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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure

{SEC(2021) 552 final} - {SWD(2021) 555 final} - {SWD(2021) 603 final} -
{SWD(2021) 604 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal introduces amendments to the EU Emissions Trading System (EU ETS) legislation in relation to its application to aviation to ensure that:

- (1) aviation contributes to the 2030 emissions reduction target in accordance with the European Green Deal;
- (2) the EU ETS is amended as appropriate in respect of the ICAO's Carbon Offset and Reduction Scheme for International Aviation; and
- (3) allocation of emission allowances in respect of aviation is revised to increase auctioning.

The objective is to revise the EU ETS in respect of aviation emissions in a cost-effective and coherent way in line with the Union's increased climate target, while taking into account the need for a just transition and the need for all sectors to contribute to the EU climate efforts.

The European Green Deal¹, adopted by the Commission in December 2019, as well as the Climate Law² and the Climate Target Plan (CTP)³, aim at enhancing the Union's climate commitment under the Paris Agreement, consistent with its objective of reaching economy-wide climate neutrality in the EU by 2050. The EU is increasing its economy-wide decarbonisation commitment, from at least 40% to at least 55% compared to 1990 levels by 2030 without using international credits. To reach the increased climate target, all sectors, including aviation, must adequately contribute to the required domestic emission reduction efforts.

The European Green Deal aims to transform the EU into a fairer and more prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases by 2050 and where economic growth is decoupled from resource use. The climate neutrality objective has been endorsed by the European Council and Parliament and is laid down in a legally binding manner in the politically agreed European Climate Law. The European Green Deal also aims to protect, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts. At the same time, this transition must be just and inclusive.

Beyond the increase in EU 2030 ambition to achieve EU-wide economy-wide greenhouse gas emissions reductions domestically by at least 55% compared to 1990, the 2030 Climate Target Plan communication underlines that "*in accordance with its international commitment to economy-wide action under the Paris Agreement, the EU should continue to regulate at least intra-EU aviation emissions in the EU ETS*". In its conclusions of December 2020, the European Council "*invites the Commission to assess how all economic sectors can best contribute to the 2030 target and to make the necessary proposals, accompanied by an in-depth examination of the environmental, economic and social impact at Member State level*"⁴.

¹ COM(2019)640 final

² 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) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

³ COM(2020)562 final

⁴ <https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf>

Aviation emissions account for 2-3% of global CO₂ emissions and have significantly increased since 1990 both at EU-level and globally. At EU-level, CO₂ emissions from aviation made up 3.7% of the economy-wide total or 15.7% of CO₂ transport emissions in 2018⁴⁹. In 2018, the EU was responsible for 15% of the global aviation CO₂ emissions⁵. Moreover, non-CO₂ climate impacts of aviation are estimated to be at least as important in total as those of CO₂ alone⁶.

Notwithstanding the recent reduction in traffic as a consequence of the COVID-19 pandemic, aviation climate impacts are projected to grow further given the sector's historical growth of above the average of other economic sectors. Before the COVID-19 pandemic, Eurocontrol had projected an annual increase in European aviation emissions by 53% by 2040 compared to 2017⁵³. Before the COVID-19 crisis, ICAO had estimated that, by 2040, international aviation emissions could rise by up to 150% compared to 2020⁵⁴.

A key tool for addressing CO₂ emissions from aviation in Europe is the EU ETS. In the public consultation on updated rules for aviation ETS, 91% of respondents agree that aviation should contribute more to climate actions. 88% of respondents believe that market-based measures can be effective to tackle aviation emissions in line with the climate objectives. Between 2013 and 2020, an estimated net saving of 193.4 Mt CO₂ was achieved by aviation via the EU ETS primarily through funding of emissions reduction in other sectors³⁹. This constitutes the aviation contribution to the 2020 EU climate objective, and the contribution is foreseen to continue for 2030.

Considering current and projected emissions from the aviation sector, and in the context of an enhanced climate ambition of the EU for 2030, the climate contribution needs to be significantly strengthened, also with a view to allow for the necessary contribution to the EU climate neutrality by 2050. The 2019 European Aviation Environment Report has also highlighted this need.

The Commission has prepared a number of impact assessments to support the envisaged revisions of key legislative instruments for the “Fit for 55” policy package. The impact assessment on the revision of EU ETS aviation rules analyses various options through which the revision could effectively and efficiently contribute to the delivery of the updated target as part of the wider package. Therefore, the revision of aviation rules must be addressed together with the revision of EU ETS for stationary installations and its extension to other sectors. ETS elements where the interlinkage of revisions is particularly prominent are the provisions concerning total quantity of aviation allowances and application of linear reduction factor thereto as well as provisions regarding market stability reserve. Choices regarding the scope of EU ETS and CORSIA implementation will impact the level of emission reductions of the ETS sector, and demand for EU allowances. Choices regarding the auctioning share of aviation allowances will impact the amount of auctioning revenues available for tackling climate change, as well as distributional elements.

