

COMMISSION IMPLEMENTING DECISION (EU) 2022/1028**of 27 June 2022****amending Decision (EU) 2021/355 as regards certain installations in Denmark, France and Sweden and included in the list of installations covered by the emissions trading system of the Union laid down in Directive 2003/87/EC***(notified under document C(2022) 4289)***(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) Further to the submission by Member States of their National Implementation Measures (NIMs), the Commission adopted Decision (EU) 2021/355 ⁽²⁾ on national implementation measures for the transitional free allocation of greenhouse gas emission allowances. That Decision rejects the inscription of certain installations and their corresponding data on the lists of installations covered by Directive 2003/87/EC, thus excluding them from the scope of the emissions trading system of the Union (EU ETS).
- (2) Installations exclusively using biomass were excluded from the EU ETS, in line with 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 EU ETS. Therefore, the inscription of the installations that used biomass exclusively for all the years of the baseline period is to be rejected despite being listed in accordance with Article 11(1) of Directive 2003/87/EC.
- (3) The Commission was informed that Sweden had erroneously included in its NIMs the installation SE-207651. That installation uses biomass exclusively and for that reason should have been excluded from the scope of the EU ETS.
- (4) Following a query from the Commission, Denmark confirmed that installations DK-65, DK-66 and DK-135 had no fossil emissions during the baseline period 2014 – 2018. Those installations use biomass exclusively and should also have been excluded from the scope of the EU ETS.
- (5) It is therefore appropriate to reject the inscription of the installations DK-65, DK-66, DK-135 and SE-207651 on the lists of installations covered by Directive 2003/87/EC for all the years of the baseline period including when they were listed in accordance with Article 11(1) of Directive 2003/87/EC.

⁽¹⁾ OJ L 275, 25.10.2003, p. 32.

⁽²⁾ 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 (OJ L 68, 26.2.2021, p. 221).

⁽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 L 140, 5.6.2009, p. 63).

- (6) Following a request for clarification from the Commission, France informed the Commission that two installations, FR-206164 and FR-206032, only produce polymers. Both installations have zero direct CO₂ emissions because they import the heat needed for the production from another EU ETS installation. In the judgment in Case C-577/16 ⁽⁴⁾, the Court of Justice held that an installation for the production of polymers which obtains the heat needed for that production from a third-party installation does not fall within the scope of the EU ETS, since it does not generate direct CO₂ emissions. The inscription of those installations on the lists of installations covered by Directive 2003/87/EC should therefore be rejected.
- (7) Decision (EU) 2021/355 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Commission Decision (EU) 2021/355 is amended as follows:

- (1) in Article 1, the following paragraph 6 is added:

'6. The inscription of the installations listed in Annex IV to this Decision included on the lists of installations covered by Directive 2003/87/EC and the corresponding free allocation data to those installations, submitted to the Commission pursuant to Article 11(1) of that Directive, are rejected.;

- (2) Annex I is replaced by the text in Annex I to this Decision;
- (3) The text set out in Annex II to this Decision is added as Annex IV.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 27 June 2022.

For the Commission
Frans TIMMERMANS
Executive Vice-President

⁽⁴⁾ Judgment of the Court of Justice of 28 February 2018, *Trinseo Deutschland Anlagengesellschaft mbH v Bundesrepublik Deutschland*, C-577/16, ECLI:EU:C:2018:127.

ANNEX I

'ANNEX I

Installations using exclusively biomass

Installations identifier in the national implementation measures lists

| | | | |
|-------------------|-------------------|-------------------|--------------------|
| DK000000000000065 | DK000000000000066 | DK000000000000135 | |
| 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 | SE000000000207651 | | |

ANNEX II

‘ANNEX IV

Installations producing polymers and importing heat, with zero direct CO₂ emissions

Installations identifier in the national implementation measures list

FR000000000206164

FR000000000206032’
