

Case No: 83357
Document No: 1173152
Decision No: 013/21/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 24 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 as referred to at point 21a) of Annex XX to the Agreement on the European Economic Area, as adapted to the Agreement by Protocol 1 thereto

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular its Article 5 (“the Surveillance and Court Agreement”),

Having regard to the Act referred to at point 21a) of Annex XX to the Agreement on the European Economic Area (“the EEA Agreement”),

Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC,

as amended and as adapted to the EEA Agreement by Protocol 1 thereto, and in particular to Articles 10a and 11 thereof (“the Act”),

Having regard to the Act referred to at point 21a) of Annex XX to the EEA Agreement,

Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council,

as adapted to the EEA Agreement by Protocol 1 thereto (“Regulation (EU) 2019/331”),

Whereas:

The EU Emission Trading System (“ETS”) as established by the Act was incorporated into the EEA Agreement as from the trading period that started in 2008 (“phase 2 of the ETS”).¹ The present decision concerns the first allocation period (2021-2025) of the trading period 2021 to 2030 (“phase 4 of the ETS”).²

¹ Decision of the EEA Joint Committee No 146/2007 of 26 October 2007.

² Decisions by the Authority concerning the NIMs for phase 3 of the ETS: Iceland (College Decision 297/13/COL, Document No. 669934); Liechtenstein (College Decision 299/13/COL, Document No. 660252); Norway (College Decision 298/13/COL, Document No. 669986).

Auctioning is the main rule for the allocation of emission allowances to operators of installations within the scope of the ETS from 2013 onwards. However, eligible operators will continue to receive free allowances in phase 4 of the ETS. The amount of allowances that each such operator receives is determined based on harmonised rules in the European Economic Area (“EEA”) as set out in the Act and Regulation (EU) 2019/331.

Pursuant to Article 11 of the Act the EFTA States are required to submit to the EFTA Surveillance Authority (“the Authority”) their National Implementation Measures (NIMs). The NIMs shall comprise a list of installations covered by the Act on their territory and include information on production activity, transfers of heat and gases, electricity production and emissions at sub-installation level, over the five years of the baseline period (2014-2018) in accordance with Annex IV to Regulation (EU) 2019/331.

It lies within the responsibility of the Authority to carry out the necessary assessment within its specific area of competence, under Article 11(3) of the Act, in order to ensure that the NIMs are complete and in compliance with the the Act and Regulation (EU) 2019/331.

The EFTA States requested the Authority to undertake the necessary preparations for phase 4 of the ETS prior to the entry into force of the Decision of the EEA Joint Committee No 112/2020 of 14 July 2020 (“JCD No 112/2020”), to allow the Authority to take the necessary formal decisions as quickly as possible upon its entry into force.³ JCD No 112/2020 incorporates Directive (EU) 2018/410⁴, concerning amendments to the Act relevant for phase 4 of the ETS, into the EEA Agreement. Following these requests, the Authority undertook a preliminary NIMs assessment prior to the entry into force of JCD No 112/2020 to enable a timely implementation of phase 4 of the ETS in the EEA and to ensure that the relevant data from the EFTA States could be taken into account by the European Commission for the establishment of the ETS for phase 4.⁵

The NIMs of the EFTA States for the period 2021-2025, drawn up under Article 11 of the Act, and the additional information submitted pursuant to Article 14 of Regulation (EU) 2019/331 including notifications of exclusions under Articles 27 and 27a of the Act, were first submitted to the Authority in a preliminary version.⁶ The EFTA States submitted their NIMs using a common template, which included the relevant data for each installation, to ensure data quality and comparability. The EFTA States also submitted a methodology report setting out the data collection process conducted by their authorities.⁷

During the preliminary assessment discussions between the Authority and the EFTA States were held and the Authority addressed questions to the EFTA States. This included requests for additional information, which resulted in the submission of additional information and new iterations of the preliminary NIMs by the EFTA States.

Upon the entry into force of JCD No 112/2020 on 1 February 2021⁸, the EFTA States formally notified the Authority of their final NIMs and Article 27 and 27a notifications,

³ Letter from Norway dated 18 November 2019 (Document No 1098330); Letter from Iceland dated 2 December 2019 (Document No. 1102151); Letter from Liechtenstein dated 30 January 2020 (Document No. 1114146).

⁴ *Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/18141* (OJ L 76, 19.3.2018, p. 3).