For aviation to contribute to the goals of the Paris Agreement, broader global action should also take place. EU has supported ICAO's CORSIA, and is working with others to encourage adequate participation and implementation. The review of the EU ETS for aviation should ensure that CORSIA is implemented as appropriate through the EU ETS and implementation

⁵ Intra-EEA aviation represented 7,5% and departing flights to third countries another 7,5%. Departing flights are covered in the EU's NDC under the Paris Agreement and in the aviation industry's Destination 2050 initiative.

⁶ COM(2020)777 quantifies these impacts, while COM(2020)747 and associated documents analyse these effects in detail.

of CORSIA needs to ensure equal treatment of airlines. At the same time, any amendment of the EU ETS Directive must be consistent with EU's ambition to become climate neutral by 2050, the Union's economy-wide greenhouse gas emission reduction commitment for 2030 and with the aim of preserving the environmental integrity and effectiveness of Union climate action.

A large volume of allowances have been allocated to aviation sector for free since 2012. The Communication on a European Green Deal⁷⁰ announced that there would be a proposal to reduce the free allowances allocated to airlines. This is re-stated in the Communication on Stepping up Europe's 2030 climate ambition. As free allocation is a derogation from the 'polluter pays' principle, the default method in EU ETS is auctioning. The underlying analysis also suggests a low risk of carbon leakage and a very limited impact on consumer prices when increasing auctioning in respect of aviation.

The main legal amendments are:

- (1) to consolidate the total quantity of aviation allowances at current levels, and apply the linear reduction factor in accordance with Article 9 of the ETS Directive;
- (2) to increase auctioning of aviation allowances;
- (3) to continue intra-European application of the EU ETS while applying CORSIA as appropriate to extra-European flights; and
- (4) to ensure that airlines are treated equally on the same routes with regard to their obligations with economic impacts.

In parallel to these amendments to the EU ETS Directive, a separate proposal is being made to implement Member State notification to EU-based airlines of zero CORSIA offsetting for the year 2021. The separate proposal relates to CORSIA-related aspects that should be in place by November 2022, for notification of zero additional offsetting to take place by that date.

- **Consistency with existing policy provisions in the policy area**

The 'Fit for 55' package is a comprehensive step in overhauling Union legislation to align it with the EU's increased climate ambition. All initiatives in the package are closely interlinked, and each one depends on the design of the others.

While the political mandate to reinforce the EU ETS for aviation is clear, this is being examined in conjunction with other related and relevant initiatives, such as the revision of the Energy Taxation Directive and the Renewable Energy Directive, as well as the ReFuelEU Initiative, which are being assessed separately, with due account of the ETS dimension and impacts.

As indicated in the European Green Deal, reducing climate change impacts from aviation requires a mix of policy instruments, as there is no one single solution to decarbonise the sector. The revision of the EU ETS for aviation is therefore part of a so-called "basket of measures", which includes market-based measures like the EU ETS and CORSIA, the boosting of the production and uptake of sustainable aviation fuels ("SAF"), aircraft technology improvements and operational improvements through e.g. the Single European Sky initiative.

- **Consistency with other Union policies**

All EU actions and policies must be consistent with the proposals of the 'Fit for 55' package and help the EU achieve the increased 2030 target and a successful and just transition towards

the 2050 climate neutrality, as stated by the Commission in the European Green Deal Communication.

As such, this initiative is linked to many other policy areas, including the Union's external policies, e.g. through the EU encouraging partner countries to also implement CORSIA, and support to help ensure that airlines operate on an equal footing. The Commission announced it will improve the way its Better Regulation guidelines and supporting tools address sustainability and innovation issues, with the objective that all EU initiatives live up to the green oath to 'do no harm'. This initiative is also consistent with the EU's policy for research and innovation and will enhance synergies between the EU's deployment programmes in particular the Innovation Fund and the EU Framework Programmes for research and innovation by incentivising the uptake and deployment of low-carbon innovative solutions.

The impact assessment accompanying the 2030 Climate Target Plan assessed carefully the possibility of reinforcing and expanding emissions trading as one of the tools to achieve greenhouse gas emission reductions at the EU level.

