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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 6.11.2020 amending Delegated Regulation (EU) 2019/1122 as regards the functioning of the Union Registry under Regulation (EU) 2018/841 of the European Parliament and of the Council

Delegations will find attached document C(2020) 7549 final.

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Brussels, 6.11.2020
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COMMISSION DELEGATED REGULATION (EU) .../...

of 6.11.2020

**amending Delegated Regulation (EU) 2019/1122 as regards the functioning of the Union
Registry under Regulation (EU) 2018/841 of the European Parliament and of the
Council**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The LULUCF Regulation¹ was adopted on 30 May 2018. It establishes, for the first time, a commitment in the LULUCF sector as part of the overall Union greenhouse gas emissions reduction commitment: Article 4 of the LULUCF Regulation requires the Member States to ensure that their accounted emissions do not exceed removals in the LULUCF sector (the ‘no-debit’ commitment). The LULUCF Regulation facilitates the fulfilment of the ‘no-debit’ commitment by allowing the Member States to use flexibilities within the LULUCF sector and with the ESR². Member States, which cannot balance out their emissions in one land accounting category by removals in another land accounting category, can buy removals in excess from other Member States; alternatively, they can use their allocations under ESR for this purpose. Likewise, the Member States who account debits in managed forest land can use the managed forest land flexibility, under certain conditions. Finally, Member States can move their removals in excess to meet their commitments under ESR, again under certain conditions, or, alternatively, they can bank removals in excess between compliance periods. The LULUCF Regulation requires that the Union specific accounting system be implemented via the Union Registry:

The new Registry Regulation, ESR and LULUCF Regulations need to be read together with the Regulation on the Governance of the Energy Union³, which sets in Article 37 the timing of the compliance cycles. These cycles should start after the comprehensive review of the national inventory data, i.e. in 2027 for the period 2021-2025, and in 2032 for the period 2026-2030.

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 Making⁴. The

¹ Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ L 156, 19.6.2018; p. 1).

² 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).

³ 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).

⁴ 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).

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. 3 contributions were submitted, all by public authorities. The comments received contained similar arguments or information to what has already been put forward during the extensive discussions that have taken place within the Expert Group on Climate Change Policy, therefore the Commission maintained the text of the Delegated Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Chapter ‘Transactions under Regulation (EU) 2018/841’ lays down the rules enabling the LULUCF compliance implementation via the Union Registry. Articles 59t to 59zb provide for rules governing the introduction in the LULUCF Compliance Accounts of the reviewed greenhouse gas emissions data, the calculation of the balance and the determination of the compliance status figure for the LULUCF Compliance Account for each Member State for each LULUCF compliance period, and for the application of corrective actions pursuant to Articles 11(2) and 15(2) of LULUCF Regulation. In addition, Articles 59x to 59z of this Chapter lay down the rules aiming at ensuring the accurate accounting of transactions relating to the exercise of the flexibilities provided in Articles 11 to 13 of LULUCF Regulation. In particular, Articles 59w and 59x establish the rules for issuing the land mitigation units and for transferring such units between the LULUCF Compliance Accounts and between the LULUCF Compliance Accounts and ESR Compliance Accounts. Articles 59y and 59z, together with Annex XIV, lay down the rules needed for the implementation of the managed forest land flexibility under Article 13 of the LULUCF Regulation. Annex XIII contains the requirement to make LULUCF related information publicly available.

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

of 6.11.2020

amending Delegated Regulation (EU) 2019/1122 as regards the functioning of the Union Registry under Regulation (EU) 2018/841 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) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU⁵, and in particular Article 15(1) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2019/1122⁶ lays down the rules for the functioning of the Union Registry, established under Directive 2003/87/EC of the European Parliament and the Council⁷.
- (2) The Union Registry rules should be adapted to enable the recording of the quantities of accounted emissions and removals under Regulation (EU) 2018/841 and to ensuring accurate accounting of transactions relating to the exercise of the flexibilities provided in Articles 11, 12 and 13 of that Regulation. In addition, the Union Registry should ensure that there are no transfers which are incompatible with the obligations resulting from Regulation (EU) 2018/841.
- (3) One Compliance Account for greenhouse gas emissions and removals from land use, land use change and forestry ('LULUCF Compliance Account') should be created for each Member State and the quantity of accounted emissions and removals for each land accounting category should be recorded in that account. Where the balance of the Member State LULUCF Compliance Account is positive, the Union Registry should issue Land Mitigation Units in the LULUCF Compliance Account of that Member State in the quantities determined pursuant to Article 4 of Regulation (EU) 2018/841. Land Mitigation Units should only be held in the LULUCF Compliance Accounts of the Member States in the Union Registry and their transfer should be allowed, under certain conditions and upon the request of the Member State, to its Compliance

⁵ OJ L 156, 19.6.2018, p. 1.

