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 (Text with EEA relevance)

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

(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) This Regulation should enter into force as a matter of urgency to take account of the First Edition of the International Standards and Recommended Practices on Environmental Protection - Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) (Annex 16, Volume IV to the Chicago Convention) adopted by the ICAO Council at the tenth meeting of its 214th session on 27 June 2018, that are intended to apply from 2019.

(2) The complete, consistent, transparent and accurate monitoring and reporting of greenhouse gas emissions, in accordance with the harmonised requirements laid down in this Regulation, are fundamental for the effective operation of the system for greenhouse gas emission allowance trading ('EU ETS') established pursuant to Directive 2003/87/EC.

(3) In the third trading period of the EU ETS (2013 to 2020), industrial operators, aviation operators, verifiers and competent authorities have gained experience of monitoring and reporting pursuant to Commission Regulation (EU) No 601/2012[(2)]. That experience has shown the need for improvement, clarification and simplification of the monitoring and reporting rules so as to promote further harmonisation and make the system more efficient. Regulation (EU) No 601/2012 has been substantially amended several times. Since further amendments are to be made, it should be replaced in the interests of clarity.

(4) The definition of 'biomass' in this Regulation should be consistent with the definitions of 'biomass', 'bioliquids' and 'biofuels' in Article 2 of Directive 2009/28/EC of the

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European Parliament and of the Council[(3)], in particular since preferential treatment with regard to allowance surrender obligations under the EU ETS constitutes a 'support scheme' within the meaning of point (k) of Article 2, and consequently financial support within the meaning of Article 17(1)(c), of that Directive.

(5) For reasons of consistency, definitions laid down in Commission Decision 2009/450/EC[(4)] and Directive 2009/31/EC of the European Parliament and of the Council[(5)] should apply to this Regulation.

(6) To ensure the best possible operation of the monitoring and reporting system, Member States that designate more than one competent authority should ensure that those competent authorities coordinate their work in line with the principles set out in this Regulation.

(7) The monitoring plan setting out detailed, complete and transparent documentation concerning the methodology of a specific installation or aircraft operator should be a core element of the system established by this Regulation. Regular updates of the plan should be required, both to respond to the verifier's findings and on the operator's or aircraft operator's own initiative. The main responsibility for the implementation of the monitoring methodology, parts of which are specified by procedures required by this Regulation, should remain with the operator or the aircraft operator.

(8) As the monitoring plan constitutes the core element of the monitoring and reporting rules, any significant change to it should be subject to the competent authority's approval. However, in order to reduce the administrative burden on competent authorities and operators, certain types of change to the plan should not be considered significant and therefore not require formal approval.

(9) It is necessary to establish basic monitoring methodologies to minimise the burden on operators and aircraft operators, and facilitate the effective monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC. Those methodologies should include basic calculation and measurement methodologies. The calculation methodologies should consist of a standard methodology and a mass-balance methodology. It should be possible to combine measurement methodologies, standard calculation methodology and mass-balance methodology within the same installation, provided the operator ensures that there are no omissions or double counting.

(10) To minimise the burden on operators and aircraft operators, simplification with regard to the uncertainty assessment requirement, without reducing accuracy, should be provided. Considerably reduced requirements with regard to uncertainty assessment should be applied where measuring instruments are used under type-conform conditions, in particular where those instruments are under national legal metrological control.

(11) It is necessary to define calculation factors which can be either default factors or determined by analysis. Requirements for analysis should retain the preference for use of laboratories accredited in accordance with the harmonised standard General requirements for the competence of testing and calibration laboratories (EN ISO/IEC 17025) for the relevant analytical methods, and provide requirements for demonstrating

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robust equivalence in the case of non-accredited laboratories, including in conformity with the harmonised standard Quality management systems – Requirements (EN ISO/IEC 9001) or other relevant certified quality management systems.

(12) A transparent and consistent methodology for determining unreasonable costs should be laid down.

(13) Further equivalence between calculation-based and measurement-based methodologies should be established. This will require better alignment of tier requirements. For the purpose of determining biomass fractions of CO_2 when using continuous emissions measurement systems (CEMS), recent technological progress should be taken into account. Therefore, more flexible rules should be set for determining the biomass fraction, in particular allowing methods other than calculation-based approaches for this purpose.

(14) Since emissions stemming from biomass are commonly rated as zero for the purpose of the EU ETS, simplified monitoring rules for pure biomass source streams should be laid down. Where fuels or materials are mixtures of biomass and fossil constituents, the monitoring requirements should be clarified. A better distinction should be made between the preliminary emission factor referring to the total carbon content and the emission factor referring only to the fossil CO_2 fraction. For this purpose, separate tier definitions should be provided for the preliminary emission factor and the biomass/fossil fraction. As with other calculation factors, requirements should take into account the size of the installation and the greenhouse gas emissions associated with the fuel or material. To this end, minimum requirements should be defined.

