



Visibility Unlimited:

TRANSPARENCY OF THE NEW AVIATION CARBON MARKET

Policy Briefing, November 2017



Aarhus Convention

Participation

Public

Democracy

Transparency

Accountability

CORSA

Executive summary

A new offsetting scheme called the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) was established by the International Civil Aviation Organisation (ICAO) in 2016 to compensate for the industry's emissions growth above 2020 levels. Although this measure will address less than a third of the sectors' total expected emissions in 2030, to date it is the only international mechanism in place to address the climate impact of international aviation emissions.

With all countries having climate targets under the Paris Agreement and having started to move away from the concept of offsetting, the CORSIA is the only significant carbon offsetting scheme in the post-Kyoto period from 2021 – 2035. The reliance on purchasing carbon credits from reductions in other sectors poses significant challenges to ensure the integrity of the scheme. Of paramount importance are, inter alia, the accounting rules to avoid double counting of emission reductions towards the Paris Agreement and ICAO's own targets, and associated transparency requirements for airlines to monitor their emissions, as well as the quality criteria of carbon credits eligible for use under the scheme.

ICAO parties plan to decide on the rules for the CORSIA by June 2018 in order for countries to adopt and implement the rules into their own regulatory processes. The CORSIA as a first step to address aviation emissions will have far reaching implications, not only on the effectiveness of limiting aviation's climate impact, but also on the success of the Paris Agreement; specifically, how aviation's measure interacts with national climate targets.

Implementation of the CORSIA requires a coordinated effort and approach between ICAO and the United Nations Framework Convention on Climate Change (UNFCCC). Many countries are not part of the ICAO process and have so far not been granted access to important information regarding the detailed rules, which can impact national implementation. Some countries already have climate measures in place to address aviation emissions, such as the EU's Emissions Trading System (EU ETS) and Canada's federal carbon pricing backstop. For the EU ETS, the implementation will be challenging because the CORSIA has a less ambitious target. Additionally, the magnitude of its impact on EU climate targets will not be known until the environmental integrity of eligible offsets can be assessed.

Transparency on how the CORSIA rules will be designed as well as opportunities to engage in this process by all affected stakeholders is paramount for the effectiveness of the CORSIA.

While in principle, the ICAO general rules of procedure promote public participation, they have inexplicably not been applied to meetings or the level of transparency of documents relating to aviation's climate impact including the development of the CORSIA. ICAO Council meetings are held without public observers, documents of meetings of the Committee on Aviation and Environmental Protection (CAEP), in charge of developing the rules of the CORSIA, are locked away from the public domain, and meetings and discussions in technical sub-committees and sub-groups are shielded from public scrutiny through non-disclosure agreements signed by all participants.

However, from the 45 countries that are members or observers of the ICAO Council and CAEP, 13 have signed up to the Aarhus Convention which obliges them to provide access to information, public participation in decision making and access to justice. With the CORSIA receiving growing international attention on its climate impact and consequences on national climate legislation, more and more stakeholders, especially parliamentary institutions but also the general public, have started to demand access to information and engagement opportunities.

Transparency is a fundamental principle of democracy and good governance. With the celebration of its 70th anniversary following the establishment of ICAO in 1947, it is time for ICAO members to revisit the interpretation of its rules and procedures for public participation and access to documents with the goal to put the ICAO processes on par with similar international processes that can offer a wealth of experience on how to engage the public in environmental decision making.

This policy brief provides background on the new CORSIA scheme and its impact on the Paris Agreement, explains the various ICAO bodies involved in the decision making processes and how transparency is currently handled. It offers considerations and recommendations to improve the ICAO public participation process to ultimately increase the legitimacy and quality of decision making.

A new carbon market for international aviation

In October 2016, the International Civil Aviation Organisation (ICAO) established a carbon offsetting scheme with the aspirational goal to compensate for international emissions growth above 2020 levels. Under the scheme, called the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), airlines registered in participating states will have to purchase emission reductions for their pollution exceeding 2020 levels.

Aviation emissions are expected to triple by 2050. Given the decline of carbon offsetting around the world in favour of domestic or in-sector action, the CORSIA is the only offsetting scheme with significant demand for the period 2021 - 2035, estimated at 3.3 billion tonnes of CO₂ reductions over the lifetime of the scheme. According to the UNEP Gap Report¹, the contribution of the CORSIA to address these emissions is estimated to be between zero and 300 million reductions per year in 2030, well under a third of the sectors' total expected emissions. Yet, this estimate is based on the assumption that robust accounting rules will avoid double counting and deliver high integrity carbon offsets that represent real and permanent reductions.