Consistency with other Union policies is also ensured through the coherence of the impact assessments for the EU ETS with the assessments made for the remainder of the 2030 climate, energy and transport framework, and with other measures presented as part of the basket of measures to address greenhouse gas emissions from aviation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for the EU ETS Directive 2003/87/EC, as well as all subsequent legislation amending it and other legislation regulating GHG emissions, is Article 192 of the Treaty on the Functioning of the European Union. This should remain the legal basis for any new legislation addressing climate impacts of aviation, as the principal objective of the measure is the protection of the environment through the reduction of GHG emissions.

• Subsidiarity

The EU ETS Directive is an existing EU policy instrument. In accordance with the principle of subsidiarity set out in Article 5 of the Treaty of the Functioning of the European Union, the objectives of the proposal amending this instrument can only be achieved through legislation at EU level.

An EU legal act is required for Member States to apply CORSIA as appropriate for the flights covered by the geographical scope of application of Directive 2003/87/EC as set out in its Annex I, i.e. flights departing from airports in the EEA and arriving to other airports in EEA or to third countries and, incoming flights to airports in the EEA from third countries.

Acting at EU level, and where possible at global level, is more efficient than acting at the Member State level, due to the transboundary effects of climate change and the largely transnational nature of aviation. Action at EU level will most effectively deliver the EU's domestic and international climate targets and ensure the harmonised and appropriate implementation of CORSIA in respect of the EU.

• Proportionality

This proposal complies with the proportionality principle because it does not go beyond what is necessary in order to achieve the objectives of implementing the EU's target for reducing

greenhouse gas emissions for the period 2021 to 2030 in a cost-effective manner, while ensuring fairness, environmental integrity, proper functioning of the internal market, and implementation of CORSIA.

The European Council has endorsed an overall economy-wide and domestic reduction in greenhouse gas emissions of at least 55% below 1990 levels by 2030. This proposal covers a large part of these greenhouse gas emissions, and revises the Directive in order to achieve this objective.

- **Choice of the instrument**

The objectives of the present proposal are best pursued through an amending Directive. This is the most appropriate legal instrument to make amendments to the existing EU ETS Directive, Directive 2003/87/EC. A Directive requires Member States to achieve the objectives and implement the measures into their national substantive and procedural law systems. Member States should ensure that national transposition provisions do not hamper innovation and are technologically neutral.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Article 28b(2) of Directive 2003/87/EC requires the Commission to present a report to the Council and the European Parliament on CORSIA, examining its ambition and overall environmental integrity, including its general ambition in relation to targets under the Paris Agreement, the level of participation, its enforceability, transparency, the penalties for non-compliance, the processes for public input, the quality of offset credits, monitoring, reporting and verification of emissions, registries, accountability as well as rules on the use of biofuels. In the light of this, a proposal should be made to amend Union law to implement CORSIA as appropriate.

In addition, Article 28b(2) of Directive 2003/87/EC provides that the report of the Commission should consider whether the provisions adopted under Article 28c(2) need to be revised. Article 28b(3) of the EU ETS Directive foresees the Commission accompanying the report with “*a proposal, where appropriate, to amend, delete, extend or replace*” the derogations provided for in Article 28a (which limit the scope of EU ETS to intra-EEA flights from 2017-23), that is “*consistent with the Union economy-wide greenhouse gas emission reduction commitment for 2030 with the aim of preserving the environmental integrity and effectiveness of Union climate action*”.

The report is included in the impact assessment accompanying this proposal, and draws on a study “*Assessment of ICAO’s global market-based measure (CORSIA) pursuant to Article 28b and for studying cost pass-through pursuant to Article 3d of the EU ETS Directive*”⁷.

Article 3d(2) of the EU ETS Directive requires the Commission to “*study the ability of the aviation sector to pass on the cost of CO₂ to its customers in both the EU ETS and ICAO’s market-based measure, comparing this to industries and to the power sector, and with the intention to propose to increase the percentage of auctioning pursuant to the review referred to in Article 28b(2)*”.

⁷ SWD [link to be included by time of adoption]

The study is included in the Impact assessment on Revision of the EU Emissions Trading System in respect of aviation, and draws on the report “Assessment of ICAO’s global market-based measure (CORSIA) pursuant to Article 28b and for studying cost pass-through pursuant to Article 3d of the EU ETS Directive”.

- **Stakeholder consultations**

Stakeholders were consulted on the inception impact assessment between 3 July 2020 and 28 August 2020. In total, 54 entities submitted a feedback. Of respondents, EU MS supported a coexistence of the EU ETS and CORSIA; non-EU countries expressed concern with overlap between EU ETS and CORSIA, partial implementation of CORSIA, treatment of non-EU carriers and the exclusivity of CORSIA. Regarding CORSIA implementation options, the vast majority of NGOs favoured full scope EU ETS or options maintaining at minimum the current scope or hybrid options in between. They also supported immediate full auctioning.

