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 (Text with EEA relevance)

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

(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. In particular, Implementing Regulation (EU) 2018/2066 lays down rules on the monitoring of emissions from biomass which are consistent with the rules on the use of biomass laid down in Directive 2009/28/EC of the European Parliament and of the Council[(3)]. Directive (EU) 2018/2001 of the European Parliament and of the Council[(4)] repeals Directive 2009/28/EC with effect from 1 July 2021. It is therefore appropriate to align the provisions regarding the monitoring and reporting of emissions from biomass laid down in Implementing Regulation (EU) 2018/2066 with the rules laid down in Directive (EU) 2018/2001, in particular as regards the relevant definitions and the sustainability and greenhouse gas emission saving criteria for the use of biomass. Furthermore, since Directive (EU) 2018/2001 lays down the sustainability and greenhouse gas emissions saving criteria for fuels when used for energy purposes, the sustainability criteria for biomass under Implementing Regulation (EU) 2018/2066 should apply only in the case of combustion of biomass in an installation or as a biofuel for aviation. For reasons of legal certainty, it is also necessary to clarify that where the biomass used for combustion does not comply with the sustainability and greenhouse gas emission saving criteria, its carbon content should be considered as fossil carbon.

(2) Pursuant to Commission Delegated Regulation (EU) 2019/331[(5)] and Commission Implementing Regulation (EU) 2019/1842[(6)], the operator of an installation applying for free allocation of allowances in accordance with Article 10a of Directive 2003/87/EC is required to include the relevant monitoring provisions in a monitoring methodology

plan, subject to approval of the competent authority. No further elements need to be included in the monitoring plans of installations to which free allocation is given. Accordingly, it is no longer necessary to provide the Member States with the possibility to require the inclusion of such elements.

(3) During the transition phase between the notification of a modification of a monitoring plan and the approval of the new modified monitoring plan by the competent authority, any gap in the monitoring or any application of a less accurate methodology should be avoided. It should therefore be clarified that data collection in this transition period should be based on both the original and the modified monitoring plan and that records should be kept of both monitoring results.

(4) With a view of ensuring accurate monitoring of source streams involving biogas injected into a gas grid, the rules on determination of the activity data from biogas should be improved and strengthened. In particular, the determination of the biomass fraction should depend on the actual purchase of biogas by the operator, and any potential double counting of the same biogas by different users should be avoided. On the basis of experience gained in application of the methodology for determining the biomass fraction of natural gas from a gas grid, the Commission will assess the need for a review of that methodology.

(5) Due to typical administrative and practical procedures at aerodromes, it is difficult to ascertain to which aircraft a batch of fuel is physically uplifted. Since aviation fuels are uniform in technical specifications, it is therefore appropriate to allow a monitoring approach for biofuel uplifts based on purchase data, provided that the relevant requirements laid down in Articles 29, 30 and 31 of Directive (EU) 2018/2001 are complied with.

(6) For consistency reasons, the rounding of data on emissions of greenhouse gases should be aligned with the way verified emissions are rounded in the Union Registry established in accordance with Article 19 of Directive 2003/87/EC.

(7) In order to reduce administrative burden for operators using certain mixed process materials, the distinction between inorganic carbon, mostly in form of carbonates, and organic carbon should be avoided where possible. In order to align common laboratory practice with the terminology of different source stream types, it is appropriate to include all forms of carbon in the same approach for process emissions. Therefore, the analysis of total carbon of a material instead of separate treatment of total inorganic carbon and total organic carbon should be allowed where possible. As a consequence, the expression ‘non-carbonate carbon’ should be used instead of ‘organic carbon’ to refer to all forms of carbon except carbonates.

(8) The fifth Assessment Report of the Intergovernmental Panel for Climate Change[7] provides new values for global warming potentials of greenhouse gases. The global warming potentials of greenhouse gases used in the EU Emission Trading System should therefore be adapted to those values and aligned with other Union acts.

(9) Following the publication of Implementing Regulation (EU) 2018/2066, an error has been detected in a formula used to determine the emissions of C_2F_6. That error should be corrected.

(10) Member States are to transpose Directive (EU) 2018/2001 by 30 June 2021. As the monitoring and reporting under Implementing Regulation (EU) 2018/2066 takes place on a calendar year basis, the amendments made in order to align the provisions of that Regulation to Directive (EU) 2018/2001 should start to apply only as of the beginning of the subsequent reporting period, that is from 1 January 2022. The date of application for the other amendments and the correction should be the same as for Implementing Regulation (EU) 2018/2066, that is 1 January 2021. Accordingly, the existing provisions of Implementing Regulation (EU) 2018/2066 on the monitoring and reporting on CO_2 emissions from biomass in accordance with Directive 2009/28/EC should continue to apply for the emissions occurring in 2021.