⁶ Commission Delegated Regulation (EU) 2019/1122 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 (OJ L 177, 2.07.2019, p. 3).

⁷ 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 (OJ L 275, 25.10.2003, p. 32).

Account for compliance with obligations under Regulation (EU) 2018/842⁸ (ESR Compliance Account).

- (4) In order to enable the use of managed forest land flexibility under Article 13 of Regulation (EU) 2018/841, managed forest land flexibility allocations should be created in the Union Registry. The managed forest land flexibility allocations should be recorded in the Union account created for that purpose and the transfers of such allocations should be enabled where the conditions set forth in Article 13 of Regulation (EU) 2018/841 are fulfilled.
- (5) The Union Registry should also enable the implementation of the compliance checks under Regulation (EU) 2018/841 by providing the processes for the introduction in the LULUCF Compliance Accounts of the reviewed greenhouse gas emissions data, the determination of the compliance status figure for the LULUCF Compliance Account for each Member State for each compliance period provided for in Regulation (EU) No 2018/841, and for the application of corrective actions pursuant to Articles 11(2) and 15(2) of Regulation (EU) 2018/841.
- (6) Delegated Regulation (EU) 2019/1122 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2019/1122 is amended as follows:

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

‘Having regard to Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU*, and in particular Article 15(1) thereof,

* OJ L 156, 19.6.2018, p. 1.’;

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

‘This Regulation also applies to emissions and removals recorded, and units issued pursuant to Article 15 of Regulation (EU) 2018/841.’;

- (3) Article 3 is amended as follows:

- (a) point (12) is replaced by the following:

⁸ 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).

‘(12) ‘transaction’ means a process in the Union Registry that involves the transfer of an allowance, an annual emission allocation unit, a land mitigation unit or a managed forest land flexibility allocation from one account to another account.’;

(b) the following points (25), (26) and (27) are added:

‘(25) ‘land use, land use change and forestry compliance period’ (‘LULUCF compliance period’) means a five-year period, from 1 January 2021 to 31 December 2025 or from 1 January 2026 to 31 December 2030, during which the Member States are to account for emissions and removals of the greenhouse gases occurring in the land accounting categories referred to in Article 2 of Regulation (EU) 2018/841;

(26) ‘land mitigation unit’ means a removal in excess in a Member State determined pursuant to Article 4 of Regulation (EU) 2018/841 equal to one tonne of carbon dioxide equivalent;

(27) ‘managed forest land flexibility allocation’ means a subdivision of a maximum compensation amount available to the Member States under the managed forest land flexibility as determined in Annex VII to Regulation (EU) 2018/841 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, Article 12 of Regulation (EU) 2018/842 of the European Parliament and of the Council and Article 15 of Regulation (EU) 2018/841. 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 Regulations (EU) 2018/842 and (EU) 2018/841.’;

(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 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, one ESR Compliance Account for each Member State for each year of the compliance period, the Union Compliance Account for greenhouse gas emissions and removals from land use, land use change and forestry (‘EU LULUCF Compliance Account’), the EU LULUCF Deletion Account, the Union

Managed Forest Land Flexibility Allocations Total Quantity Account ('EU MFLFA Total Quantity Account') and one LULUCF Compliance Account for each Member State for each LULUCF compliance period.

2. The national administrator designated pursuant to Article 7(1) shall act as authorised representative of the ESR Compliance Accounts and the LULUCF Compliance Accounts.';

(7) the following Article 27b is inserted:

'Article 27b

Closure of the LULUCF Compliance Account

1. The central administrator shall close a LULUCF Compliance Account not earlier than one month after the determination of the compliance status figure for that account pursuant to Article 59za, and after giving prior notice to the account holder.

2. The central administrator shall ensure that the Union Registry carries out a transfer of all remaining land mitigation units (LMUs), AEAs or managed forest land flexibility allocations from the Member State LULUCF Compliance Accounts, which are positive at closure, to the EU LULUCF Deletion Account.';

(8) In Title IIA, the following Chapter is added:

'CHAPTER 2

Transactions under Regulation (EU) 2018/841

Article 59t

Introduction of the LULUCF relevant data

1. In a timely manner, upon availability of the relevant reviewed greenhouse gas emissions data for a given compliance period in 2027 and 2032 respectively, the central administrator shall enter, into the Member State LULUCF Compliance Account, the quantities of accounted emissions or accounted removals in each land accounting category referred to in Article 2 of Regulation (EU) 2018/841 for a corresponding LULUCF compliance period.

