



FEBRUARY 2018 BRIEFING FOR ENVI MEPS ON DRAFT RULES FOR ICAO'S GLOBAL OFFSETTING MECHANISM (CORSA)

Overview

The ICAO General Assembly, in October 2016, adopted an assembly resolution to establish a global offsetting mechanism for international aviation for emissions above 2020 levels (CORSA). We have a number of concerns about this overall agreement: in particular the weak target and the exclusive reliance on offsetting, both of which contradict EU climate policies. Nonetheless as NGO observers to ICAO, we have worked to ensure the implementing rules for this agreement have the highest possible level of environmental integrity.

The implementing rules will be introduced through a Standard and Recommended Practice (SARP). SARPs are the standard means by which ICAO introduces its rules - from aircraft safety to noise certification. They are discussed in more detail below under the 'enforcement and transparency' section.

CORSA alone, even with the highest possible levels of environmental integrity, will do little to mitigate international aviation's climate impact. [Research](#) by the International Council for Clean Transport has found that its cost will equal perhaps 0.4% of fuel costs in the 2020s, rising to 1.1% of fuel costs in the 2030s. These costs are significantly less than the underlying price volatility of jet fuel, meaning CORSA will do nothing to incentivise greater efficiency by airlines and aircraft manufacturers.

CORSA's only hope for a positive climate impact is in the purchase of credible offsets and the avoidance of crediting bad alternative fuels. However as detailed below there are serious concerns if the rules as currently drafted, coupled with how ICAO decision-making operates, will ensure even that.

MEPs therefore must ensure full scrutiny of any implementation of CORSA into EU law, starting with a planned delegated act later this year dealing with monitoring, reporting and verification (MRV) requirements which come into force at the start of 2019 in order to establish a two year average baseline for offsetting emissions above 2020 levels. Further implementation of CORSA's offsetting requirement, intended to take place through Europe's emissions trading

system, must not undermine important EU climate and legal principles such as environmental integrity, transparency and fair competition.

More generally, as CORSIA won't mitigate international aviation's climate impact, and ICAO has not shown an ability to establish a long-term goal for the sector, MEPs should press the Commission to consider what additional measures will be pursued at European-level to ensure aviation makes a fair contribution to Europe's climate goals.

Enforcement and transparency

One of the most concerning aspects of CORSIA is the lack of an enforcement mechanism. ICAO was established by the 1944 Chicago Convention (CC), which details what ICAO can and cannot do and what the rights and responsibilities of its contracting parties are.

The CC is clear that, while contracting parties should strive for full implementation of SARPs, they are also entitled to file differences in which they communicate to ICAO that they do not intend to implement the SARP or will implement the SARP in a different manner. This permits a contracting party to implement a SARP in either a more or less stringent manner.

The CC does not contain an enforcement mechanism to prosecute or punish parties for non-compliance. While it does contain a dispute resolution mechanism, this is a relatively weak and under-used process, and would not cover circumstances where contracting parties have filed a difference. At present, there is widespread non-compliance with many ICAO SARPs, including those relating to safety and security.

In some cases, Air Service Agreements (ASAs) negotiated by the EU or bilaterally by individual member states contain clauses requiring compliance with ICAO SARPs. Again however, ASAs lack effective enforcement mechanisms. In other cases, such as the EU-US Air Service Agreement (Open Skies), the agreement explicitly permits contracting parties to not comply with ICAO environmental SARPs.

The sort of enforcement mechanism contained in EU ETS, where member states can issue fines or detain aircraft, or where the Commission can take infringement proceedings against member states for non-compliance, does not exist for CORSIA. This poses an obvious risk to both the environmental effectiveness of CORSIA, but also fair competition between operators operating similar routes. For example if one operator, registered to and therefore reporting to a third country, is failing to surrender the appropriate number of offset credits, or is permitted to surrender other, lower quality and lower cost offset credits, then they will receive a competitive advantage over an operator which is in full compliance.

Without amending the CC or re-negotiating all ASAs, there is little that can be done to develop an enforcement mechanism. However a substitute is ensuring a high degree of **transparency** in the system. For example, language in the SARPs requiring states to publish total operator

emissions and information on the offset credits surrendered and sustainable alternative fuel used. This would help third parties to determine whether there is full and fair compliance, and would be a first step towards developing a proper enforcement mechanism. It would also help answer the simple question as to whether CORSIA is delivering an environmental benefit

This issue is discussed in detail in a 2015 report commissioned by DG Clima "[Possible legal arrangements to implement a global market based measure for international aviation emissions](#)".

