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#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 13 March 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 13.3.2019  
amending Commission Delegated Regulation [C(2019)1841 of 12 March  
2019] supplementing Directive 2003/87/EC of the European Parliament  
and of the Council as regards the functioning of the Union Registry under  
Regulation (EU) 2018/842 of the European Parliament and of the Council

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Delegations will find attached document C(2019) 1846 final.

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Encl.: C(2019) 1846 final



Brussels, 13.3.2019  
C(2019) 1846 final

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 13.3.2019**

**amending Commission Delegated Regulation [C(2019)1841 of 12 March 2019]  
supplementing Directive 2003/87/EC of the European Parliament and of the Council as  
regards the functioning of the Union Registry as regards the functioning of the Union  
Registry under Regulation (EU) 2018/842 of the European Parliament and of the  
Council**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

The Effort Sharing Regulation (ESR)<sup>1</sup>, replacing the Effort Sharing Decision, was adopted on 30 May 2018. Article 12 of ESR gives the Commission the right to adopt via delegated act a Registry Regulation in order to make possible the accurate accounting of transactions and their blocking in case of irregularities.

For accounting of transactions under ESR, the new Registry Regulation should build on existing concepts used in the current Registry Regulation 389/2013<sup>2</sup> for the accounting under the Effort Sharing Decision, which covers the period 2013 to 2020. It uses the same concept of units (Annual Emission Allocations – AEAs), which, similar as under the current Registry Regulation, cannot be held outside the ESR and LULUCF Accounts. However, ESD and ESR accounts are separate from each other – AEAs cannot be transferred between ESD and ESR accounts.

The Registry rules for Effort Sharing need to be adapted to take into account new elements introduced by the ESR. Unlike the ESD, the ESR does not allow the use of international credits for compliance. Other key new elements stemming from the new Effort Sharing Regulation, which need to be reflected in the Registry are a five-yearly compliance check instead of annual checks, the introduction of two new flexibilities with the EU ETS and with the Land Use Land Use Change and Forestry (LULUCF) as well as a new safety reserve for compliance purposes. While the ETS flexibility does not lead to transfers of units from ETS accounts to ESR accounts within the Registry, the LULUCF flexibility and the possibility to use AEAs to comply with the LULUCF regulation need such transferability. This has impact on the sequencing of the two compliance processes in the Registry. Finally, there are provisions to ensure the orderly closure of ESD accounts, including that any remaining deficit on ESD accounts will result in a corresponding deduction of AEAs from ESR accounts.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

The Commission established the Expert Group on Climate Change Policy on 27 March 2018. For the preparation of this Delegated Regulation, meetings of the Expert Group on Climate Change Policy were held on 3 April 2018, 18 May 2018, 11-12 June 2018 and 3 July 2018.

The documents relevant to the meetings have been transmitted simultaneously to the European Parliament and the Council, as foreseen in the Common Understanding on Delegated Acts annexed to the Interinstitutional Agreement on Better Law Making<sup>3</sup>.

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<sup>1</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018; p. 26).

<sup>2</sup> Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ L 122, 3.5.2013, p.1).

<sup>3</sup> Interinstitutional Agreement Between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p.1).

The observations expressed by the expert group were taken into account when preparing the draft Delegated Regulation.

Furthermore, online feedback on the text of the Delegated Regulation was collected on the Better Regulation portal for four weeks between 9 January and 6 February 2019. Eight contributions were provided – by public authorities (6), a research institution (1) and a consulting company (1). Some comments have helped to further improve the clarity of the text.

Two new elements were raised during the online feedback:

- The concept of additional ESR flexibility accounts exempted from standard compliance rules could not be accepted, as it would de facto bypass the limits on the use of flexibilities agreed by the co-legislators in Article 5 of ESR; it also worth recalling that as long as those limits are respected the present rules provide Member States with considerable freedom on how to operationalise any project-based mechanisms;
- The proposal for price transparency on AEA transfers does not fit the scope of this delegated act, but could be taken up in an implementing act under the Governance Regulation<sup>4</sup>, as that Regulation sets out Member States' reporting requirements relevant for ESR.

Other comments received contained similar arguments to what has already been put forward during extensive discussions within the Climate Change Policy Expert Group. Therefore, after analysing the opinions received, the Commission has made no change beyond textual improvements to the Delegated Regulation.