Most business associations and companies preferred the CORSIA only policy option. On auctioning, most business associations and companies favoured the status quo or the slow reduction, and the use of the revenues for the aviation industry. EU citizens who responded were in favour of more climate ambition from the sector.

The open public stakeholder consultation took place between 1 October 2020 and 14 January 2021, and received a total of 81 responses. In the public consultation, 91% of respondents agree that the aviation sector should contribute more to climate actions. 88% of respondents believe that market-based measures can be effective to tackle aviation emissions in line with the climate objectives. 82% of respondents to the public consultation agreed that market-based measures be combined with other policies such as support for innovative aviation technologies, operational improvements, taxation, and the production and use of sustainable aviation fuels.

For CORSIA implementation options, opinions differed between and within stakeholder groups. For business associations, the most preferable options were CORSIA ONLY and MIX option with 33% of responses for each option. The least preferable options were ETS full legal scope and MIX BIS with 33% of responses for each option. For public authorities, 30% found CORSIA ONLY the most preferable option, and 40% found CORSIA ONLY the least preferable option. For NGOs, EU ETS full legal scope was the most preferable option with 89% of responses, and CORSIA only the least preferable option with 44% of responses.

For increasing the auctioning share of aviation allowances, most stakeholders preferred the immediate phase out, while they held maintaining the status quo as the least preferred option. Respondents’ views were clearly split between or auctioning share increase options. 53% of business associations preferred the status quo and stated immediate phase-out as the least preferred option (74%). 56% of NGOs preferred immediate phase-out, and 63% stated status quo as their least preferred option. 60% of public authorities preferred slow phase-out of free allocation.

Large majority of the stakeholders considered that increasing auctioning could increase the cost of flying, while the majority also agreed that this measure would contribute to climate change mitigation.

- **Impact assessment**

The impact assessment has analysed the various options through which a revision of EU ETS in respect of aviation could effectively and efficiently contribute to the delivery of the updated target as part of such a wider “Fit for 55” policy package. The impact assessment analyses

different options for CORSIA implementation through the EU ETS and for increase of auctioning share.

The options for implementing CORSIA differ in the extent to which the existing EU ETS coverage is maintained, reduced or extended. Comparison of options shows that while ETS price incentives are orders of magnitude more meaningful than the price of CORSIA quality offsets, the overall environmental impact at global level across policy options is limited due to the limited geographical scope of the EU ETS. However, there are significant differences between the options as regards the contribution to the EU's emission reduction target. There are also considerable differences in terms of revenues stemming from the different policy option combinations, as CORSIA, by design, does not generate any public revenue from airlines. The preferred option is to maintain the current EU ETS coverage (intra-EEA flights, including departing flights to Switzerland and to the UK) and introduce appropriate CORSIA-related provisions for flights that are currently not covered by the EU ETS (flights to/from third countries, and by EU-based airlines between two third countries).

The options for increasing the auction share in allocating aviation allowances differ in the speed of increase. The comparison of the analysed options shows a strong case for moving to full auctioning from the date of entry into force of the revised legislation. While free allowances have been allocated notably to address potential adverse competitiveness impacts and carbon leakage, they constitute a derogation from the 'polluter pays' principle. The analysis suggests a low risk of carbon leakage when increasing the auctioning share. Switching to full auctioning implies stabilising the cap for aviation at current levels as auctioning is currently a fixed percentage of free allocations. This would maintain current level of environmental integrity for the aviation cap, and the cap would be subject to the linear reduction factor, as already required by the co-legislators and as is the case for all other operators in the EU ETS. The removal of free allocation in the EU ETS would reinforce its environmental integrity. The preferred option is increased auctioning from the entry into force of the amendment.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it contributes to the objective of a high level of environmental protection in accordance with the principle of sustainable development as laid down in Article 37 of the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

Under the existing ETS, most of the auction revenues accrue to Member States, hence there are positive impacts on national budgets. Adjustments to the EU budgetary framework will be presented by the Commission as part of the upcoming Own Resources package including a proposal to amend the multiannual financial framework.

For the existing coverage of the EU ETS, there are no additional administrative impacts on national administrations. The impacts of the implementation of CORSIA should be limited by using the same infrastructures.