2. The central administrator shall also enter the sum of total accounted emissions and total accounted removals in all land accounting categories in all Member States for a given compliance period into the EU LULUCF Compliance Account.

Article 59u

Calculation of the balance of the Member States and EU LULUCF Compliance Accounts

Upon introduction of the LULUCF relevant data pursuant to Article 59t, the central administrator shall ensure that the Union Registry calculates the balance of the Member States and EU LULUCF Compliance Accounts by subtracting the total quantity of emissions in the respective LULUCF Compliance Account from the total quantity of removals in the same LULUCF Compliance Account.

Article 59v

Creation of LMUs

1. Where the balance of the Member State LULUCF Compliance Account calculated pursuant to Article 59u is positive, the central administrator shall create in the LULUCF Compliance Account of that Member State a number of LMUs corresponding to the quantity of removals in excess.

2. LMUs shall only be eligible for transferring to other LULUCF Compliance Accounts pursuant to conditions laid down in Articles 11 and 12 of Regulation (EU) 2018/841, and to the ESR Compliance Account of the Member State concerned pursuant to conditions laid down in Article 59k of this Regulation.

Article 59w

Transfers of LMUs between the LULUCF Compliance Accounts

1. The central administrator shall ensure that, upon request of a Member State holding LMUs, the Union Registry transfers a requested quantity of LMUs from the LULUCF Compliance Account of the requesting Member State to any of the following accounts:

- (a) the LULUCF Compliance Account of that Member State corresponding to the second LULUCF compliance period;
- (b) the LULUCF Compliance Account of another Member State.

2. The transfers referred to in paragraph 1 shall not be carried out where the Member State's request is submitted after the determination of the compliance status figure for the given compliance period.

3. The central administrator shall ensure that the LMUs transferred in accordance with paragraph 1(b) of this Article be only used for the purpose of fulfilling the recipient Member State's obligations under Article 4 of Regulation (EU) 2018/841. The Union Registry shall block any subsequent transfer of the LMUs from the LULUCF Compliance Account of the receiving Member State into its ESR Compliance Account.

Article 59x

Transfers of LMUs and AEAs between the LULUCF Compliance Accounts and ESR Compliance Accounts

1. The central administrator shall ensure that the Union Registry identifies and displays, in the LULUCF Compliance Account of the Member State holding LMUs, the quantity of LMUs eligible for transfer to the ESR Compliance Account of that Member State by subtracting the LMUs originating from the accounting categories that are not eligible under Article 7 of Regulation (EU)

2018/842 from the total quantity of LMUs in the same LULUCF Compliance Account.

2. The central administrator shall ensure that, upon request of a Member State holding LMUs, the Union Registry transfers a requested quantity of LMUs from the LULUCF Compliance Account of the requesting Member State to its ESR Compliance Account. Such transfer shall not be carried out where the conditions laid down in Article 59k are not met.

3. Where the balance of the Member State LULUCF Compliance Account calculated pursuant to Article 59u is negative, the central administrator shall ensure that, upon request of that Member State, the Union Registry transfers a requested quantity of AEAs from any ESR Compliance Account of the requesting Member State to its LULUCF Compliance Account. Such transfer shall not be carried out in any of the following cases:

- (a) the Member State requested to transfer an amount of AEAs exceeding the amount needed for bringing the balance of the LULUCF Compliance Account corresponding to a given LULUCF compliance period of that Member State calculated pursuant to Article 59u to 0;
- (b) the Member State's request is submitted after the determination of the compliance status figure for the given compliance period;
- (c) the status of the ESR Compliance Account concerned does not allow the transfer.

4. The central administrator shall ensure that AEAs transferred in accordance with paragraph 3 of this Article be only used for the purpose of fulfilling the recipient Member States obligations under Article 4 of Regulation (EU) 2018/841. The Union Registry shall block any subsequent transfer of the AEAs from the LULUCF Compliance Account of the receiving Member State to the LULUCF Compliance Accounts of other Member States.

Article 59y

Creation of managed forest land flexibility allocations (MFLFAs)

1. At the beginning of the LULUCF compliance period, from 1 January 2021 to 31 December 2025, the central administrator shall create in the EU MFLFA Total Quantity Account a number of MFLFAs equal to the sum of the maximum amounts of MFLFAs available to all Member States for the period 2021 to 2030 pursuant to Annex XIV.