### 3. LEGAL ELEMENTS OF THE DELEGATED ACT

The proposal contains a chapter 1 of Title IIa, to be inserted in the new Regulation on the Union Registry, on 'Transactions under Regulation (EU) 2018/842' (ESR). Articles 59a to 59c cover the creation of AEAs and their transfer to Member States' ESR Compliance Accounts. Articles 59d to 59f define two key moments for each ESR Compliance Account – calculation of the balance and determination of the compliance status figure. Articles 59h to 59m and Article 59r implement ESR Articles 5 to 7 on the use of flexibilities. Articles 59n to 59p lay down the rules for the safety reserve, implementing ESR Article 11. Article 59g implements ESR Article 9, i.e. what happens if the Member State does not comply with its obligations under ESR.

Article 59q implements ESR Articles 6(3) and 10 on possible AEA adjustments. Article 59s deals with transfers initiated in error. The proposed new Article 27a lays down rules for the closure of ESR Compliance Accounts.

Article 88 of the new Regulation on the Union Registry ensures that until 2023 the Registry manages simultaneously with the ESR accounts also the existing ESD accounts under Commission Regulation 389/2013.

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<sup>4</sup> Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

COMMISSION DELEGATED REGULATION (EU) .../...

of 13.3.2019

**amending Commission Delegated Regulation [C(2019)1841 of 12 March 2019]  
supplementing Directive 2003/87/EC of the European Parliament and of the Council as  
regards the functioning of the Union Registry as regards the functioning of the Union  
Registry under Regulation (EU) 2018/842 of the European Parliament and of the  
Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013<sup>5</sup>, and in particular Article 12(1) thereof,

Whereas:

- (1) Commission Delegated Regulation [C(2019)1841 of 12 March 2019] supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry<sup>6</sup> lays down the rules for the functioning of the Union Registry, established under Directive 2003/87/EC of the European Parliament and the Council<sup>7</sup>.
- (2) All operations required in relation to the compliance period between 2013 and 2020 should be completed in accordance with the rules laid down in Commission Regulation (EU) 389/2013<sup>8</sup>. As Decision No 406/2009/EC of the European Parliament and of the Council<sup>9</sup> lays down the rules for the compliance period from 2013-2020, including on the use of international credits generated pursuant to the Kyoto Protocol, that Regulation will continue to apply to those operations until 1 July 2023, which is the end of the additional period for fulfilling commitments under the second commitment period of the Kyoto Protocol. In order to provide clarity about the rules applying to all operations related to the compliance period between 2013 and 2020 in accordance with Decision No 406/2009/EC, on the one hand, and the rules applying to all operations related to the compliance period between 2021 and 2030 in accordance

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<sup>5</sup> OJ L 156, 19.6.2018; p. 26.

<sup>6</sup> [OJ L]

<sup>7</sup> Directive 2003/87/EC of the European Parliament and 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 (OJ L 275, 25.10.2003, p. 32).

<sup>8</sup> Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ L 122, 3.5.2013, p. 1).

<sup>9</sup> Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

with Regulation (EU) 2018/842, on the other hand, the scope of application of those provisions of Regulation (EU) 389/2013 which continue to apply, after the entry into force of the present Regulation, for the operations related to the compliance period between 2013 and 2020 will be limited to that purpose.

- (3) Regulation (EU) 2018/842 sets obligations for Member States with respect to their minimum contributions for the period from 2021 to 2030 to fulfilling the Union's target of reducing its greenhouse gas emissions by 30% below 2005 levels in 2030.
- (4) Article 12 of Regulation (EU) 2018/842 provides that the accurate accounting of transactions under that Regulation is to be ensured in the Union Registry.
- (5) Annual emission allocation units should be issued in the Member States Compliance Accounts for compliance with obligations under Regulation (EU) 2018/842 ('ESR Compliance Accounts') established in the Union Registry pursuant to Commission Delegated Regulation [C(2019)1841 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry], in quantities determined pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842. Annual emission allocation units should only be held in in the ESR Compliance Accounts in the Union Registry.
- (6) The Union Registry should enable the implementation of the compliance cycle under Regulation (EU) 2018/842 by providing the processes for the introduction in the ESR Compliance Accounts of the annual reviewed greenhouse gas emission data, for the determination of the compliance status figure for each Member State ESR Compliance Account for each year of a given compliance period, and, where necessary, for the application of the factor under Article 9(1)(a) of Regulation (EU) 2018/842.
- (7) The Union Registry should also ensure the accurate accounting of transactions pursuant to Articles 5, 6, 7 and 11 of Regulation (EU) 2018/842.
- (8) Commission Delegated Regulation [C(2019)1841 of 12 March 2019] supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Commission Delegated Regulation [C(2019)1841 of 12 March 2019] supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry is amended as follows:

