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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	12207/22
Subject:	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 <ul style="list-style-type: none">• Preparation for the negotiations with the European Parliament

In the context of the technical discussions with the European Parliament and in view of the upcoming trilogue on 6 December 2022 on the above-mentioned file, the Commission services have prepared informal compromise texts as regards Data Transparency and Sustainable Aviation Fuels free allowances, that Delegations will find in the annexes (Annexes I and II).

The Presidency would welcome the views of the Delegations on the compromise texts proposed by the Commission. In order to steer the discussion at the upcoming Working Party on Environment, the Presidency has prepared the following questions:

A. Data transparency

The provisions proposed by the Commission would apply to all data reported to Member States or transmitted to the Commission through ETS MRV. With respect to data communicated in accordance with Article 7 of Commission Delegated Regulation (EU) 2019/1603, the provisions concern only operators registered in the EU.

1. Do you consider that the level of granularity proposed by the Commission is sufficient to ensure the non-disclosure of commercially sensitive information, notably given that an operator may be active only on few State pairs or there may be only one operator on a State pair?
2. Taking into account the three-year compliance cycle under CORSIA, do you consider that the aggregation and reporting of some data (e.g. amount and category of CORSIA eligible fuels, amount and type of CORSIA eligible emission units used to comply with CORSIA offsetting obligations) on an annual basis is achievable?
3. Given the European Parliament position in this regard (row 90c), what other data could be published?

B. Sustainable Aviation fuels free allowances

4. According to the compromise text proposed by the Commission, the sustainable aviation fuels eligible for free allowances would be limited to hydrogen from renewable energy sources, renewable fuels of non-biological origin compliant with [Article 25] of Directive (EU) 2018/2001, used in aviation and advanced biofuels as defined in Article 2, second paragraph, point (34) of Directive (EU) 2018/2001, which have a zero emission factor under Annex IV or under the delegated act pursuant to Article 14. Do you agree with this scope?
5. Do you have any reservation on the rules for physical attribution proposed by the Commission?
6. Do you consider that the price differential should be calculated taking into account the price of fossil kerosene or the price of biofuels produced from the feedstock listed in part B of Annex IX of Directive (EU) 2018/2001 as a benchmark?
7. Do you agree that the price differential should be calculated taking into account incentives from the price of carbon as well as from [possible] EU wide taxation of fossil fuels?
8. Do you agree with covering a higher proportion of the price differential for the renewable fuels of non-biological origin and hydrogen produced from renewable energy sources?

Possible compromise text on data transparency proposed by the Commission

Monitoring and reporting of emissions. Article 14

Text to be added in paragraph 3:

Emissions related data from aviation activities reported to Member States or transmitted to the Commission, including data communicated in accordance with Article 7 of Commission Delegated Regulation (EU) 2019/1603, shall [, where appropriate,] be published by the Commission, per aircraft operator in a user-friendly manner aggregated on an annual basis. The data for each year shall be published at the latest [3 months] after the respective reporting deadline. Those data on each aircraft operator shall include at least the following:

- (a) data on emissions from flights within the EEA, [from flights departing the EEA, flights incoming to the EEA and flights between two third countries, broken down by aircraft operator and by state pair][and data on emissions subject to obligation to cancel CORSIA eligible emission units];
- (b) the amount of offsetting, calculated in accordance with Article 12(7);
- (c) the amount and category of fuels used that have zero emission factor under this Directive or entitle the aircraft operator to receive allowances pursuant to Article [3c(5a)];
- (d) the amount [and type] of [credits pursuant to Article 11a][CORSIA eligible emission units] used to comply with their offsetting referred to in point (b).

Recital to be added

Information on the use of carbon credits to comply with offsetting under the CORSIA scheme should be made publicly available in a [no less transparent][similar] manner than how it is made available on the use of international credits under this Directive up to 2020 pursuant to Annex XIV of Commission Regulation (EU) No 389/2013.