(11) Implementing Regulation (EU) 2018/2066 should therefore be amended and corrected accordingly.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) 2018/2066

Implementing Regulation (EU) 2018/2066 is amended as follows:

(1) Article 3 is amended as follows:

(a) point (21) is replaced by the following:

(21) "biomass" means the biodegradable fraction of products, waste and residues from biological origin from agriculture, including vegetal and animal substances, from forestry and related industries, including fisheries and aquaculture, as well as the biodegradable fraction of waste, including industrial and municipal waste of biological origin;;

(b) the following points (21a) to (21e) are inserted:

(21a) "biomass fuels" means gaseous and solid fuels produced from biomass;

(21b) "biogas" means gaseous fuels produced from biomass;

(21c) "waste" means waste as defined in point (1) of Article 3 of Directive 2008/98/EC, excluding substances that have been intentionally modified or contaminated in order to meet this definition;

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/2085. (See end of Document for details)*

(21d) "residue" means a substance that is not the end product(s) that a production process directly seeks to produce; it is not a primary aim of the production process and the process has not been deliberately modified to produce it;

(21e) "agricultural, aquaculture, fisheries and forestry residues" means residues that are directly generated by agriculture, aquaculture, fisheries and forestry and that do not include residues from related industries or processing;;

(c) point (23) is replaced by the following:

(23) "biofuels" means liquid fuels for transport produced from biomass;;

(2) in Article 12, paragraph 3 is deleted;

(3) in Article 16(1), the second subparagraph is replaced by the following:

In case of doubt, the operator or aircraft operator shall use in parallel both the modified and the original monitoring plan to carry out all monitoring and reporting in accordance with both plans, and it shall keep records of both monitoring results.;

(4) in Article 18(2), the following third subparagraph is added:

For the purpose of this paragraph, Article 38(5) shall apply, provided that the relevant information on the sustainability and the greenhouse gas emissions saving criteria of biofuels, bioliquids and biomass fuels used for combustion is available to the operator.;

(5) in Article 19, the following paragraph 6 is added:

6. For the purpose of this Article, Article 38(5) shall apply.;

(6) Article 38 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

For the purpose of this paragraph, Article 38(5) shall apply.;

(b) in paragraph 2, the first subparagraph is replaced with the following:

The emission factor of biomass shall be zero. For the purpose of this subparagraph, Article 38(5) shall apply.;

(c) in paragraph 4, the following subparagraph is added:

For the purpose of this paragraph, Article 38(5) shall apply.;

(d) the following paragraph 5 is added:

5. Where reference is made to this paragraph, biofuels, bioliquids and biomass fuels used for combustion shall fulfil the sustainability and the greenhouse gas emissions saving criteria laid down in paragraphs 2 to 7 and 10 of Article 29 of Directive (EU) 2018/2001.

However, biofuels, bioliquids and biomass fuels produced from waste and residues, other than agricultural, aquaculture, fisheries and forestry residues are required to fulfil only the criteria laid down in Article 29(10) of Directive

(EU) 2018/2001. This subparagraph shall also apply to waste and residues that are first processed into a product before being further processed into biofuels, bioliquids and biomass fuels.

Electricity, heating and cooling produced from municipal solid waste shall not be subject to the criteria laid down in Article 29(10) of Directive (EU) 2018/2001.

The criteria laid down in paragraphs 2 to 7 and 10 of Article 29 of Directive (EU) 2018/2001 shall apply irrespective of the geographical origin of the biomass.

Article 29(10) of Directive (EU) 2018/2001 shall apply to an installation as defined in Article 3(e) of Directive 2003/87/EC.

The compliance with the criteria laid down in paragraphs 2 to 7 and 10 of Article 29 of Directive (EU) 2018/2001 shall be assessed in accordance with Articles 30 and 31(1) of that Directive.

Where the biomass used for combustion does not comply with this paragraph, its carbon content shall be considered as fossil carbon.;

(7) Article 39 is amended as follows:

(a) paragraph 3 is replaced by the following:

3. By way of derogation from paragraphs 1 and 2 and Article 30, the operator shall not use analyses or estimation methods in accordance with paragraph 2 to determine the biomass fraction of natural gas received from a gas grid to which biogas is added.

The operator may determine that a certain quantity of natural gas from the gas grid is biogas by using the methodology set out in paragraph 4.;

(b) the following paragraph 4 is added:

4. The operator may determine the biomass fraction using purchase records of biogas of equivalent energy content, provided that the operator provides evidence to the satisfaction of the competent authority that:

a there is no double counting of the same biogas quantity, in particular that the biogas purchased is not claimed to be used by anyone else, including through a disclosure of a guarantee of origin as defined in Article 2(12) of Directive (EU) 2018/2001;

b the operator and the producer of the biogas are connected to the same gas grid.

For the purpose of demonstrating compliance with this paragraph, the operator may use the data recorded in a database set up by one or more Member States which enables tracing of transfers of biogas.;

(8) in Article 43(4), the following subparagraph is added:

For the purpose of this paragraph, Article 38(5) shall apply.;

(9) in Article 47(2), the following subparagraph is added:

For the purpose of this paragraph, Article 38(5) shall apply.;

(10) Article 54 is replaced by the following: