Commission Implementing Regulation (EU) 2020/2084 of 14 December 2020 amending and correcting Implementing Regulation (EU) 2018/2067 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2084

of 14 December 2020

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(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 10a(2) and the third subparagraph of Article 15 thereof,

Whereas:

(1) To ensure consistency between verification of annual emissions reports pursuant to Article 15 of Directive 2003/87/EC and verification of activity level data collected pursuant to Commission Implementing Regulation (EU) 2019/1842[(2)], as well as to make use of the synergies, it is appropriate to include rules for the verification of annual activity level reports required under Article 3 of Implementing Regulation (EU) 2019/1842 in the legal framework set by Commission Implementing Regulation (EU) 2018/2067[(3)].

(2) Harmonised standards such as the harmonised standard concerning requirements for greenhouse gas validation and verification bodies for use in accreditation or other forms of recognition are regularly revised. A number of amendments should be made to Implementing Regulation (EU) 2018/2067 to align it with revisions in the applicable standards and to strengthen the requirements for procedures of verifiers and for the operation of the verifier's management system.

(3) It is important to clarify that the presumption of conformity laid down in Article 4 of Implementing Regulation (EU) 2018/2067 does not exempt the verifier from applying the programme specific requirements in that Implementing Regulation and that that presumption of conformity does not apply to certain provisions in Implementing Regulation (EU) 2018/2067 where it is important to preserve the objectives and principles set out in Annex V to Directive 2003/87/EC.

(4) Under Commission Delegated Regulation (EU) 2019/331[4] and Implementing Regulation (EU) 2019/1842, the operator of an installation applying for free allocation in accordance with Article 10a of Directive 2003/87/EC is required to include the relevant monitoring provisions in a monitoring methodology plan. Therefore, it is no longer appropriate to provide for the verification of elements relevant for such free allocation in the scope of verification of the monitoring plan under Implementing Regulation (EU) 2018/2067.

(5) In order to ensure that the evaluation of verification may be carried out in efficient and timely manner, the rules regarding access of the competent authority to internal verification documentation should be amended.

(6) To further promote harmonisation within the Union and to improve the effectiveness of the accreditation system, it is important to clarify the eligibility of verifiers requesting accreditation in accordance with Implementing Regulation (EU) 2018/2067.

(7) Following the publication of Implementing Regulation (EU) 2018/2067, errors of different types have been detected and need to be corrected. In particular, throughout the text, the number of Delegated Regulation 2019/331 was omitted and needs to be inserted.

(8) Force majeure circumstances beyond the control of the operator or aircraft operator may prevent the verifier from carrying out physical site visits according to Article 21 of Implementing Regulation (EU) 2018/2067. In these cases it is appropriate to allow verifiers to carry out virtual site visits provided specific conditions are met.

(9) Implementing Regulation (EU) 2018/2067 should therefore be amended and corrected accordingly.

(10) It is appropriate for the amendments to Implementing Regulation (EU) 2018/2067 to apply to the verification of greenhouse gas emissions, tonne-kilometre data and allocation data related to the fourth trading period. The applicability of the relevant provisions of this Regulation should therefore be deferred to 1 January 2021.

(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

Amendments to Implementing Regulation (EU) 2018/2067

Implementing Regulation (EU) 2018/2067 is amended as follows:

(1) Article 2 is replaced by the following:

Article 2

Scope

This Regulation shall apply to the verification of greenhouse gas emissions and tonne-kilometre data occurring from 1 January 2019, reported pursuant to Article 14 of Directive 2003/87/EC, and to the verification of data relevant for the update of *ex ante* benchmarks and for the determination of free allocation to installations pursuant to Article 10a of that Directive.;

(2) Article 3 is amended as follows:

(a) point (3) is replaced by the following:

(3) "verifier" means a legal person carrying out verification activities pursuant to this Regulation and accredited by a national accreditation body pursuant to Regulation (EC) No 765/2008 and this Regulation or a natural person otherwise authorised, without prejudice to Article 5(2) of that Regulation, at the time a verification report is issued;;

(b) the following point (6a) is inserted:

(6a) "annual activity level report" means a report submitted by an operator pursuant to Article 3(3) of Commission Implementing Regulation (EU) 2019/1842[(5)];;

(c) point (7) is replaced by the following:

