

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2022/388

of 8 March 2022

amending Implementing Regulation (EU) 2018/2066 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council

(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 14(1) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2018/2066 ⁽²⁾ lays down rules for the monitoring and reporting of greenhouse gas emissions from the activities subject to Directive 2003/87/EC and, in particular, of emissions from biomass. That Regulation was amended by Commission Implementing Regulation (EU) 2020/2085 ⁽³⁾ in order to align the provisions regarding the emissions from biomass with the rules laid down in Directive (EU) 2018/2001 ⁽⁴⁾, in particular as regards the relevant definitions and the sustainability and greenhouse gas emission saving criteria for the use of biomass. Following those amendments, the provisions regarding the sustainability and greenhouse gas emissions saving criteria for the use of biomass apply from 1 January 2022.
- (2) The application of the sustainability and greenhouse gas emissions saving criteria to activities covered by Directive 2003/87/EC is required to ensure the sustainability of biofuels, bioliquids and biomass fuels used for combustion and its contribution to the climate and environmental objectives of the Union.

⁽¹⁾ OJ L 275, 25.10.2003, p. 32.

⁽²⁾ Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012 (OJ L 334, 31.12.2018, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) 2020/2085 of 14 December 2020 amending and correcting Implementing Regulation (EU) 2018/2066 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 423, 15.12.2020, p. 37).

⁽⁴⁾ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

- (3) There is a growing recognition of the need for alignment of bioenergy policies with other environmental objectives and of the need to ensure fair access to the biomass raw material market for the development of innovative, high value-added bio-based solutions and a sustainable circular bioeconomy. Member States should therefore take into consideration the available sustainable supply of biomass for energy and non-energy uses and the maintenance of the national forest carbon sinks and ecosystems as well as the principles of the circular economy and the biomass cascading use, and the waste hierarchy established in Directive 2008/98/EC of the European Parliament and of the Council on waste ⁽⁷⁾. The Union's Emissions Trading System (ETS) aims to contribute to achieving the Union's climate change mitigation objectives in terms of the reduction of greenhouse gas emissions. In the pursuit of this goal, it is essential to also contribute to wider environmental objectives, and in particular the prevention of biodiversity loss, which is negatively impacted by the indirect land use change associated to the production of certain biofuels, bioliquids and biomass fuels. Considering that a zero rate will apply to all biomass in the ETS until sustainability criteria are fully implemented, Member States are encouraged, in line with the Treaty principle of the 'polluter pays', to use market-based instruments and tools such as taxation at their disposal in order to ensure that the use of unsustainable biomass in the ETS sectors is discouraged to avoid negative environmental impacts.
- (4) Member States had until 30 June 2021 to transpose Directive (EU) 2018/2001. The transposition of the Directive is not yet complete in many Member States.
- (5) Directive (EU) 2018/2001 provides for the adoption of a number of delegated and implementing acts to implement the sustainability and greenhouse gas emissions saving criteria for biomass. The adoption of several of those acts is delayed.
- (6) Directive (EU) 2018/2001 aims to strengthen the role of voluntary international and national certification schemes for verification of compliance with the sustainability and greenhouse gas emissions saving criteria in a harmonised manner. Member States may also set up national certification schemes. The methodologies used by those certification schemes need to be updated once the delegated and implementing acts provided for under Directive (EU) 2018/2001 are adopted. Furthermore, verifiers need to be trained.
- (7) In order to ensure a robust, efficient and harmonised implementation, it is considered necessary and proportionate to postpone the application of the sustainability and greenhouse gas emissions saving criteria for biofuels, bioliquids and biomass in Implementing Regulation (EU) 2018/2066. A period of one calendar year is appropriate to align with the ETS's annual compliance cycle.
- (8) This Regulation also reduces economic uncertainty for operators using biofuels, bioliquids and biomass fuels for combustion in activities under Directive 2003/87/EC, as certification schemes are expected to become fully operational in the course of 2022.
- (9) Implementing Regulation (EU) 2018/2066 should therefore be amended accordingly.
- (10) Pending the adoption of the necessary rules to implement Directive (EU) 2018/2001, this Regulation should apply from 1 January 2022.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 38 of Implementing Regulation (EU) 2018/2066, the following paragraph 6 is added:

'6. By way of derogation from paragraph 5, first subparagraph, Member States, or competent authorities as appropriate, may consider as fulfilled the sustainability and greenhouse gas emissions saving criteria referred to in that paragraph for biofuels, bioliquids and biomass fuels used for combustion from 1 January 2022 to 31 December 2022.'

⁽⁷⁾ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 March 2022.

For the Commission
The President
Ursula VON DER LEYEN