Participating airlines will buy offset credits from projects that purport to reduce emissions in countries around the world. In principle, airlines are free to choose credits from offsetting programs that abide by ICAO offset criteria. For participating states, the obligations to stay within the ICAO target will start in 2020 but because the target is sectoral, monitoring requirements will have to be met from 2019 onwards by all countries. Since the CORSIA will only compensate for part of the growth of emissions from 2020 onwards, as not all states have joined, additional action is needed to achieve the decarbonisation required to reach the goals of the Paris Agreement or even reach the aspirational ICAO goal of "neutral growth" from 2020 levels.

The effectiveness of the scheme will depend on the integrity of the rules, which are currently being developed within ICAO. They will apply to **countries**, who will have to implement the CORSIA through domestic law, and **airlines** who will have to meet reduction requirements. Critical issues to be decided relate to the types of offsets that will be allowed from various carbon offsetting schemes, the type of information airlines will have to monitor and report, and the level of transparency of information publicly available in the central registry. To that end, a first draft set of rules is expected in November 2017 with the goal to adopt them at the 213th Council session in June 2018.

Impact of the CORSIA on the Paris Agreement

The integrity of the CORSIA has two direct implications for the Paris Agreement, notably the need for compatible accounting rules to ensure that the same climate efforts are not counted twice and the establishment of robust quality criteria under which offset credits will be eligible for use under CORSIA.

Avoiding double counting

Under the Paris Agreement, all countries have climate targets, called Nationally Determined Contributions (NDCs). Accounting rules for transfers between countries are currently being negotiated as part of the Paris Rulebook. However, since the CORSIA obliges airline operators to purchase the carbon offsets, there is also a need for accounting rules between the sectors covered under the Paris Agreement and the aviation sector to avoid double counting of emission reductions towards ICAO and the Paris goals. For example, airlines may be looking to purchase offsets created by a fossil fuel switch to biomass residues to generate electricity. The project could lead to less coal being used to generate electricity, which a country will report in their greenhouse gas inventory as a decrease in coal consumption. Without clear accounting rules, both, the airline and the country would end up claiming the activity as helping reach their climate target, but to ensure environmental integrity, the reductions should only be counted once to avoid undermining the ICAO and Paris goals.

Coordinating how countries must adjust their emission totals when they sell emission reductions to airlines is central to ensuring that both ICAO and Paris parties meet their goals with real reductions. Cooperation of this sort has been pursued by the United Nations Environmental Program (UNEP) when the Basel Convention on the disposal of hazardous waste had implications on the International Maritime Organisation (IMO) and the transportation of waste by ships. To harmonize rules the Conference of the Parties to the Basel Convention called for formalised cooperation between UNEP and IMO on dumping of waste at sea².

Offset quality criteria

Offsetting requires having systems in place to create, measure and produce credits from climate activities. However, not all carbon offsetting programmes have lived up to the expectations of producing real, permanent, additional and verified emission reductions. Some offset projects have been designed to overestimate how many emissions reductions are generated.³ Following some human rights abuses in relation to carbon offsetting projects, there have also been demands for stronger social safeguards when implementing such projects.⁴ Thus quality criteria is important for ensuring that offsets are environmentally and socially robust. ICAO has released a list of high level rules that aims at offering guidance on offset quality.

However, the list is too vague since all existing offset programs would comply with them despite evidence that many programs produce ineffective carbon offsets. There is an urgent need to learn from existing quality criteria rules in various jurisdictions already in place, and design robust quality standards that rule out outdated and harmful technologies, such as supercritical coal, and ensure that all emission reductions are in fact real, permanent, additional and verified. Most other policies that have used offsets have clearly stated quality criteria. For example, the UN's Clean Development Mechanism (CDM) does not allow nuclear projects or avoided deforestation, and the European Union excluded HFC and adipic acid credits in 2013 from its emissions trading scheme.

Moreover, the offset quality criteria of the CORSIA will need to be applicable to all offsetting programmes eligible to sell credits, such as UNFCCC mechanisms, voluntary programs like the Gold Standard or national offsetting schemes like the Japanese Joint Crediting Mechanism.

