ([1]).

(6) On 27 June 2018, at the 10th meeting of its 214th session, the ICAO Council adopted the First Edition of Volume IV of Annex 16 to the Convention: the International Standards and Recommended Practices on Environmental Protection – Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).

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

(8) In accordance with Article 90 of the Convention, unless a majority of the contracting States register their disapproval, CORSIA will become effective three months after the deadline for registering disapproval.

(9) Article 38 of the Convention covers departures from international standards and procedures. In accordance with that Article, any 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

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

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 the ICAO of the differences between its own practice and that established by the international standard.

(10) On 20 July 2018 the ICAO sent out State Letter AN 1/17.14 – 18/78 ('the State Letter'), requesting the contracting States to, first, notify any disapproval of any part of CORSIA before 22 October 2018 and, second, notify any differences between their national practices and CORSIA and the expected date for compliance before 1 December 2018.

(11) CORSIA is to become applicable to an aeroplane operator producing annual CO_2 emissions greater than 10 000 tonnes from international flights conducted by aeroplanes with a maximum certificated take-off mass greater than 5 700 kg, with the exception of humanitarian, medical and firefighting flights.

(12) Monitoring, reporting and verification ('MRV') requirements set out in CORSIA are to become applicable as from 1 January 2019.

(13) From 1 January 2021 to 31 December 2035, the offsetting requirements of CORSIA are to become applicable to an aeroplane operator conducting international flights (as defined in point 1.1.2 of Chapter 1 of Part II and point 2.1 of Chapter 2 of Part II) between contracting States referred to in the forthcoming ICAO document entitled 'CORSIA States for Chapter 3 State Pairs'.

(14) It is appropriate to establish the position to be taken on the Union's behalf in reply to the State Letter. This is because CORSIA will be capable of decisively influencing the content of Union law, in particular Directive 2003/87/EC of the European Parliament and of the Council ([1]).

(15) Given that CORSIA would allow significant progress to be achieved at international level, no disapproval should be notified under Article 90 of the Convention.

(16) The Union fully supports the efforts undertaken within the ICAO to make CORSIA operational as soon as possible. In accordance with Directive 2003/87/EC, the Commission is in the process of translating the CORSIA MRV requirements into Union acts with expected entry into force by January 2019. Moreover, the Commission is to present to the European Parliament and to the Council a report which considers ways for those instruments to be implemented in Union law. The time limit within which possible differences have to be notified according to the State Letter is too short for any adaptations to CORSIA to be adopted by the Union within that limit. Therefore, in order for the ICAO to take full account of the current legal situation at Union level as well as work initiated in the area of MRV, Member States should, in reply to the State Letter, notify differences in accordance with the addendum to this Decision.

(17) Article 28b(2) and (3) of Directive 2003/87/EC covers the follow-up to be carried out with regard to the outcome of work at ICAO level. It is appropriate to inform the ICAO about the terms of those provisions.

(18) The Union's position is to be expressed by the Member States of the Union that are members of the ICAO,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in reply to State Letter AN 1/17.14 – 18/78, issued by the International Civil Aviation Organization on 20 July 2018, is set out in the addendum to this Decision.

Article 2

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

([1]) 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).

Article 3

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

Done at Brussels, 29 November 2018.

For the Council
The President
M. SCHRAMBÖCK

ADDENDUM

As regards ATTACHMENT C to ICAO State letter AN 1/17.14 – 18/78 (NOTIFICATION OF COMPLIANCE WITH OR DIFFERENCES FROM ANNEX 16, VOLUME IV), differences shall be notified and the following explanations be given in this respect:

General points

The Union and its Member States are a strong supporter of ICAO's efforts to put a global market-based measure for international aviation globally into effect to contribute to tackling climate change.

(*insert your State*) fully supports the efforts undertaken within ICAO in order to make CORSIA operational as soon as possible. In accordance with Directive 2003/87/EC, Europe is in the process of translating CORSIA Monitoring, Reporting and Verification (MRV) requirements into Union legal acts with expected entry into force by January 2019. The time limit within which possible differences have to be notified according to ICAO State Letter AN 1/17.14 – 18/78 is too short for any adaptations of the Union law to be adopted by the Union within that limit.

At this stage, certain differences exist between Directive 2003/87/EC and detailed rules adopted by the Commission, on the one hand, and CORSIA on the other hand. This applies both to MRV requirements and to offsetting requirements.

In respect of both, the scope of application of Directive 2003/87/EC as it currently stands shall be recalled. The Directive applies irrespective of the nationality of the aeroplane operator and in principle covers flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies. Directive 2003/87/EC applies without distinction to flights within and between Member States and/or EEA countries.

MRV requirements

MRV requirements set out in the CORSIA are to become applicable as from 1 January 2019.

The rules of the European Union applicable in this field on 1 December 2018 are mainly contained in 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. That Directive is the legal basis for the detailed provisions in the matter, contained in Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC and in Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC.

It should be noted that the European Commission is currently in the process of adopting regulations that are expected to remove, subject to the General points set out above, differences with the CORSIA Monitoring Reporting Verification requirements of the First Edition of Annex 16, Volume IV, with an expected entry into force before 1 January 2019.

Offsetting requirements

As regards offsetting, it is noted that the corresponding requirements contained in CORSIA will apply only at a later stage and that Union law may meanwhile be amended in light of CORSIA.

As a result, it is not necessary to address the current offsetting requirements under Union law beyond the General points set out above.