COMMISSION DECISION (EU) 2021/355

of 25 February 2021

concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council

(notified under document C(2021) 1215)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ([1]) and in particular Article 11 thereof,

Whereas:

(1) Auctioning is the rule for the allocation of emission allowances from 2013 onwards to operators of installations within the scope of the emissions trading system of the Union (EU ETS). Eligible operators will continue to receive free allowances in the trading period 2021 to 2030. The amount of allowances that each such operator receives is determined based on Union-wide harmonised rules set out in Directive 2003/87/EC and Commission Delegated Regulation (EU) 2019/331 ([2]).

(2) Member States were required to submit to the Commission by 30 September 2019 their National Implementation Measures (NIMs), comprising a list of installations covered by Directive 2003/87/EC on their territory and including information on production activity, transfers of heat and gases, electricity production and emissions at sub-installation level, over the five years of the baseline period (2014-2018) in accordance with Annex IV to Delegated Regulation (EU) 2019/331.

(3) To ensure data quality and comparability, Member States submitted their NIMs using the electronic template provided by the Commission in accordance with Article 14(1) of Delegated Regulation (EU) 2019/331, which included the relevant data per installation. Member States also submitted a methodology report setting out the data collection process conducted by their authorities.

(4) Given the wide range of information and data submitted, the Commission first analysed the completeness of all the NIMs. Where the Commission noted that submissions were incomplete, it requested additional information from the Member States concerned. In reply to those requests, the relevant authorities submitted additional relevant information in order to complete the submitted NIMs.

(5) The Commission then assessed the NIMs against the criteria contained in Directive 2003/87/EC and in Delegated Regulation (EU) 2019/331, taking into account the Commission's guidance documents to Member States published between January and April 2020. Those consistency checks constituted the second phase of the NIMs assessment.

([1]) OJ L 275, 25.10.2003, p. 32

([2]) Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 27.2.2019, p. 8).

(6) The consistency checks of the NIMs were carried out for each Member State and each installation separately and in comparison with other installations in the same sector. As part of that comprehensive assessment, the Commission analysed the consistency of the data itself and with the Union-wide rules for harmonised free allocation for phase 4 of Delegated Regulation (EU) 2019/331. The Commission examined the eligibility of installations for free allocation, the division of installations into sub-installations and their boundaries, in order to apply the correct benchmark. Considering that the data is used for calculating the revised benchmark values, the Commission paid particular attention to the attribution of emissions to each sub-installation. Furthermore, given the significant impact on allocations, the Commission analysed in detail the data concerning calculation of the historical activity levels of installations during the baseline period. The Commission also examined whether the inclusion of an installation in the NIMs lists was in line with the provisions of Annex I to Directive 2003/87/EC.

(7) Further in-depth analyses of the data for specific installations that have had an impact in the calculation of the revised benchmark values and per Member State were conducted. The specific assessments were based on risk assessment analysis that took into account several criteria including the emissions intensity for each product benchmark sub-installation.

(8) Based on the results of those checks, the Commission carried out a detailed assessment of installations where potential irregularities in the application of the harmonised allocation rules were identified. For those installations, further clarification was sought from the competent authority of the Member States concerned.

(9) In the light of the results of that compliance assessment, the NIMs of Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, Hungary, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden were found to be compatible with Directive 2003/87/EC and Delegated Regulation (EU) 2019/331, except as set out below. The installations included in the NIMs by those Member States have been found eligible for free allocation and no inconsistencies with regard to the Union-wide rules for harmonised free allocation of emission allowances were detected, except as set out below.

(10) However, in the light of the results of the assessment, certain aspects of the NIMs submitted by Finland and Sweden are incompatible with the criteria contained in Directive 2003/87/EC and in Delegated Regulation (EU) 2019/331.

(11) Finland and Sweden proposed the inclusion of 51 installations using biomass exclusively. Some of those installations were subject to unilateral opt-in in 2004-2007, approved by the Commission pursuant to Article 24 of Directive 2003/87/EC. Nevertheless, installations exclusively using biomass were subsequently excluded from the EU ETS, in line with a new provision in paragraph 1 of Annex I to Directive 2003/87/EC. That provision was introduced in the ETS Directive by Directive 2009/29/EC of the European Parliament and of the Council ([3]), and since its application on 1 January 2013, it determined a new scope for the ETS, including regarding prior opt-ins. Therefore, the inclusion of the installations that used biomass exclusively is to be rejected for all the years of the baseline period including when they were listed in Article 11(1) of Directive 2003/87/EC.