IT development and procurement choices will be subject to pre-approval by the European Commission Information Technology and Cybersecurity Board.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

Article 3c, paragraphs 1 to 3 are amended to consolidate the total quantity of allowances for aviation at the level of allocation/auctioning for intra-European flights and departing flights from EEA airports to Switzerland and the UK. The allocation for year 2024 will be based on the total allocation to active aircraft operators in 2023, reduced by the linear reduction factor as specified in the ETS Directive. The allocation shall be increased by the level of allocation that would have been made if routes between outermost regions, and other states than the Member State in which the outermost region is located, had been covered by the ETS in 2023. The temporary derogation from EU ETS obligations for these routes expires on 31 December 2023. The increased cap shall be reduced by the linear reduction factor as specified in the ETS Directive.

A time-limited derogation from the EU ETS is proposed 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.

Article 3d paragraph 1 is replaced to establish increased auctioning of allowances for aviation from year after the entry into force of the amendment. The amendment is for transition to full auctioning as from 2027.

Article 3d paragraph 2 is deleted as obsolete.

Article 3d, paragraph 3, first sentence is amended to reflect that delegated acts to be adopted to supplement this Directive concerning the detailed arrangements for the auctioning by Member States of aviation allowances should include the modalities for the transfer of a share of revenues to the Union budget.

Article 3d, paragraph 4 is replaced to reflect a stronger recommendation that Member States use ETS auctioning revenues to tackle climate change and that a share of those revenues is attributed to the Union budget under Decision (EU, Euratom) 2020/2053 on the system of own resources.

Articles 3e and 3f are deleted as free allocation rules to aircraft operators are no longer needed after the transition to full auctioning.

Article 11a, paragraphs 1 to 4 are replaced to provide for EU-based airlines to use appropriate international credits for compliance for flights to or from third countries that are applying CORSIA. To ensure that the EU's CORSIA implementation supports the Paris Agreement goals and gives incentives for broad participation to CORSIA, the following conditions must be met: compliance credits originate from states that are Parties to the Paris Agreement and that participate in CORSIA, and double counting of credits is avoided.

A new paragraph 8 is added to Article 11a, empowering the Commission to adopt an implementing act specifying the credits which have been considered acceptable by the ICAO Council to use for compliance of CORSIA.

A new paragraph 6 is added to Article 12, implementing CORSIA for EU companies for flights to, from and outside European Economic Area, Switzerland and UK. Airlines' surrender obligations for these flights are decreased from full amount of emissions to their share of collective aviation emissions as per CORSIA baseline.

New paragraphs 3 to 9 are added to Article 25a.

The Commission is empowered to adopt and maintain an implementing act listing states (other than EEA, Switzerland and UK) which are considered to be applying CORSIA for the purposes of Union law.

CORSIA verification of compliance of non-EU based airlines is meant to belong solely to the home country of these airlines. Implementing CORSIA for extra-European flights therefore means exempting non-European airlines from the EU ETS obligations for the flights between Europe and third countries that are implementing CORSIA.

To ensure equal treatment on routes, flights to and from countries that are not implementing CORSIA would be exempt from EU ETS or CORSIA obligations.

Flights to and from most Least Developed Countries and Small Island Developing States not implementing CORSIA would be exempt from EU ETS or CORSIA obligations without end date for the exemption.

The Commission should be empowered to adopt an implementing act exempting EU-based airlines from surrender requirements in respect of emissions from flights where a significant distortion of competition to the detriment of EU-based airlines occurs due to a less stringent implementation or enforcement of CORSIA in the third country. The distortion of competition could be caused by a less stringent approach to eligible offset credits or double counting provisions.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure

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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2003/87/EC of the European Parliament and of the Council³ 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 by Directive 2008/101/EC of the European Parliament and of the Council⁴.
- (2) The Paris Agreement, adopted in December 2015 under the United Nations Framework Convention on Climate Change (UNFCCC) entered into force in November 2016 (“the Paris Agreement”)⁵. 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. In order to achieve the objectives of the Paris Agreement, all sectors of the economy need to contribute to achieving emission reductions, including international aviation.

¹ OJ C , , p. .

² OJ C , , p. .

³ 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).

⁴ 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).

⁵ Paris Agreement (OJ L 282, 19.10.2016, p. 4).