Current language in the draft SARP

The draft SARP contains no language which establishes a credible enforcement mechanism. However this would have been beyond the scope of a draft SARP - instead an amendment to the CC or at the very least a decision by the ICAO Council would have been required.

The draft SARP could however have contained stronger language on transparency, especially as several years of technical work had gone into developing transparency provisions for CORSIA. So for example much of the transparency requirements are contained in the part of the draft SARP known as the Implementation Elements. Our preference is that this language be strengthened to make it clear that states must make public information on total operator emissions and offsets and alternative fuels used.

In addition, there is language in the draft SARP requiring states to share with other states information on operator compliance in cases where an operator is operating between those two states (i.e. the EU could require information from China to determine whether China Southern is complying with CORSIA for routes between China and the EU). However compliance with this requirement is optional - states can also decline to share such information.

The ICAO Secretariat will have an important role in encouraging transparency and compliance with CORSIA. For example they will have a role in establishing the registry and a number of important databases (i.e. on alternative fuel use). The Secretariat answers to the ICAO Council. Council and Secretariat therefore must show a much greater commitment to environmental enforcement and transparency than has been the case to date.

Potential questions for ENVI hearing

- Whether the 2015 study influenced the Commission's strategy in designing and negotiating the CORSIA?
- Whether Europe will be pushing for amendments to improve the level of transparency required in the SARPs?
- Whether, when negotiating ASAs, the EU has as a negotiating objective the need for third countries to comply with all ICAO SARPs, including environmental SARPs.
- Can the EU require demonstration of compliance with CORSIA before permitting third country operators to operate routes to and from Europe?

Sustainable Alternative Fuel

Under CORSIA, operators will have the ability to reduce their offsetting requirement through the use of sustainable alternative fuel (SAF). The draft SARP package contains life cycle assessments to determine what level of emission reductions can be claimed for the use of different types of SAF. In general the current rules for the life cycle assessments is acceptable, except for the rules for calculating the life cycle assessments for fuel feedstocks derived from waste, residues, and by-products. Here, induced land use changes (ILUC) are excluded despite the ability of these fuel feedstocks to cause displacement. So for example palm fatty acid distillate is currently used in the soap and oleochemical markets - if it were to be used for alternative fuel, the price of PFAD would rise and this would stimulate demand for palm oil by existing users. This 'zero ILUC' rating for these fuel feedstocks need to be revised.

To qualify under CORSIA, SAF must be certified as meeting sustainability criteria as defined in the SARP package. These criteria were developed by technical experts (NGOs, states and industry) over a two year period and was contained in full in earlier drafts of the SARP package. However in November 2017, as the final package was being prepared to be circulated to all 193 ICAO contracting parties, the ICAO Council decided to remove 10 of the 12 sustainability themes. This was done under pressure from a number of states, chiefly Brazil but also with support from Russia, India and China. The Council sent the criteria back to the technical experts for further work, but the result is that these criteria will not be included in the SARP package. Operators could therefore use alternative fuels which are far from sustainable - for example produced in ways which compromise labour or land rights - with no recourse in the SARPs to prevent this.

This is not the only risk from the use of SAF under CORSIA. At present SAF can be used under EU ETS, however operators claiming such use must be able to demonstrate actual fuel use. In contrast, the draft CORSIA SARP package permits the fuel purchase method - operators can present receipts of fuel purchase as evidence of fuel use. Such receipts will have to be verified (along with the rest of an operator's emissions) and verifiers will require evidence from the SAF producer and seller. However such verification will be hard to conduct if the operator is claiming fuel purchase in a number of different jurisdictions. There is therefore a risk of fraud and misreporting. To date there are a number [of examples](#) of fraudulent alternative fuel use in the US Renewable Fuel Standard programme, the sort of fraud which could be easier to replicate under CORSIA due to the absence of enforcement mechanisms.