The criteria also need to be in line with the overarching Paris accounting rules for transferring emissions units, which in addition to avoiding double counting, should allow for higher ambition, promote sustainable development and ensure environmental integrity. Transparent information on where these projects are located, what methodology has been used, who has developed and verified them, as well as their current owner is essential to be able to judge any action against the Paris criteria.

The ICAO decision making jungle

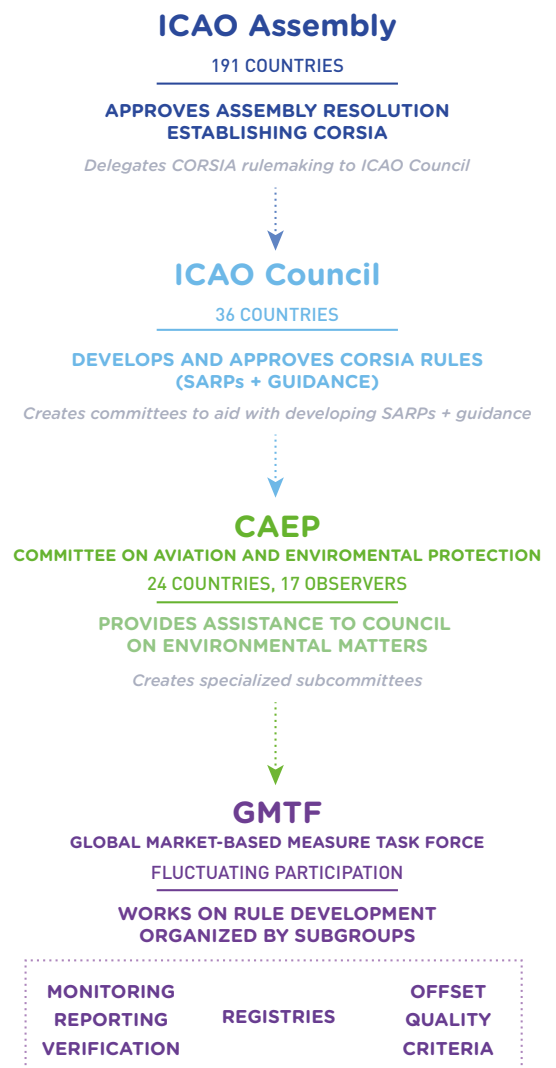
Given that the CORSIA is currently the only mechanism to address emissions from aviation, it is important to understand the involved decision making bodies and opportunities for engagement.

The three most important ICAO decision-making bodies with regard to climate are the **ICAO Assembly**, the **ICAO Council** and the **Committee on Aviation and Environmental Protection (CAEP)**. The ICAO Assembly is composed of 191 member states and meets only once every three years with the next meeting to take place in 2019. While this is the ultimate decision-making authority, most of the political work is done by the ICAO Council with 36 member states⁵. CAEP is a technical committee that assists the ICAO Council in formulating new policies and environment-related rules. It has 24 member states and seven observer states.

The members participating in the Council and CAEP are different with the ICAO Council having more political weight than CAEP. There are a handful of member countries represented in both bodies. They currently include Canada, the United Kingdom, the United States, Italy, Sweden, Spain, Germany and France among others.

CAEP is further supported by a number of sub-committees and sub-groups. Regarding the technical rules for the CORSIA, the most relevant subcommittee is the **Global Market-based measure Task Force (GMTF)** charged with developing draft rules for the CORSIA. The task force has sub-groups including on **monitoring, reporting and verification (MRV)**, on **quality criteria for emissions units** and on **registries**.

The set-up of the committees and sub-groups differs from the composition of the political bodies in that Council members are elected every three years.



CAEP members and observers can nominate experts in a personal capacity to work in subcommittees like the GMTF. In addition to the seven observer countries in CAEP, there are ten more observers: the European Commission, the UNFCCC secretariat, seven industry groups and one civil society organisation, the International Coalition for Sustainable Aviation (ICSA). ICSA is comprised of six NGOs that speak with one voice: the Aviation Environment Federation, Environmental Defense Fund, the International Council on Clean Transportation, Transport and Environment, World Wildlife Fund, and Carbon Market Watch.

Observers are invited by the ICAO body concerned to join meetings. For CAEP in particular, observers are nominated by countries to participate in specific working groups, such as the GMTF. Observers have the right to share views, but not vote on decisions. To access documents in any of the CAEP subcommittees, groups must sign up to a non-disclosure agreement prohibiting the distribution of any documents on environmental matters.

Transparency and public participation at ICAO

Transparency is a fundamental principle of democracy and good governance that has also been enshrined in the Paris Agreement. Engaging stakeholders including civil society in policy making is a core element for legitimacy of the decision making process and raises the quality of decision making. It is a process, not a single event and requires facilitating access to relevant information, consultation and active involvement and input from all relevant stakeholders.

Given that the rules for the CORSIA have a direct impact on compliance with the Paris climate targets and need to be implemented in domestic law by ICAO parties before it can be operational, opportunities to engage in the ICAO decision making process and access to information to that end are paramount for the integrity of the CORSIA.

The ICAO decision making process

The ICAO Assembly delegates the drafting and adoption of rules to the Council, in the form of Standards and Recommended Practices (SARPs). As this work can become quite technical, the Council is free to establish subsidiary committees as it deems fit to assist in formulating SARPs. CAEP is one such committee that assists in this capacity on environmental matters. CAEP, in return, has the power to establish working groups of limited membership, such as the GMTF, which works on the CORSIA. This is laid out in the rules that govern public participation and transparency of information in Council committees, which are particularly important guidance for decision making.

The rules of procedure for Standing Committees of the Council Assembly set out a transparent default position with regard to access to documents and public participation in meetings (see box). Only sessions involving aviation security matters, salaries, disputes between states or issues that could endanger representatives if made public should require a meeting to be held in closed session. Despite this transparent default position, committees set their own working methods, and CAEP meetings and their subgroups are closed. CAEP is governed by “CAEP Directives” approved by the Council, which are not publicly available⁶.

The ICAO rules of procedure for committees are freely available and set out a transparent default position with regard to access to documents and public participation. Rule 17 sets the default position that committee meetings “shall be open to the public”. The guidelines on when committee meetings should be held in closed sessions do not reference environmental matters and are set out below in an appendix of the rules of procedure:

1. *“Meetings of each Committee, except the Committee on Unlawful Interference, should normally be open to the public. In general, meetings should only be held in closed session if discussion involves the following:*
 - a) the level of aviation security in specified States or in general;*
 - b) current or future provisions concerning aviation security;*
 - c) salaries or allowances of an individual member of staff or of a category of staff;*
 - d) selection of candidates for posts in the Secretariat;*
 - e) disputes between Contracting States; and*
 - f) issues where representatives’ personal security could be endangered if their statements were made public.*
2. *Normally, only documents relating to meetings concerning the subjects listed under a) to f) above should be marked “Restricted”⁷.*

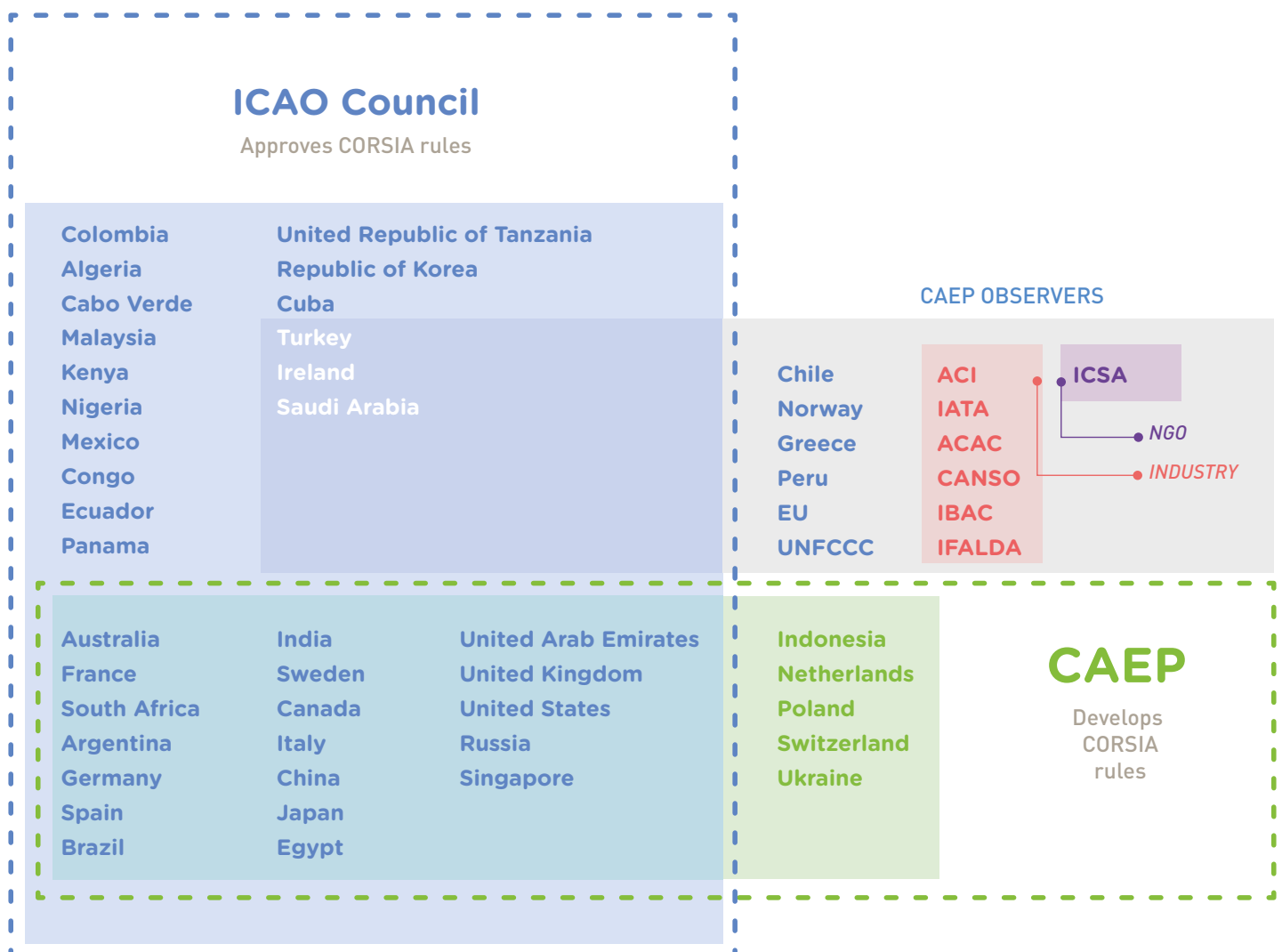
Observers' participation in this process is outlined in the standing rules of procedure of the Assembly. Rule 25 notes that for closed meetings, individual observers may be invited by the bodies concerned⁸. However, to date, NGOs have only been invited to Assembly, CAEP and GMTF meetings. Despite the important political decisions taken by ICAO Council meetings, to date, no civil society observer has ever been invited to observe Council meetings.

While one civil society representative can actively participate in subcommittee and sub-group meetings, the meetings are closed to the general public. Moreover, for participating NGOs that provide technical input to the discussions, the associated non-disclosure agreement strips civil society of the opportunity to share information about the meetings with the public.

Of the 17 CAEP observers, almost half represent industry bodies. A request for participation from policy makers was refused in January 2016 when a delegation of Members of the European Parliament was denied observer access to CAEP on the basis that it was a technical, not political, committee. Nevertheless, knowledge of the detailed rules of the CORSIA will be crucial for implementing the policy and will need to be debated among lawmakers in Europe. This deviation from the standard committee rules of procedure is limiting given the far reaching consequences that CORSIA design has on other markets and climate frameworks.

This practice of public participation is in contrast with many other policy fora. For example, the International Maritime Organisation allows civil society to apply for consultative status instead of participation through invitation only⁹.

Additionally, civil society groups in the IMO are not grouped into a single observer, allowing for a broader diversity of views and more geographical representation. The UNFCCC goes a step further and even allows groups not admitted as an observer organisation to contribute to negotiations through submissions and written and oral interventions during meetings¹⁰.



Access to information

Access to information related to decisions under ICAO must be seen in correlation with the general principles related to participation explained above. The rules on the CORSIA are presented in the form of the official **Standards and Recommended Practices** (SARPs), which apply to countries and airlines, but also **guidance material**, additional documents with undefined legal force. All key rules of relevance to the CORSIA, notably on credit quality, accounting as well as transparency of registries are developed in the form of SARPs by CAEP and agreed by the ICAO Council. Once agreed, national governments need to implement the rules into national law, or in the case of the European Union, into EU law.

However, no information on the development and content of these rules has been released publicly, which keeps important discussions on essential elements related to the integrity of the CORSIA in the dark. This lack of transparency will require the majority of ICAO countries, not represented at CAEP, to implement the CORSIA based on a final set of rules that governments and their civil society will not have had an opportunity to analyse or contribute to.