- (1) in citations, the following text is added:

'Having regard to Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013\*, and in particular Article 12(1) thereof,

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\* OJ L 156, 19.6.2018, p. 26.';

- (2) in Article 2, the following paragraph is added:

'This Regulation also applies to annual emission allocation units (AEA).';

- (3) Article 3 is amended as follows:
- (a) point (12) is replaced by the following:
- ‘(12) ‘transaction’ means a process in the Union Registry that involves the transfer of an allowance or an annual emission allocation unit from one account to another account;’
- (b) the following points (23) and (24) are added:
- ‘(23) ‘ESR compliance period’ means the period from 1 January 2021 to 31 December 2030 during which the Member States are to limit their greenhouse gas emissions pursuant to Regulation (EU) 2018/842;
- (24) ‘annual emission allocation unit’ means a subdivision of a Member State's annual emission allocation determined pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842 equal to one tonne of carbon dioxide equivalent;’;
- (4) in Article 4, paragraph 2 is replaced by the following:
- ‘2. Member States shall use the Union Registry for the purposes of meeting their obligations under Article 19 of Directive 2003/87/EC and Article 12 of Regulation (EU) 2018/842. The Union Registry shall provide national administrators and account holders with the processes set out in this Regulation.’;
- (5) in Article 7, paragraph 5 is replaced by the following:
- ‘5. The central administrator, the competent authorities and national administrators shall only perform processes necessary to carry out their respective functions in accordance with Directive 2003/87/EC and Regulation (EU) 2018/842.’;
- (6) Article 12 is replaced by the following:
- ‘Article 12*
- Opening accounts administered by the central administrator*
1. The central administrator shall open all ETS management accounts in the Union Registry, the EU ESR AEA Total Quantity Account, the Deletion Account under Regulation (EU) 2018/842 (‘ESR Deletion Account’), the EU Annex II AEA Total Quantity Account, the EU ESR Safety Reserve Account and one ESR Compliance Account for each Member State for each year of the compliance period.
2. The national administrator designated pursuant to Article 7(1) shall act as authorised representative of the ESR Compliance Accounts.’;
- (7) the following Article 27a is inserted:
- ‘Article 27a*
- Closure of the ESR Compliance Account*
- The central administrator shall close an ESR Compliance Account not earlier than one month after the determination of the compliance status figure for that account pursuant to Article 59f, and after giving prior notice to the account holder.

On closure of the ESR Compliance Account, the central administrator shall ensure that the Union Registry transfers the AEA's remaining in the ESR Compliance Account to the ESR Deletion Account.';

(8) the following Title IIA is inserted:

**'TITLE IIA**

**SPECIFIC PROVISIONS FOR ACCOUNTING TRANSACTIONS  
UNDER REGULATIONS (EU) 2018/842 AND (EU) 2018/841**

***CHAPTER 1***

***Transactions under Regulation (EU) 2018/842***

*Article 59a*

*Creation of AEA's*

1. At the beginning of the compliance period, the central administrator shall create:

- (a) in the EU ESR AEA Total Quantity Account a quantity of AEA's equal to the sum of the annual emission allocations for all Member States for all the years of the compliance period as set out in Article 10(2) of Regulation (EU) 2018/842 and in the Decisions adopted pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842;
- (b) in the EU Annex II AEA Total Quantity Account a quantity of AEA's equal to the sum of all annual emission allocations for all eligible Member States for all the years of the compliance period as set out in the Decisions adopted pursuant to Articles 4(3) and (4) of Regulation (EU) 2018/842 based on the percentages notified by Member States under Article 6(3) of that Regulation.

2. The central administrator shall ensure that the Union Registry assigns each AEA a unique unit identification code upon its creation.