- (3) The International Civil Aviation Organization (ICAO) Council adopted the First Edition of the International Standards and Recommended Practices on Environmental Protection - Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) (Annex 16, Volume IV to the Chicago Convention) at the tenth meeting of its 214th session on 27 June 2018. The Union and its Member States continue to support CORSA and are committed to implement it from the start of the pilot phase 2021-2023⁶.
- (4) In line with Council Decision (EU) 2018/2027⁷, Member States notified the ICAO Secretariat of differences between CORSA and the EU ETS. The objective was to preserve the Union *acquis* and future policy space, 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 legislation. Following the adoption of this amendment to Directive 2003/87/EC, the notification of differences between CORSA and the EU ETS to the ICAO Secretariat should be updated to reflect the revisions made to Union law.
- (5) Tackling climate and environmental-related challenges and reaching the objectives of the Paris Agreement are at the core of the Communication on “The European Green Deal”, adopted by the Commission on 11 December 2019⁸.
- (6) The Union undertook to reduce its economy-wide net greenhouse gas emissions by at least 55 % below 1990 levels by 2030 in the updated nationally determined reduction commitment of the Union and its Member States submitted to the UNFCCC Secretariat on 17 December 2020⁹.
- (7) The Union has enshrined into legislation the target of economy-wide climate neutrality by 2050 in Regulation (EU) 2021/1119 of the European Parliament and of the Council¹⁰. That Regulation also establishes a binding Union domestic reduction commitment of net greenhouse gas emissions (emissions after deduction of removals) by at least 55% below 1990 levels by 2030.
- (8) This amendment to Directive 2003/87/EC aims at the implementation for aviation of the Union’s contributions under the Paris Agreement, and of the regulatory framework to achieve the binding Union 2030 climate target of a domestic reduction of net greenhouse gas emissions by at least 55 % compared to 1990 levels by 2030 set out in Regulation (EU) 2021/

⁶ 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 (CORSA) 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).

⁷ 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 (CORSA) (OJ L 325, 20.12.2018, p. 25).

⁸ COM(2019)640 final.

⁹

https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European%20Union%20First/EU_NDC_Submission_December%202020.pdf

¹⁰ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality (European Climate Law) (OJ L 243, 9.7.2021, p. 1).

- (9) Aviation should contribute to the emission reduction efforts necessary for the Union's 2030 climate target. Therefore, the total quantity of allowances for aviation should be consolidated and subject to the linear reduction factor.
- (10) Achieving the increased climate ambition will require channelling as many resources as possible to the climate transition. As a result, all auction revenues that are not attributed to the Union budget should be used for climate-related purposes.
- (11) In accordance with Article 28b(3) of Directive 2003/87/EC, the Union is to assess the ICAO's CORSIA scheme and implement it as appropriate, and in a manner that is consistent with the Union's economy-wide emission reduction commitment for 2030.
- (12) The total quantity of allowances for aviation should be consolidated at the level of allocation for 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. The allocation for the year 2024 should be based on the total allocation to active aircraft operators in year 2023, reduced by the linear reduction factor as specified in Article 9 of Directive 2003/87/EC. 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 are covered by the EU ETS from year 2024 onwards.
- (13) Increased auctioning from the year after the entry into force of this amendment to Directive 2003/87/EC should be the rule for the aviation sector allocation of allowances, taking into account the sector's ability to pass on the increased cost of CO₂.
- (14) Directive 2003/87/EC should also be amended with regard to acceptable compliance units, to take into account the Unit Eligibility Criteria adopted by the ICAO Council at its 216th session in March 2019 as an essential element of CORSIA. Airlines based in the Union should be able to use international credits for compliance for flights to or from 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 to CORSIA, the credits should originate from states that are parties to the Paris Agreement and that participate in CORSIA, and double counting of credits should be avoided.
- (15) In order to ensure uniform conditions for the use of international credits in accordance with Article 11a of Directive 2003/87/EC, implementing powers should be conferred on the Commission to adopt a list of the credits which have been considered acceptable by the ICAO Council to use for compliance of CORSIA, and that fulfil the eligibility conditions above. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹¹.
- (16) To ensure that the necessary arrangements are in place for authorisation by the participating parties, 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 avoiding 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

¹¹ 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 the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹².