Current language in the draft SARP

The draft SARP package does not contain ILUC criteria for waste, residue and by-products fuel feedstocks. The draft SARP package contains 2 of the original 12 sustainability themes (p105 - 2.3.2.2), dropping criteria such as protection of water, soil, air, land and labour rights. There is no guarantee as to when, if ever, the remaining criteria will be re-inserted.

The draft SARP contains language (p66 - Table A5-2) detailing the sort of information which operators must submit to a verifier in order to determine whether the SAF meets the agreed criteria. This also includes information on the name of the fuel blender, total mass, party responsible for shipment. This is information to help the verifier determine whether there is compliance with the sustainability criteria and to reduce the risk of fraudulent claiming.

Potential questions for ENVI hearing

- Will the CORSIA package undermine recent efforts to reform Europe's alternative fuel laws?
- The recently adopted Regulation 2017/2392, in Art 28c, commits the Commission to adopting CORSIA MRV provisions in a manner consistent with the principles in the existing EU ETS (Directive 2003/87/EC). This cannot be done unless sustainability criteria are included. Will the Commission restore sustainability criteria when proposing a delegated act to implement MRV?
- How can we ensure that European operators are not fraudulently claiming alternative fuel uplifted in third countries?

Emissions Units

The Emissions Unit Criteria lays out the requirements that offset must meet to be eligible for use under CORSIA. The quality of the criteria and its application is paramount for CORSIA to function. A European Commission study has found that [73%](#) of the potential supply of credits from the UN Clean Development Mechanism (CDM) from 2013 to 2020 are unlikely to deliver "real, measurable and additional" emission reductions. Many of the projects have also been linked to human rights violations, such as the hydro-dam project [Barro Blanco](#) in Panama which, after years of pressure by environmental and human rights campaigners was withdrawn from the CDM in 2016.

Within programs, methodologies (what type of activities are allowed) have proven problematic, such as the destruction of industrial gases HFC-23 and N₂O, unwanted side products of industrial processes with high global warming potential which is considered as eligible and credit producing activity under the CDM. [Research](#) has shown that the initial, since revised, methodology used to calculate the baselines for these credits led to perverse incentives to increase pollution in order to be paid to reduce it later.

Additionally, as of yet undeveloped rules under the Paris Agreement must require countries to adjust their national registries when climate projects are used in CORSIA, so that the benefits of one project aren't counted twice - by international airline and by the host country.

All these problems, if left unaddressed, gut the CORSIA of any environmental benefit. Additionally, as Europe has decided to prohibit the use of offsets post-2020, any use of offsets directly undermines EU climate goals and will need to be compensated with increased ambition elsewhere.

Current language in the draft SARP

The draft SARP only specifies that CORSIA eligible units are required to meet the criteria specified in two annex documents. The explanation of how the criteria are meant to be applied are referenced in a note with weak legal enforceability under 4.2.1 (p.32). This opens the door to countries determining eligible offset units in any manner they see fit.

Additionally, in the annex documents there is a suggestion that offset criteria should be applied at the program level, which would mean blanket approval of entire programs such as the CDM.

When assessing what offsets should be allowed in CORSIA, it is completely ineffective to approve entire programs as environmentally stringent as any program can have one or two bad methodologies, or good methodologies can be poorly applied for specific mitigation projects. In this regard it is important that the content of the criteria, the uniform application of the criteria, and the scope of its application are clearly defined.

A more general concern is that the ICAO Council will have the final say in accepting recommendations from the body established to evaluate whether programmes meet the criteria detailed in the SARP - the technical advisory body (TAB). As with the sustainability criteria for alternative fuels, there is a risk that sound recommendations from TAB will be rejected by Council members, who may engage in horsetrading to protect their preferred offsetting programmes.

Potential questions for ENVI hearing

- What are the implications for the effectiveness of CORSIA if countries do not have to respect a common procedure for determining CORSIA eligible offsets?
- Will Europe advocate to apply the offset criteria at the project level to prevent worthless credits from being used by airlines?
- Where will ambition be increased in Europe to protect the integrity of the EU's climate goals post 2020, which do not foresee the use of offsets?
- How will Europe ensure that the ICAO Council does not reject recommendations from the TAB?

For further information

Kelsey Perlman
Carbon Market Watch
0032 487 130280

kelsey.perlman@carbonmarketwatch.org

Andrew Murphy
Transport & Environment
0032 485 001214

andrew.murphy@transportenvironment.org