*Article 59b*

*Annual emission allocation units*

AEA's shall be valid for the purpose of meeting the Member States' greenhouse gas emissions limitation requirements pursuant to Article 4 of Regulation (EU) 2018/842 and their commitments under Article 4 of Regulation (EU) 2018/841. They shall be transferable only pursuant to conditions laid down in Article 5(1) to (5), Article 6, Article 9(2) and Article 11 of Regulation (EU) 2018/842 and Article 12(1) of Regulation (EU) 2018/841.

*Article 59c*

*Transfer of AEA's to each ESR Compliance Account*

1. At the beginning of the compliance period, the central administrator shall transfer a quantity of AEA's corresponding to the annual emission allocation for each Member State for each year as set out in Article 10(2) of Regulation (EU) 2018/842 and in the Decisions adopted pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842 from the EU ESR AEA Total Quantity Account into the relevant ESR Compliance Account.



2. Where on the closure of the Member State ESD Compliance Account for year 2020 pursuant to Article 31 of Regulation (EU) No 389/2013, the total quantity of greenhouse gas emissions expressed in tonnes of carbon dioxide equivalent in that ESD Compliance Account exceeds the sum of all AEA, international credits, tCERs and ICERs, the amount corresponding to the quantity of emissions in excess, multiplied by the abatement factor specified in Article 7(1)(a) of Decision 406/2009/EC, shall be deducted from the quantity of the AEA transferred to the Member State ESR Compliance Account for year 2021 pursuant to paragraph 1 of this Article.

#### *Article 59d*

##### *Introduction of the relevant greenhouse gas emissions data*

1. In a timely manner, upon availability of the relevant reviewed greenhouse gas emissions data for a given year of the compliance period for the majority of Member States, the central administrator shall enter the total quantity of the relevant reviewed greenhouse gas emissions expressed in tonnes of carbon dioxide equivalent for each Member State in its ESR Compliance Account for that given year of the compliance period.

2. The central administrator shall also enter the sum of the relevant reviewed greenhouse gas emissions data for all Member States for a given year in the EU ESR AEA Total Quantity Account.

#### *Article 59e*

##### *Calculation of the balance of the ESR Compliance Account*

1. Upon introduction of the relevant greenhouse gas emissions data pursuant to Article 59d, the central administrator shall ensure that the Union Registry calculates the balance of the respective ESR Compliance Account by subtracting the total quantity of reviewed greenhouse gas emissions expressed in tonnes of carbon dioxide equivalent in the respective ESR Compliance Account from the sum of all AEA in the same ESR Compliance Account.

2. The central administrator shall ensure that the Union Registry displays the balance of each ESR Compliance Account.

#### *Article 59f*

##### *Determination of the compliance status figures*

1. The central administrator shall ensure that 6 months after the introduction of the relevant greenhouse gas emissions data pursuant to Article 59d of this Regulation for the year 2025 and 2030 the Union Registry determines the compliance status figure for each ESR Compliance Account for the year 2021 and 2026 by calculating the sum of all AEA, credits pursuant to Article 24a of Directive 2003/87/EC and LMUs less the total quantity of reviewed greenhouse gas emissions expressed in tonnes of carbon dioxide equivalent in the same ESR Compliance Account.

2. The central administrator shall ensure that the Union Registry determines the compliance status figure for each ESR Compliance Account for each of the

years 2022 to 2025 and 2027 to 2030 by calculating the sum of all AEAs, credits pursuant to Article 24a of Directive 2003/87/EC and LMUs less the total quantity of reviewed greenhouse gas emissions expressed in tonnes of carbon dioxide equivalent in the same ESR Compliance Account at a date falling one month following the determination of the compliance status figure for the previous year.

The central administrator shall ensure that the Union Registry records the compliance status figure for each ESR Compliance Account.

#### *Article 59g*

##### *Application of Article 9(1) (a) and (b) of Regulation (EU) 2018/842*

1. Where the compliance status figure determined pursuant to Article 59f of this Regulation is negative, the central administrator shall ensure that the Union Registry transfers the exceeding quantity of reviewed greenhouse gas emissions expressed in tonnes of carbon dioxide equivalent multiplied by the factor of 1,08 specified in Article 9(1)(a) of Regulation (EU) 2018/842 from a Member State's ESR Compliance Account for the given year to its ESR Compliance Account for the next year.
2. At the same time, the central administrator shall block the ESR Compliance Accounts corresponding to the remaining years of the compliance period, of the Member State concerned.
3. The central administrator shall change the ESR Compliance Account status from blocked to open for all the remaining years of the compliance period as of the year for which the compliance status figure determined pursuant to Article 59f is zero or positive.