(7) "operator's or aircraft operator's report" means the annual emission report to be submitted by the operator or aircraft operator pursuant to Article 14(3) of Directive 2003/87/EC, the tonne-kilometre report to be submitted by the aircraft operator for the purposes of applying for the allocation of allowances pursuant to Articles 3e and 3f of that Directive, the baseline data report submitted by the operator pursuant to Article 4(2) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(2) of that Regulation or the annual activity level report;;

(d) in point (13), point (c) is replaced by the following:

(c) for the purposes of verifying the baseline data report submitted by the operator pursuant to Article 4(2)(a) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(2) of that Regulation or the annual activity level report, any act or omission of an act by the operator that is contrary to the requirements in the monitoring methodology plan;;

(e) the following point (30) is added:

(30) "activity level reporting period" means the applicable period preceding the submission of the annual activity level report

pursuant to Article 3(1) of Implementing Regulation (EU) 2019/1842.;

(3) Article 4 is replaced by the following:

Article 4

Presumption of conformity

Where a verifier demonstrates its conformity with the criteria laid down in the relevant harmonised standards as defined in point (9) of Article 2 of Regulation (EC) No 765/2008, or parts thereof, the references of which have been published in the *Official Journal of the European Union*, it shall, with the exception of Articles 7(1), 7(4), 22, 27(1), 28, 31 and 32 of this Regulation, be presumed to comply with the requirements set out in Chapters II and III of this Regulation in so far as the applicable harmonised standards cover those requirements.;

(4) in Article 6, the first paragraph is replaced by the following:

A verified emissions report, tonne-kilometre report, baseline data report, new entrant data report or annual activity level report shall be reliable for users. It shall represent faithfully that, which it either purports to represent or may reasonably be expected to represent.;

(5) Article 7 is amended as follows:

(a) paragraph 4 is amended as follows:

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

(a) the operator's or aircraft operator's report is complete and meets the requirements laid down in Annex X to Implementing Regulation (EU) 2018/2066, in Annex IV to Delegated Regulation (EU) 2019/331 or Article 3(2) of Implementing Regulation (EU) 2019/1842, as appropriate;;

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

(c) where the verification of an operator's baseline data report, new entrant data report or annual activity level report is concerned, the operator has acted in conformance with the requirements of the monitoring methodology plan pursuant to Article 8 of Delegated Regulation (EU) 2019/331 approved by the competent authority;;

(b) paragraph 5 is replaced by the following:

5. If the verifier discovers that an operator or an aircraft operator is not complying with Implementing Regulation (EU) 2018/2066 or the operator is not complying with, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842, that irregularity shall be included in the verification report even if the monitoring plan or monitoring methodology plan concerned, as appropriate, has been approved by the competent authority.;

(6) Article 10(1) is amended as follows:

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

(h) the operator's or aircraft operator's annual emission, tonne-kilometre report, baseline data report, new entrant data report or annual activity level report, as appropriate;;

(b) the following point (ka) is inserted:

(ka) if the monitoring methodology plan was modified, a record of all modifications in accordance with Article 9 of Delegated Regulation (EU) 2019/331;;

(c) the following point (la) is inserted:

(la) where applicable, information on how the operator has corrected non-conformities or addressed recommendations of improvements that were reported in the verification report concerning an annual activity level report from the previous year or a relevant baseline data report;;

(d) point (n) is replaced by the following:

(n) all relevant correspondence with the competent authority, in particular information related to the notification of modifications of the monitoring plan or monitoring methodology plan as well as corrections of reported data, as appropriate;;

(7) Article 11(4) is amended as follows:

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

(b) whether there have been any modifications to the monitoring plan during the reporting period;;

(b) the following point (ba) is inserted:

(ba) whether there have been any modifications to the monitoring methodology plan during the baseline period or the activity level reporting period, as appropriate;;

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

(d) where applicable, whether the modifications referred to in point (ba) have been notified to the competent authority pursuant to Article 9(3) of Delegated Regulation (EU) 2019/331 or approved by the competent authority in accordance with Article 9(4) of that Regulation.;

(8) in Article 13(1), point (c) is replaced by the following:

(c) a data sampling plan setting out the scope and methods of data sampling related to data points underlying the aggregated emissions in the operator or aircraft operator's emission report, the aggregated tonne-kilometre data in the aircraft operator's tonne-kilometre report or the aggregated data relevant for free allocation in the operator's baseline data report, new entrant data report or annual activity level report.;