The role of transparency to safeguard the ambition level for airlines under the EU ETS

To take the European example, the EU institutions have reached a provisional agreement that foresees the implementation of the CORSIA at the European level through the EU Emissions Trading System (EU ETS).

Transparency regarding the development of the Standards and Recommended Practices on how to implement the CORSIA is however critical, not only because of the high priority of democratic processes that are at the centre of EU decision making, but importantly because the way in which CORSIA will be implemented will have an overall impact on the effectiveness of the EU ETS to address emissions. This is because the climate target for airlines under the EU ETS is more stringent than the ICAO target¹¹, meaning the implementation of CORSIA through a derogation of the EU ETS would effectively decrease European climate ambition.

To safeguard the agreed ambition level for reducing aviation emissions in Europe, the implementation of the CORSIA will therefore have to go hand in hand with agreeing on complementary measures to make up for the ambition deficit of the CORSIA.

ICAO members' obligations under the Aarhus Convention

The Aarhus Convention is the most well-developed articulation of transparency in environmental policy making. All Aarhus Convention parties have a duty to promote the principles of the Convention in international forums making environmental decisions (Aarhus Convention Article 3(7)). These three principles are 1) **Access to information** 2) **Public participation in decision making** and 3) **Access to justice**.

It is signed by most European and Central Asian countries, including all EU Member States. In total, 13 EU Member States are involved in designing rules for the CORSIA through the ICAO decision making bodies.

Yet, despite their obligations under the Aarhus Convention and potential opportunities for public meetings and access to information as per the ICAO rules of procedures, the signatories have so far been complicit in keeping the development of the CORSIA in the dark.

Recognising the importance of the CORSIA, national parliaments in Italy¹² and Sweden¹³ have submitted written questions to their governments requesting more information on the CORSIA. At the EU level, a number of Members of the European Parliament¹⁴ have asked the European Commission to release documentation on the CORSIA especially considering the importance of its impacts on the EU's climate targets for 2030.

Responding to the growing understanding about the far reaching impacts of the CORSIA, Aarhus signatories will now be challenged to defend the important principles they have signed up to and demand a new interpretation of the ICAO rules of procedures in order to create more public participation and access to information related to decision making on environmental matters under ICAO.

Conclusions

For market-based measures to work together across countries, sectors and international organisations, transparency, including access to information and inclusiveness in the decision making process, is a prerequisite. While the ICAO general rules of procedure uphold this notion in that they provide the opportunity for member countries to make environmental discussions in CAEP public, they have so far been interpreted in a thoroughly narrow fashion. A general lack of public scrutiny has allowed ICAO to operate in a clandestine way since its establishment in 1947. The fact that ICAO was tasked with addressing aviation emissions back in 1997 and only established its first measures 24 years later should raise concern.

Given the far reaching implications the CORSIA will have not only on aviation but on the success of the Paris Agreement as well as the integrity of numerous emissions trading and carbon offsetting schemes across the world, the need for broader stakeholder participation in the development of the scheme is essential.

Moreover, 13 ICAO parties participating in Council and in CAEP processes are signatories to the Aarhus Convention and therefore have an obligation to promote access to information, public participation in decision making and access to justice in international environmental decision making forums. With the celebration of its 70th anniversary following the establishment of ICAO in 1947, it is time for ICAO members to revisit the interpretation of its rules and procedures for public participation and access to documents with the goal to put the ICAO processes on par with similar international processes that can offer a wealth of experience on how to engage the public in environmental decision making.

Concretely, following recommendations should be considered in this process:

- **Broaden observer diversity:** The ICAO Council should allow for interested observer organisations to apply for ICAO observer status instead of limiting participation by invitation only. The number of observers should not be limited.
- **Hold meetings open to the public:** The ICAO environmental committee (CAEP) meetings should follow rule 24 of the general rules of procedure for standing committees and be held open by default.
- **Provide access to important documents:** CAEP should follow rule 41 which allows committee documents, including Standards and Recommended Practices (SARPs), to be provided to the public.
- **Improve public engagement in decision making:** CAEP should invite public input to ICAO decision making processes and make input received from observer organisations publicly available.
- **Encourage democracy:** ICAO members should be allowed to share the texts of Committee decisions, together with Committee working papers and other papers with their democratic institutions pursuant to rule 42.

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