#### *Article 59h*

##### *Use of flexibility laid down in Article 6 of Regulation (EU) 2018/842*

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs from the EU Annex II AEA Total Quantity Account to that Member State's ESR Compliance Account for a given year of the compliance period. Such transfer shall not be carried out in any of the following cases:

- (a) the Member State's request is submitted before the calculation of the balance of the ESR Compliance Account or after the determination of the compliance status figure for the given year;
- (b) the Member State that made the request is not listed in Annex II to Regulation (EU) 2018/842;
- (c) the requested amount exceeds the total remaining balance of the Annex II to Regulation (EU) 2018/842 amount available for that Member State as set out in the Decisions adopted pursuant to Articles 4(3) and (4) of Regulation (EU) 2018/842 and taking into account any downward revision of the amount pursuant to the second subparagraph of Article 6(3) of that Regulation;

- (d) the requested amount exceeds the quantity of the excess emissions for the given year, calculated taking into account the quantity of AEAs transferred from that Member State's ESR Compliance Account for a given year to its LULUCF Compliance Account pursuant to Articles 59x(3) or 59za(2).

#### *Article 59i*

##### *Borrowing of AEAs*

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs to that Member State's ESR Compliance Account for a given year of the compliance period from its ESR Compliance Account for the following year of the compliance period. Such transfer shall not be carried out in any of the following cases:

- (a) the Member State's request is submitted before the calculation of the balance of the ESR Compliance Account or after the determination of the compliance status figure for the given year;
- (b) the requested amount exceeds 10 percent of the following year's annual emission allocation as determined pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842 in respect of the years 2021 to 2025 and 5 percent of the following year's annual emission allocation as determined pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842 in respect of the years 2026 to 2029.

#### *Article 59j*

##### *Banking of AEAs*

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs from that Member State's ESR Compliance Account for a given year of the compliance period to its ESR Compliance Account for any of the following years of the compliance period. Such transfer shall not be carried out in any of the following cases:

- (a) the Member State's request is submitted before the calculation of the balance of the ESR Compliance Account for the given year;
- (b) in respect of the year 2021, the requested amount exceeds the positive balance of the account as calculated pursuant to Article 59e;
- (c) in respect of the years 2022 to 2029, the requested amount exceeds the positive balance of the account as calculated pursuant to Article 59e of this Regulation or 30% of that Member State's cumulative annual emission allocations up to that year, as determined pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842;
- (d) the status of the ESR Compliance Account initiating the transfer does not allow the transfer.

#### *Article 59k*

##### *Use of Land Mitigation Units*

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of Land Mitigation Units from a Member State's LULUCF Compliance Account to that Member State's ESR Compliance Account. Such transfer shall not be carried out in any of the following cases:

- (a) the requested amount exceeds the available quantity of LMUs eligible for transfers into the ESR Compliance Account pursuant to Article 59x or the remaining amount;
- (b) the requested amount exceeds the available amount according to Annex III to Regulation (EU) 2018/842 or the remaining amount;
- (c) the requested amount exceeds the quantity of the emissions for the given year less the quantity of AEAs for the given year as set out in Article 10(2) of Regulation (EU) 2018/842 and the Decisions adopted pursuant to Article 4(3) and Article 10 of that Regulation, and less the sum of all the AEAs banked from previous years to the current or any following year pursuant to Article 59j of this Regulation;
- (d) that Member State has not submitted its report in accordance with the second subparagraph of Article 7(1) of Regulation 525/2013 on its intention to use of the flexibility set out in Article 7 of Regulation (EU) 2018/842;
- (e) that Member State has not complied with the Regulation (EU) 2018/841;
- (f) the transfer is initiated before the calculation of the balance of the LULUCF Compliance Account of that MS or after the determination of the compliance status figure for the given compliance period pursuant to Articles 59u and 59za;
- (g) the transfer is initiated before the calculation of the balance of the ESR Compliance Account of that MS or after the determination of the compliance status figure for the given year.