Possible compromise on SAF Allowances proposed by the Commission

Possible compromise on SAF Allowances

In Article 3c, the following paragraph is added (paragraph 5a):

For the period from 1 January 2024 until [31 December 2030], a maximum of [20] million of the total quantity of allowances referred to in paragraph 5, shall be reserved in respect of commercial aircraft operators, on a transparent, equal treatment and non-discriminatory basis for the uplifting of the sustainable aviation fuels (SAF): hydrogen from renewable energy sources, renewable fuels of non-biological origin compliant with [Article 25] of Directive (EU) 2018/2001, used in aviation and advanced biofuels as defined in Article 2, second paragraph, point (34) of Directive (EU) 2018/2001, which have a zero emission factor under Annex IV or under the delegated act pursuant to Article 14, for subsonic flights subject to allowance surrendering requirements according to Article 12(3). [In case in an airport sustainable aviation fuel cannot be physically attributed to a specific flight,] those allowances shall be available for sustainable aviation fuels uplifted at that airport proportionate to the emissions from flights of the aircraft operator from that airport subject to allowance surrendering requirements according to Article 12(3).

Those allowances shall be allocated in the same manner as a carbon contract for difference, to cover part of or all the price differential between the use of [fossil kerosene / biofuels produced from the feedstock listed in part B of Annex IX of Directive (EU) 2018/2001] and the price of the relevant sustainable aviation fuels, taking into account incentives from the price of carbon and from [possible] EU wide taxation of fossil fuels. [When calculating the price differences, the Commission shall take into account the report published under Article 12 of the ReFuelEU Aviation published by the European Union Aviation Safety Agency].

The allowances allocated under this paragraph shall cover:

[70%] of the remaining price differential between the use of [fossil kerosene / biofuels produced from the feedstock listed in part B of Annex IX of Directive (EU) 2018/2001] and the relevant advanced biofuels;

[95%] of the remaining price differential between the use of [fossil kerosene / biofuels produced from the feedstock listed in part B of Annex IX of Directive (EU) 2018/2001] and renewable fuels of non-biological origin compliant with [Article 25] of Directive (EU) 2018/2001, used in aviation.

[[100%] of the remaining price difference between the use of [fossil kerosene / biofuels produced from the feedstock listed in part B of Annex IX of Directive (EU) 2018/2001] and any sustainable aviation fuel covered by the two previous sub-paragraphs, at airports situated on islands smaller than 10.000 km²], at airports which are insufficiently large to be defined as Union airports according to Article 3 of the Refuel aviation Regulation] and at airports located in an outermost region.]

[The allocation should take into account possible support from other schemes at national level.]

On a yearly basis, commercial aircraft operators may apply for an allocation of allowances based on the volume of sustainable aviation fuels referred to in this paragraph, uplifted on flights subject to allowance surrendering requirements according to Article 12(3) between 1 January 2024 and [31 December 2030]. If for a given year the demand of allowances for the uplifting of such fuels is higher than the availability of allowances, they shall be reduced in a uniform manner for all aircraft operators concerned.

The Commission shall publish in the Official Journal details of the average cost difference between [fossil kerosene / biofuels produced from the feedstock listed in part B of Annex IX of Directive (EU)

2018/2001], taking into account incentives from the price of carbon and from [possible] EU wide taxation of fossil fuels, and the relevant sustainable aviation fuels on a yearly basis for the previous year.

The Commission shall adopt delegated acts to establish the detailed rules for the yearly calculation of the cost difference and for the allocation of allowances for uplifting of the fuels identified in paragraph [above] and establish the detailed rules for the calculation of the greenhouse gas emissions saved in accordance with the use of fuels as reported under Commission Implementing Regulation (EU) 2018/2066 and the arrangements for taking into account incentives from the price of carbon and from [possible] possible EU wide taxation of fossil fuels.

From 1 January 2028, the Commission shall evaluate the application of this paragraph in its reports pursuant to Article 10(5) and provide this to the European Parliament and the Council in a timely manner.