(12) Sweden proposed the inclusion of one installation whose emissions originate from a lime kiln in which lime mud, a residue from the recovery of the cooking chemicals in kraft pulp mills, is calcined. The process of recovering lime from lime mud is covered by the definitions of the system boundaries of short/long fibre kraft pulp. Thus, the concerned installation imports an intermediate product that is covered by a product benchmark. Given that emissions should not be double-counted, as recalled in Article 16(7) of Delegated Regulation (EU) 2019/331, the free allocation data of that installation is to be rejected.

([3]) Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community, OJ L140, 5.6.2009, p. 63.

(13) Sweden proposed that three installations would use different benchmark sub-installations compared to what they used in phase 3 NIMs for production of iron ore pellets. Sweden proposed the use of a sintered ore benchmark sub-installation for the production of iron ore pellets, while in phase 3 heat and fuel benchmarks were used. However, the sintered ore benchmark is defined in Annex I to Delegated Regulation (EU) 2019/331 and the definition of products as well as the definition of processes and emissions covered by that product benchmark are tailored to sinter production and do not include iron ore pellets. Moreover, Article 10a(2) of Directive 2003/87/EC requires an update of the benchmark values for phase 4, and does not provide for any adjustment of the interpretation of the benchmark definitions. The data submitted for the production of iron ore pellets based on a sintered ore sub-installation are therefore to be rejected,

HAS ADOPTED THIS DECISION:

Article 1

1. The inscription of the installations listed in Annex I to this Decision included on the lists of installations covered by Directive 2003/87/EC submitted to the Commission pursuant to Article 11(1) of that Directive and the corresponding data to these installations are rejected.

2. The free allocation data of the installation listed in Annex II to this Decision included on the lists of installations covered by Directive 2003/87/EC submitted to the Commission pursuant to Article 11(1) of that Directive is rejected.

3. The data corresponding to the product benchmark sub-installations of the installations listed in Annex III to this Decision on the lists of installations covered by Directive 2003/87/EC and submitted to the Commission pursuant to Article 11(1) of Directive 2003/87/EC are rejected.

4. No objections are raised should a Member State amend the data concerning the split into sub-installations submitted for the installations in its territory included in the lists referred to in paragraph 3 and listed in Annex III to this Decision before determining the preliminary annual amounts of free allowances for each year from 2021 to 2025 in accordance with Article 14(5) of Delegated Regulation (EU) 2019/331.

5. Any amendment referred to in paragraph 4 shall be notified to the Commission as soon as possible, and a Member State shall not proceed to the determination of the preliminary annual amounts of free allowances for each year from 2021 to 2025 in accordance with Article 14(5) of Delegated Regulation (EU) 2019/331 until acceptable amendments have been made.

Article 2

Except as set out in Article 1, no objections are raised with regard to the lists of installations covered by Directive 2003/87/EC as submitted by Member States pursuant to Article 11(1) of Directive 2003/87/EC and the data corresponding to those installations.

This Decision is addressed to the Member States.

Done at Brussels, 25 February 2021.

For the Commission
Frans TIMMERMANS
Executive Vice-President

ANNEX I

Installations using exclusively biomass

Installations Identifier in the NIMs lists

FI000000000000645	FI000000000207696		
SE000000000000031	SE000000000000064	SE000000000000073	SE000000000000074
SE000000000000086	SE000000000000088	SE000000000000099	SE000000000000102
SE000000000000169	SE000000000000186	SE000000000000199	SE000000000000205
SE000000000000211	SE000000000000249	SE000000000000261	SE000000000000319
SE000000000000320	SE000000000000324	SE000000000000382	SE000000000000468
SE000000000000523	SE000000000000543	SE000000000000547	SE000000000000565
SE000000000000583	SE000000000000629	SE000000000000659	SE000000000000681
SE000000000000686	SE000000000000687	SE000000000000705	SE000000000000785
SE000000000000789	SE000000000000798	SE000000000000830	SE000000000000838
SE000000000000845	SE000000000000847	SE000000000202297	SE000000000205800
SE000000000205887	SE000000000206192	SE000000000208282	SE000000000209062
SE000000000209930	SE000000000211058	SE000000000000153	SE000000000000231
SE000000000000779			

ANNEX II

Installation using intermediate product for lime production

Installations Identifier in the NIMs list
SE000000000000419

ANNEX III

Installations using sintered ore product benchmark instead of heat or fuel benchmarks

Installations Identifier in the NIMs list		
SE000000000000497	SE000000000000498	SE000000000000499