#### *Article 59l*

##### *Ex-ante transfers of a Member State's annual emission allocation*

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs from the ESR Compliance Account for a given year of that Member State to the ESR Compliance Account of another Member State. Such transfer shall not be carried out in any of the following cases:

- (a) in respect of the years 2021 to 2025, the requested amount exceeds five percent of the given year's annual emission allocation of the initiating Member State as determined pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842 or the remaining amount available;
- (b) in respect of the years 2026 to 2030, the requested amount exceeds ten percent of the given year's annual emission allocation of the initiating Member State as determined pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842 or the remaining amount available;

- (c) the Member State has requested the transfer to an ESR Compliance Account for a year before the given year;
- (d) the status of the ESR Compliance Account initiating the transfer does not allow the transfer.

#### *Article 59m*

##### *Transfers after the calculation of the balance of the ESR Compliance Account*

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs from the ESR Compliance Account for a given year of that Member State to the ESR Compliance Account of another Member State. Such transfer shall not be carried out in any of the following cases:

- (a) the Member State's request is submitted before the calculation of the balance of the account pursuant to Article 59e;
- (b) the requested amount exceeds the positive balance of the account as calculated pursuant to Article 59e or the remaining amount;
- (c) the status of the ESR Compliance Account initiating the transfer does not allow the transfer.

#### *Article 59n*

##### *Safety Reserve*

Upon introduction of the relevant greenhouse gas emissions data pursuant to Article 59d of this Regulation for the year 2030, the central administrator shall create in the EU ESR Safety Reserve Account a quantity of additional AEAs equal to the difference between 70 % of the sum of reviewed emissions for the year 2005 of all Member States as determined following the methodology in the Decision adopted pursuant to Article 4(3) of Regulation (EU) 2018/842 and the sum of the relevant reviewed greenhouse gas emissions data for all Member States for the year 2030. Such amount shall be between 0 and 105 million AEAs.

#### *Article 59o*

##### *First round of distribution of the Safety Reserve*

1. The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs from the EU ESR Safety Reserve Account to that Member State's ESR Compliance Account for any of the years from 2026 to 2030 as required by the Member State. Such transfers shall not be carried out in any of the following cases:

- (a) the request refers to an ESR Compliance Account for a year other than the years 2026 to 2030;
- (b) the Member State's request is made before the calculation of the balance for the year 2030;

- (c) the Member State's request is made less than 6 weeks before the determination of the compliance status figure for the ESR Compliance Account for the year 2026;
- (d) the request was made by a Member State which is not listed in the Decision published pursuant to Article 11(5) of Regulation (EU) 2018/842;
- (e) the requested amount exceeds 20% of that Member State's overall overachievement in the period from 2013 to 2020 as determined in the Decision published pursuant to Article 11(5) of Regulation (EU) 2018/842 or the amount as reduced pursuant to paragraph 3 of this Article, or the remaining amount available;
- (f) the quantity of AEAs sold to other Member States pursuant to Articles 59l and 59m exceeds the quantity of AEAs acquired from other Member States pursuant to Articles 59l and 59m;
- (g) the requested amount exceeds the quantity of the excess emissions for the given year when taking into account the following:
  - (i) the quantity of AEAs for the given year as set out in the Decisions adopted pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842;
  - (ii) the quantity of AEAs acquired to or sold from the ESR Compliance Account for the given year, pursuant to Articles 59l and 59m;
  - (iii) the full quantity of AEAs banked from previous years to the current or any following years pursuant to Article 59j;
  - (iv) the total quantity of AEAs allowed for borrowing to that year under Article 59i;
  - (v) the quantity of LMUs eligible for the transfers into the ESR Compliance Accounts pursuant to Article 59x or the remaining amount available pursuant to Article 59m.

2. Six weeks before the determination of the compliance status figure for the year 2026, the central administrator shall ensure that the Union Registry calculates and displays the total sum of AEAs requested by all Member States under paragraph 1.

3. Where the sum referred in paragraph 2 is higher than the total quantity of AEAs in the EU ESR Safety Reserve Account, the central administrator shall ensure that the Union Registry carries out a transfer of each amount requested by each Member State reduced on a pro rata basis.

4. The central administrator shall ensure that the Union Registry calculates the pro rata reduced amount by multiplying the requested amount by the ratio of the total quantity of AEAs in the EU ESR Safety Reserve Account and the total amount requested by all Member States pursuant to paragraph 1.