- (17) For CORSIA implementation on flights 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, surrender obligations should be decreased for Union-based aircraft operators operating these flights. Aircraft operators' surrender obligations for these flights should be decreased to only their share of collective international aviation emissions above collective 2019 levels, in respect of emissions during 2021-23, and above collective 2019-20 levels for subsequent years of CORSIA application.
- (18) In order to ensure uniform conditions for listing countries which are considered to be applying CORSIA for the purposes of Directive 2003/87/EC pursuant to Article 25a(3) of that Directive, 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 of the European Parliament and of the Council.
- (19) As CORSIA implementation and enforcement for aircraft operators based outside the Union is meant to belong solely to the home country of these aircraft operators, implementing CORSIA for flights 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 means exempting aircraft operators based outside the Union from the EU ETS obligations for these flights.
- (20) To ensure equal treatment on routes, flights to and from countries that are not implementing CORSIA should be exempt from EU ETS or CORSIA obligations. To incentivise full implementation of CORSIA starting in 2027, the exemption should only apply to emissions up to 31 December 2026.
- (21) Flights to and from Least Developed Countries and Small Island Developing States, as defined by the United Nations, not implementing CORSIA, other than those states whose GDP per capita equals or exceeds the Union average, should be exempt from EU ETS or CORSIA obligations without an end date for the exemption.
- (22) In order to ensure uniform conditions for exempting aircraft operators from surrender requirements as laid down in Article 12(8) of Directive 2003/87/EC in respect of emissions from flights to and from countries 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 Article 25a(7) of that Directive, implementing powers should be conferred on the Commission to exempt airlines based in the Union from surrender requirements in respect of emissions from flights where a significant distortion of competition to the detriment of airlines based in the Union occurs due to a less stringent implementation or enforcement of CORSIA in the third country. The distortion of competition could be caused by a less stringent approach to eligible offset credits or double counting provisions. Those powers should

¹² 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 the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

- (23) In order to ensure uniform conditions for the establishment of a level playing field on routes between two different countries applying CORSIA where those countries allow aircraft operators to use other units than those on the list adopted pursuant to Article 11a(8) of Directive 2003/87/EC, pursuant to Article 25a(8) of that Directive, implementing powers should be conferred on the Commission to allow aircraft operators based in a Member State to use unit types additional to the list adopted pursuant to Article 11a(8) or not to be bound by the conditions of Article 11a(2) and (3). Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (24) In order to ensure a level playing field on routes between two third countries implementing CORSIA, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of accepting other credits on those routes. 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-Making¹³. 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.
- (25) Special consideration should be given to promoting accessibility for the outermost regions of the Union. Therefore, a derogation from the EU ETS should be provided 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.
- (26) 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 hard to decarbonise sectors 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 EU level, the necessary R&I efforts, are supported among others, through the Horizon Europe Framework Programme, which includes significant funding and new instruments for the sectors coming under the ETS.
- (27) Since the objectives of this Directive 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.
- (28) Directive 2003/87/EC should therefore be amended accordingly,

¹³ OJ L 123, 12.5.2016, p.1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/87/EC is amended as follows:

(1) Article 3c is amended as follows:

(a) paragraph 2 is deleted,

(b) the following paragraphs 5, 6 and 7 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 falling within Annex I in the year 2023, reduced by the linear reduction factor specified in Article 9, and shall publish that quantity, as well as the quantity of free allocation which would have taken place in 2024 if the rules for free allocation were not updated.

6. 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, 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 specified in Article 9.

7. By way of derogation from Articles 12(2a), 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 taking place until 2030 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.’;

(2) Article 3d is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. In 2024, 25% of the quantity of allowances in respect of which free allocation would have taken place as published in accordance with Article 3c shall be auctioned.’,

(b) the following paragraph 1a, 1b, 1c and 1d are added:

‘1a. In 2025, 50% of the quantity of allowances in respect of which free allocation would have taken place in that year, calculated from the publication in accordance with Article 3c shall be auctioned.

1b. In 2026, 75% of the quantity of allowances in respect of which free allocation would have taken place in that year, calculated from the publication in accordance with Article 3c shall be auctioned.

1c. As from 1 January 2027, all of the quantity of allowances in respect of which free allocation would have taken place in that year shall be auctioned.’,

1.d. Allowances which are allocated for free shall be allocated to aircraft operators proportionately to their share of verified emissions from aviation activities reported in 2023. This 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 2023.’,

(c) paragraph 2 is deleted,

(d) the first sentence of paragraph 3 is replaced by the following:

‘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, 1a, 1b, 1c and 1d of this Article, including the modalities for the transfer of a share of revenue from such auctioning to the general budget of the Union.’,

(e) paragraph 4 is replaced by the following:

‘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(3) of the Treaty and entered in the general budget of the Union. Member States shall use the revenues generated from the auctioning of allowances in accordance with Article 10(3).’;

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

(4) In Article 6(2), point (e) is replaced by the following:

‘(e) an obligation to surrender allowances equal to the total emissions of the installation in each calendar year, as verified in accordance with Article 15, within four months following the end of that year.’;

(5) Article 11a is amended as follows:

(a) paragraphs 1 to 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 is 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 as laid down in Article 12 in respect of emissions from flights to and from countries that are listed in the implementing act adopted pursuant to Article 25a(3):

(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 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 country that is a party to the Paris Agreement at the time of use;

(b) they originate from a country that is listed in the implementing act adopted pursuant to Article 25a(3) as participating in Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). This condition shall not apply in respect of emissions before 2027, nor shall it apply in respect of Least

Developed Countries and Small Island Developing States, as defined by the United Nations, except for those countries 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 that double counting and a net increase in global emissions are avoided.