(15) Imposing a disproportionate monitoring effort on installations with lower, less consequential annual emissions should be avoided, while ensuring that an acceptable degree of accuracy is maintained. In that regard, special conditions should be laid down for installations considered to have low emissions and aircraft operators considered to be small emitters.

(16) Article 27 of Directive 2003/87/EC allows Member States to exclude small installations from the EU ETS, subject to equivalent measures and provided that the conditions in that Article are met. Article 27a of Directive 2003/87/EC allows Member States to exclude installations emitting less than 2 500 tonnes, from the EU ETS provided that the conditions in that Article are met. This Regulation should not apply directly to installations excluded pursuant to Article 27 or 27a of the Directive 2003/87/EC unless the Member State decides otherwise.

(17) To close potential loopholes connected to the transfer of inherent or pure CO_2, such transfers should only be allowed subject to very specific conditions. In its judgment of 19 January 2017 in Case C-460/15[(6)], the Court of Justice of the European Union found that the second sentence of Article 49(1) of Regulation (EU) No 601/2012 and point 10(B) of Annex IV to that Regulation are invalid in so far as they systematically include the carbon dioxide (CO_2) transferred to another installation for the production of precipitated calcium carbonate in the emissions of the lime combustion installation, regardless of whether or not that CO_2 is released into the atmosphere. In order to take account of the Court's judgment in Case C-460/15, the CO_2 that is transferred for the

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production of precipitated calcium carbonate and ends up chemically bound in it should be recognised as not released into the atmosphere. However, those conditions should not exclude the possibility of future innovations. Regulation (EU) No 601/2012 should therefore be amended accordingly.

(18) Since it is possible that not only CO_2, but also N_2O is transferred between installations, monitoring rules should be introduced for the transfer of N_2O that are similar to those for the transfer of CO_2. Furthermore, it is appropriate to extend the definition of inherent CO_2 beyond the limits of CO_2 contained in fuels to CO_2 contained in any source stream to be monitored.

(19) Specific aviation-related provisions on monitoring plans and the monitoring of greenhouse gas emissions should be laid down.

(20) The estimation of missing data should be made consistent by requiring the use of conservative estimation procedures recognised in the monitoring plan or, where this is not possible, through the approval of an appropriate procedure by the competent authority and its inclusion in the monitoring plan.

(21) Operators should be required regularly to review their monitoring methodology for improvement and to consider recommendations made by verifiers as part of the verification process. Where they do not use a methodology based on the tier system or fail to meet the highest tier methodologies, operators should report regularly on the steps they are taking to meet a monitoring methodology based on the tier system and to reach the highest tier required. To reduce the administrative burden related to reporting on improvements, intervals and reasons for reporting on improvements should be adjusted taking into account experiences in the administrative practice by Member States.

(22) Pursuant to Articles 3e(1) and 28a(2) of Directive 2003/87/EC, aircraft operators may apply for an allocation of emission allowances free of charge, in respect of activities listed in Annex I to that Directive, based on verified tonne-kilometre data.

(23) The use of information technology, including requirements for data-exchange formats and the use of automated systems, should be promoted and the Member States should therefore be allowed to require economic operators to use such systems. The Member States should also be allowed to elaborate their own electronic templates and file-format specifications which should, however, conform to minimum standards published by the Commission.

(24) Rules for substances containing other forms of carbon leading to CO_2 emissions than carbonate-containing materials should be laid down to provide more clarity on the monitoring and reporting rules for process emissions. The use of urea in flue-gas cleaning should be mentioned explicitly and a corresponding default emission factor should be listed.

(25) Member States should be given sufficient time to adopt the necessary measures and establish the appropriate national institutional framework to ensure the effective application of this Regulation. This Regulation should therefore apply, including after another revision, before its start of applicability, in order to take further developments into account and to remove references to sources outside Union law where possible,

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from the beginning of the fourth trading period, except for the amendments to Regulation (EU) No 601/2012 that should apply as soon as possible.

(26) Regulation (EU) No 601/2012 should be repealed from 1 January 2021. However, its effects should be maintained for the monitoring, reporting and verification of emissions and activity data occurring during the third EU ETS trading period.

(27) This Regulation includes improvements to monitoring and reporting that take account of the First Edition of the International Standards and Recommended Practices on Environmental Protection - Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) (Annex 16, Volume IV to the Agreement) adopted by the ICAO Council at the tenth meeting of its 214th session on 27 June 2018. The Regulation on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC is also being amended to take account of the First Edition of the International Standards and Recommended Practices, and these two instruments are being complemented by a Delegated Act pursuant to Article 28c of Directive 2003/87/EC. Regulation (EU) No 601/2012 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

SECTION 1

Subject matter and definitions

Article 1

Subject matter

This Regulation lays down rules for the monitoring and reporting of greenhouse gas emissions and activity data pursuant to Directive 2003/87/EC in the trading period of the Union emissions trading system commencing on 1 January 2021 and subsequent trading periods.

Article 2

Scope

This Regulation shall apply to the monitoring and reporting of greenhouse gas emissions specified in relation to the activities listed in Annex I to Directive 2003/87/EC and