#### *Article 59p*

#### *Second round of distribution of the Safety Reserve*

1. Where the sum referred in Article 59o(2) is lower than the total quantity of AEAs in the EU ESR Safety Reserve Account, the central administrator shall ensure that the Union Registry authorises additional requests from Member States provided that:

- (a) Member State's request is made at the earliest six weeks before the determination of the compliance status figure for the year 2026 but no later than 3 weeks before the determination of the compliance status figure for the year 2026;
- (b) the request was made by a Member State which is listed in the Decision published pursuant to Article 11(5) of Regulation (EU) 2018/842;
- (c) the quantity of AEAs sold to other Member States pursuant to Articles 59l and 59m does not exceed the quantity of AEAs acquired from other Member States pursuant to Articles 59l and 59m;
- (d) the transferred amount does not exceed the quantity of the excess emissions for the given year when taking into account all the amounts listed under Article 59o (1)(g) and the quantity of AEAs received pursuant to Article 59o.

2. If the sum of all valid requests is higher than the remaining total amount, the central administrator shall ensure that the Union Registry calculates the amount to be transferred for each valid request by multiplying the remaining total quantity of AEAs in the EU ESR Safety Reserve Account with the ratio of that request to the sum of all requests fulfilling the criteria set out in paragraph 1.

#### *Article 59q* *Adjustments*

1. In case of adjustments pursuant to Article 10 of Regulation (EU) 2018/842 or of any other modification of the sum specified in Article 59a of this Regulation that would lead to an increase of a Member State's annual emission allocation during the compliance period, the central administrator shall create the corresponding quantity of AEAs in the EU ESR AEA Total Quantity Account and transfer it in the relevant ESR Compliance Account of the Member State concerned.

2. In case of adjustments pursuant to Article 10 of Regulation (EU) 2018/842 or of any other modification of the sum specified in Article 59a of this Regulation that would lead to a decrease of a Member State's annual emission allocation during the compliance period, the central administrator shall transfer the corresponding quantity of AEAs from the Member State's relevant ESR Compliance Account to the ESR Deletion Account.

3. Where a Member State notifies a downward change of the percentage under the second subparagraph of Article 6(3) of Regulation (EU) 2018/842 and following the corresponding amendment to the amounts specified in the Decision adopted pursuant to Article 4(3) of Regulation (EU) 2018/842, the central administrator shall transfer the corresponding quantity of AEAs from the EU Annex II AEA Total Quantity Account to the ESR Deletion Account. The total amount available for that Member State under Article 6 of Regulation (EU) 2018/842 shall be modified accordingly.

*Article 59r*

*Transfers of previously banked AEAs*

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs to a Member State's ESR Compliance Account for a given year of the compliance period from its ESR Compliance Account for any of the following years of the compliance period. Such transfer shall not be carried out where:

- (a) the requested amount exceeds the quantity of AEAs banked pursuant to Article 59j in the ESR Compliance Account from which the transfer is intended;
- (b) the Member State's request is made before the calculation of the balance or after the determination of the compliance status figure of the ESR Compliance Account to which the transfer is intended.

*Article 59s*

*Execution and reversal of transfers*

1. For all transfers specified in this Title, Articles 34, 35 and 55 shall apply.
  2. Transfers to the ESR Compliance Accounts initiated in error may be reversed at the request of the national administrator. In such cases, Article 62(4), (6), (7) and (8) shall apply.’;
- (9) in Article 70, paragraph 2 is replaced by the following:
- ‘2. The central administrator shall ensure that the EUTL conducts automated checks having regard to the data exchange and technical specifications provided for in Article 75 of this Regulation for all processes to identify irregularities and discrepancies, where a proposed process does not conform to the requirements of Directive [2003/87/EC](#), Regulation (EU) [2018/842](#) and this Regulation.’;
- (10) Annex I to Commission Delegated Regulation [\[C\(2019\)1841](#) of 12 March 2019] supplementing Directive [2003/87/EC](#) of the European Parliament and of the Council as regards the functioning of the Union Registry is amended in accordance with Annex I to this Regulation;
- (11) Annex XIII to Commission Delegated Regulation [\[C\(2019\)1841](#) of 12 March 2019] supplementing Directive [2003/87/EC](#) of the European Parliament and of the Council as regards the functioning of the Union Registry is amended in accordance with Annex II to this Regulation.

*Article 2*

*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.



This Regulation shall be binding in its entirety and directly applicable in all Member States.  
Done at Brussels, 13.3.2019

*For the Commission  
The President  
Jean-Claude JUNCKER*