⁵ Hereunder for the determination of *ex-ante* benchmark values pursuant to Article 10a of Directive 2003/87/EC.

⁶ Submission from Iceland of 20 January 2020 (Document No. 1109368); Submission from Liechtenstein of 30 January 2020 (Document No. 1111367); Submission from Norway of 8 October 2019 (Document No. 1174116).

⁷ Iceland (Document No. 1178037); Norway (Document No. 1174116).

⁸ Decision of the EEA Joint Committee No 112/2020 as amended by Decision of the EEA Joint Committee No. 245/2020.

Iceland on 1 February 2021⁹, Liechtenstein on 1 February 2021¹⁰ and Norway on 1 February 2021.¹¹ The final NIMs submitted by Iceland and Norway reflected the outcome of the preliminary compliance assessment undertaken by the Authority. Liechtenstein notified the Authority that it would exclude the two installations covered by the Act on their territory under Article 27a of the Act, and therefore did not submit a NIM.

During its assessment the Authority has coordinated closely with the European Commission with a view to ensure a harmonised approach across the EEA.

For its NIMs assessment the Authority applied the same methodology applied by the European Commission, as described below:

- (1) Given the wide range of information and data submitted, the Authority first analysed the completeness of all the NIMs. Where the Authority noted that submissions were incomplete, it requested additional information from the EFTA States concerned. In reply to those requests, the relevant authorities submitted additional relevant information in order to complete the submitted NIMs.
- (2) The Authority then assessed the NIMs and Article 27 and 27a notifications against the criteria contained in the Act and in Regulation (EU) 2019/331.¹² Those consistency checks constituted the second phase of the NIMs assessment.
- (3) The consistency checks of the NIMs were carried out for each individual EFTA State and each installation separately and in comparison with other installations in the same sector. As part of that comprehensive assessment, the Authority analysed the consistency of the data itself and with the rules for harmonised free allocation for phase 4 of Regulation (EU) 2019/331. The Authority examined the eligibility of installations for free allocation, the division of installations into sub-installations and their boundaries, in order to apply the correct benchmark. Considering that the data is used for calculating the revised benchmark values, the Authority paid particular attention to the attribution of emissions to each sub-installation. Furthermore, given the significant impact on allocations, the Authority analysed in detail the data concerning calculation of the historical activity levels of installations during the baseline period. The Authority also examined whether the inclusion of an installation in the NIMs lists was in line with the provisions of Annex I to the Act.
- (4) Further in-depth analyses of the data for specific installations that have had an impact in the calculation of the revised benchmark values and per EFTA State were conducted. The specific assessments were based on a risk assessment analysis that took into account several criteria including the emissions intensity for each product benchmark sub-installation.
- (5) Based on the results of those checks, the Authority carried out a detailed assessment of installations where potential irregularities in the application of the harmonised allocation rules were identified, seeking further clarification from the competent authority of the EFTA State concerned.

In the light of the results of this compliance assessment, the Authority considers the NIMs of Iceland and Norway to be compatible with the Act and Regulation (EU) 2019/331. The

⁹ Document No. 1177510, with a revised version submitted on 8 February (Document No. 1178851).

¹⁰ Document No. 1177445.

¹¹ Document No. 1177361.

¹² Where applicable the guidance documents published by the European Commission between January and April 2020, with a view to reflect a harmonized approach within the EEA have been taken into account.

installations included in the NIMs by the EFTA States have been found eligible for free allocation and no inconsistencies with regard to the rules for harmonised free allocation of emission allowances were detected. The Authority considers that the notified exclusions of installations pursuant to Articles 27 and 27a of the Act by Iceland and Liechtenstein to be compatible with the Act.

HAS ADOPTED THIS DECISION:

1. No objections are raised with regard to the list of installations covered by Directive 2003/87/EC as submitted by the EFTA States pursuant to Article 11(1) of the Act and their corresponding data to these installations.
2. This Decision is addressed to Iceland, Liechtenstein and Norway.

Done at Brussels, 24 February 2021

For the EFTA Surveillance Authority

Bente Angell-Hansen
President

Frank J. Büchel
College Member

Högni Kristjánsson
Responsible College Member

For Carsten Zatschler
Countersigning as Director,
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This document has been electronically authenticated by Bente Angell-Hansen, Catherine Howdle.