2. MFLFAs shall only be valid for balancing out some accounted emissions in the managed forest land accounting category of the Member State concerned with the view of meeting its commitments under Article 4 of Regulation (EU) 2018/841. MFLFAs shall only be eligible for a transfer from the EU MFLFA Total Quantity Account to the LULUCF Compliance Account of the Member State concerned.

Article 59z

Transfer of MFLFAs to the Member State LULUCF Compliance Account

1. The central administrator shall ensure that, upon request of a Member State, the Union Registry transfers a requested quantity of MFLFAs from the EU MFLFA Total Quantity Account to the LULUCF Compliance Account of the requesting Member State. Such transfer shall not be carried out in any of the following cases:

- (a) the balance of the Member State LULUCF Compliance Account corresponding to a given LULUCF compliance period calculated pursuant to Article 59u is 0 or positive;
- (b) the Member State requested to transfer an amount of MFLFAs exceeding the amount needed for bringing the balance of the LULUCF Compliance Account corresponding to a given LULUCF compliance period of that Member State calculated pursuant to Article 59u to 0;
- (c) the balance of the EU LULUCF Compliance Account corresponding to a given LULUCF compliance period, calculated taking into account the transfers carried out under Article 59x, is negative;
- (d) the Member State requested to transfer an amount of MFLFAs exceeding the maximum limits set forth in Annex XIV, recalculated, if necessary, taking into account previous requests under this Article of the same Member State;
- (e) the Member State requested to transfer an amount of MFLFAs exceeding the quantity of sinks accounted for as emissions against its forest reference level in the managed forest land accounting category of that Member State;
- (f) the Member State's request is submitted after the determination of the compliance status figure for the given compliance period;
- (g) the Member State has not included, in its strategy submitted in accordance with Article 15 of Regulation (EU) 2018/1999⁹, any ongoing or planned specific measures to ensure the conservation or enhancement, as appropriate, of forest sinks and reservoirs.

2. In order to avoid double counting, the central administrator shall ensure that when carrying out the transfer in accordance with the first paragraph of this Article, the Union Registry subtracts the corresponding quantities of MFLFAs transferred to the LULUCF Compliance Account the requesting Member State from the EU MFLFA Total Quantity Account.

Article 59za

Determination of the compliance status figures and forced compliance

⁹ 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).

1. The central administrator shall ensure that after a period of time as set out in Union legislation for the exercise of flexibilities pursuant to Articles 11, 12 and 13 of Regulation (EU) 2018/841, the Union Registry determines the compliance status figure for the LULUCF Compliance Account of each Member State by subtracting the total quantity of accounted emissions from the sum of LMUs, AEAs and MFLFAs in the same LULUCF Compliance Account.

2. Where the compliance status figure of the Member State Compliance Account determined pursuant to paragraph 1 is negative, the central administrator shall ensure that the Union Registry transfers to that Member State LULUCF Compliance Account the quantity of AEAs needed to bring the compliance status figure to 0, in equal parts from the ESR Compliance Accounts of the Member State concerned corresponding to relevant years.

3. Where the compliance status figure of the Member State Compliance Account determined pursuant to paragraph 1 is positive, the central administrator shall ensure that the Union Registry transfers all the remaining LMUs to EU LULUCF Deletion Account with the view of bringing the compliance status figure to 0.

4. In the case of forced compliance pursuant to paragraph 2, the central administrator shall ensure that the Union Registry recalculates the compliance status figure for the LULUCF Compliance Account concerned taking into account the amounts of transferred AEAs.

Article 59zb

Corrective action

1. Where the Member State does not comply with the monitoring requirements laid down in Article 26(3) of Regulation (EU) 2018/1999, the central administrator shall temporarily prohibit that Member State from transferring or banking LMUs pursuant to Article 59w of this Regulation or from using MFLFAs under Article 59z of this Regulation by blocking the transactions from and to the LULUCF Compliance Account of the Member State concerned corresponding to a given LULUCF compliance period. The central administrator shall change the Member State LULUCF Compliance Account status from open to blocked.

2. Upon the request of a Member State demonstrating that it meets the monitoring requirements referred to in paragraph 1, the central administrator shall change the Member State LULUCF Compliance Account status from blocked to open.’;

(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, Regulations (EU) 2018/842 and (EU) 2018/841 and this Regulation.’;

- (10) Annex I to Delegated Regulation (EU) 2019/1122 is amended in accordance with Annex I to this Regulation;
- (11) Annex XIII to Delegated Regulation (EU) 2019/1122 is amended in accordance with Annex II to this Regulation;
- (12) Annex XIV, as set out in Annex III to this Regulation, is added to Delegated Regulation (EU) 2019/1122.

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, 6.11.2020

For the Commission
The President
Ursula VON DER LEYEN