The Commission shall adopt implementing acts laying down more detailed requirements for the arrangements referred to in the first subparagraph, which may include reporting and registry requirements, and for listing the states or programmes which apply these arrangements. Arrangements shall take account of flexibilities accorded to Least Developed Countries and Small Island Developing States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).’

(c) paragraph (4) is deleted,

(d) the following paragraph 8 is added:

‘8. The Commission shall adopt an implementing act listing credits which, have been considered eligible by the ICAO Council, and that fulfil the conditions laid down in paragraphs 2 and 3. The Commission shall amend that list as appropriate. That implementing act 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 laid down in the delegated act referred to in paragraph 7, Member States shall calculate the offsetting each year for the preceding calendar year within the meaning of ICAO’s International Standards and Recommended Practices on Environmental Protection for Carbon Offsetting and Reduction Scheme for International Aviation, other than those which apply 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 by 30 November each year inform the aircraft operators that fulfil all of the following conditions of the level of offsetting:

- (a) the aircraft operator holds an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State;
- (b) they produce annual CO₂ emissions greater than 10 000 tonnes from the use of aircrafts 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 2019.

For the purposes of the first subparagraph, point (b), CO₂ 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.’,

(b) the following paragraphs 7 and 8 are added:

‘7. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive by laying down the methodology for calculating offsetting responsibilities for aircraft operators.

8. In respect of flights to, from and between the countries that are listed in the implementing act adopted pursuant to Article 25a(3), aircraft operators that hold an air operator certificate issued by a Member State or is 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 respect of the relevant calendar year. The cancellation shall take place by 31 January 2025 for emissions in the period 2021 to 2023, by 31 January 2028 for emissions in the period 2024 to 2026, by 31 January 2031 for emissions in the period 2027 to 2029, by 31 January 2031 for emissions in the period 2027 to 2029, by 31 January 2034 for emissions in the period 2030 to 2032 and by 31 January 2037 for emissions in the period 2033 to 2035.’;

(7) In Article 18a, paragraph 3, point (b) is replaced by the following:

‘(b) as 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.’;

(8) Article 23 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

‘2. The power to adopt delegated acts referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 12(7), third subparagraph, 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c shall be conferred on the Commission for an indeterminate period of time from 8 April 2018.

3. The delegation of power referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 12(7), third subparagraph, 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’,

(b) paragraph 6 is replaced by the following:

‘6. A delegated act adopted pursuant to Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 12(6), third subparagraph, 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’;

(9) In Article 25a, the following paragraphs 3 to 9 are added:

‘3. The Commission shall adopt an implementing act listing countries 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 2019-2020 for each year thereafter. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

4. In respect of emissions from flights to or from countries that are listed in the implementing act adopted pursuant to paragraph 3, aircraft operators that hold an air operator certificate issued by a country or that is registered in a country that is listed therein shall not be required to cancel units in respect of those emissions.

5. In respect of emissions occurring until 31 December 2026 from flights between the EEA and countries that are not listed in the implementing act adopted pursuant to paragraph 3, other than flights to Switzerland and the United Kingdom, aircraft operators shall not be required to cancel units.

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, aircraft operators shall not be required to cancel units.

7. Where the Commission determines that there is a significant distortion of competition which is detrimental to aircraft operators that hold an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, the Commission shall be empowered to adopt implementing acts to exempt those aircraft operators from surrender requirements as laid down in Article 12(8) in respect of emissions from flights to and from such countries. The distortion of competition may be caused by a third country 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. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

8. Where an aircraft operator that holds an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, operates flights between two different countries listed in the implementing act adopted pursuant to paragraph 3, including flights that take place between Switzerland, the United Kingdom and countries listed in the implementing act adopted pursuant to paragraph 3, and those countries allow aircraft operators to use other units 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 that 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) In Annex I, in the table, the following text is inserted after the first paragraph of the entry ‘Aviation’ of the column ‘Activities’:

‘Flights between aerodromes that are located in two different countries that are listed in the implementing act adopted pursuant to Article 25a(3) by aircraft operators that fulfil all of the following conditions:

- (a) the aircraft operator holds an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State;
- (b) they produce annual CO₂ emissions greater than 10 000 tonnes from the use of aircrafts 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 2019. 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.’.

Article 2

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

Article 3

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

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President