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

COUNCIL DECISION (EU) 2020/954

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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 Chicago Convention') entered into force on 4 April 1947. It established the International Civil Aviation Organization (ICAO) and aims to regulate international air transport.

(2) All Member States of the Union are contracting States of the Chicago Convention and members of the ICAO, whereas the Union has observer status in certain ICAO bodies.

(3) In December 2015, the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change adopted the Paris Agreement[(1)]. The objectives of the Paris Agreement include holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit temperature increase to 1,5 °C above pre-industrial levels. All sectors of the economy should contribute to achieving emission reductions, including international aviation.

(4) In 2016, by means of its Resolution A39-3, the 39th ICAO Assembly decided to implement a global market-based measure scheme in the form of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) to limit greenhouse gas emissions from international aviation at their 2020 levels. The Union position in respect of the elaboration and adoption of that scheme and its various detailed elements has been established by Council Decision (EU) 2016/915[(2)].

(5) 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 Chicago Convention: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) ('Annex 16, Volume IV').

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2020/954. (See end of Document for details)*

(6) In 2017, Regulation (EU) 2017/2392 of the European Parliament and of the Council[3] amended Directive 2003/87/EC of the European Parliament and of the Council[4]. One of the purposes of that Regulation was to prepare for the implementation of CORSIA from 2021, to lay down requirements under Union law for the monitoring, reporting and verification for the purpose of CORSIA, and reporting on and the review of the implementation of CORSIA.

(7) The rules contained in Annex 16, Volume IV are to become binding in accordance with, and within the limits set out in, the Chicago Convention. Those rules are also to become binding upon the Union and its Member States under existing international air transport agreements.

(8) In order for ICAO to take full account of the current legal framework at Union level, differences have been notified by the Member States in accordance with Council Decision (EU) 2018/2027[5]. Under Decision (EU) 2018/2027, Directive 2003/87/EC, as it currently stands, 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 on the Functioning of the European Union ('TFEU') applies. Directive 2003/87/EC applies without distinction to flights within and between Member States and/or European Economic Area countries. At this stage, those rules apply both to monitoring, reporting and verification (MRV) requirements and offsetting requirements.

(9) Subject to the differences notified in accordance with Decision (EU) 2018/2027, the MRV requirements which are set out in Annex 16, Volume IV and applicable as from 1 January 2019 have been incorporated into Union law by means of Commission Implementing Regulations (EU) 2018/2066[6] and (EU) 2018/2067[7] and Commission Delegated Regulation (EU) 2019/1603[8]. Under those Regulations, emissions data will be collected and transmitted to the ICAO Secretariat in respect of emissions during the pilot phase.

(10) Pursuant to paragraphs 3.1.3 and 3.2.1 of Chapter 3 of Part II and Appendix 1 of Annex 16, Volume IV, contracting States are required to notify ICAO of their decision to voluntarily participate or to discontinue the voluntary participation in CORSIA from 1 January 2021. Contracting States are also required to notify ICAO of which option they have selected for calculating aeroplane operators' offsetting requirements during the 2021-2023 period. They are required to submit those notifications by 30 June 2020.

(11) It follows from those provisions that certain legal effects of Annex 16, Volume IV depend on the submission of and the terms of relevant notifications to ICAO. Therefore, the adoption of a Union position in respect of such notifications falls within the scope of Article 218(9) TFEU.

(12) In this respect, it is appropriate to establish the position to be taken on the Union's behalf within the ICAO, having regard to the notification requirements under Annex 16, Volume IV, in particular because the voluntary participation in CORSIA and the choice of the option under paragraph 3.2.1 of Annex 16, Volume IV may decisively influence rights and obligations in an area covered by Union law, notably Directive 2003/87/EC

and, to a certain extent, Directive (EU) 2018/2001 of the European Parliament and of the Council[9].

(13) The Union and the Member States have repeatedly declared[10] that they are willing to participate in CORSIA from 1 January 2021.

(14) Voluntary participation in CORSIA implies that, in accordance with paragraph 3.2.1 of Annex 16, Volume IV, an option must be selected for calculating aeroplane operators' offsetting requirements during the 2021-2023 period. In this respect, it is appropriate to base the calculations on the emissions during 2021, 2022 and 2023, respectively. That option is likely to entail a greater environmental and international transport benefit than the other option available, which is to base the calculations on the emissions during 2020, since the emissions from international aviation are expected to be higher during 2021, 2022 and 2023 than during 2020 thus leading to greater offsetting requirements. It would also ensure greater continuity, bearing in mind that, for the years from 2024, paragraph 3.2.2 of Annex 16, Volume IV equally provides for a calculation based on the respective year.

(15) The selection of emissions during 2021, 2022 and 2023, respectively, for the calculation of aeroplane operators' offsetting requirements would apply during the 2021-2023 period to all aeroplane operators that have been attributed to the Member State concerned in line with the latest edition of the ICAO document 'CORSIA Aeroplane Operator to State Attributions'[11].

(16) The framework of Directive 2003/87/EC currently differs from Annex 16, Volume IV in certain ways. Under Article 28b(2) of Directive 2003/87/EC, within 12 months of the adoption by ICAO of the relevant instruments and before CORSIA becomes operational, the Commission is to present a report to the European Parliament and to the Council in which it is to consider ways for those instruments to be implemented in Union law through a revision of Directive 2003/87/EC and in which it is to examine, amongst other things, the ambition and overall environmental integrity of CORSIA, 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. Under Article 28b(3) of Directive 2003/87/EC, where appropriate, the Commission is to accompany the report with a proposal to the European Parliament and to the Council to amend, delete, extend or replace the derogations provided for in Article 28a of that Directive, 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.

(17) The Commission has not yet presented the report. There is therefore an urgent need for the Commission to present the report referred to Article 28b(2) of Directive 2003/87/EC, accompanied by the corresponding proposal to the European Parliament and to the Council, as soon as possible and before the end of 2020.

(18) In this context, it is necessary to ensure that current and possible future differences between Union law and Annex 16, Volume IV be taken into account effectively, with a