



Brussels, **XXX**
[...] (2024) **XXX** draft

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

of **XXX**

amending Delegated Regulation (EU) 2019/1122 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Union Registry is established pursuant to Article 19(1) of Directive 2003/87/EC¹. The rules on the function of the Union Registry were established in Commission Regulation (EU) No 1193/2011² and by Commission Regulation (EU) No 389/2013³ for the third trading period of the EU Emissions Trading System (EU ETS) (2013-2020). The Union Registry rules were adapted to the new legal context set for the fourth trading period of the EU ETS (2021-2030) by the Commission Delegated Regulation (EU) 2019/1122⁴ that is applicable as of 1 January 2021. The latter has repealed the former in most parts. However, the fulfilment of requirements of the second period of the Kyoto Protocol is still governed by Regulation (EU) No 389/2013.

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 27 August, 19 September and 31 October 2024.

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 Making⁵. 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 dd/mm/yyyy and dd/mm/yyyy. xx contributions were submitted, x from citizens, x from companies, x from non-governmental organisations, x from public authorities, x from a business association and x on behalf of academic institutions.

The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725⁶ and delivered an opinion on dd/mm/yyyy.

¹ 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 (OJ L 275, 25.10.2003, p. 32).

² Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council and amending Commission Regulations (EC) No 2216/2004 and (EU) No 920/2010 (OJ L 315, 29.11.2011, p. 1).

³ 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).

⁴ 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, 2.7.2019, p. 3).

⁵ 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).

⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions,

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Directive (EU) 2023/959 of the European Parliament and of the Council has created an adjacent ETS system for buildings, transport and additional sectors as of 2027. This change needs to be further reflected in the Registry Regulation, in order to give regulated entities the rules and tools to enrol in the Union Registry for their ETS compliance.

Annex I to Directive (EU) 2023/959 of the European Parliament and of the Council lay down the scope of ETS for maritime transport, when a shipping company is no longer included in the EU ETS in accordance with Annex I of that Directive, in a given year, the Delegated Regulation (EU) 2019/1122 needs to be amended to reflect this exclusion.

Directive (EU) 2023/959 of the European Parliament and of the Council has exclude from its scope installations where emissions from the combustion of biomass contribute on average to more than 95 % of the total average greenhouse gas emissions. The Delegated Regulation (EU) 2019/1122 needs to be amended to reflect this exclusion.

Directive 2003/87/EC provides that allowances issued before 1 January 2013, for the first and second phase of the EU ETS, are no longer valid. Delegated Regulation (EU) 2019/1122 should be amended in order to avoid negative impacts on operators that have no technical nor legal means to comply with previous EU ETS obligations.

Past experiences have shown cases where Court rulings lead to situations such as exclusion of an operator or sector from the scope of Directive 2003/87/EC. Delegated Regulation (EU) 2019/1122 needs to be amended to ensure enforceability of such ruling and the restitution of allowances for which the surrender have been invalidated by the Court.

Directive (EU) 2023/959 of the European Parliament and of the Council has established an additional support mechanism for the use of eligible aviation fuels. Decision of the EEA Joint Committee No 334/2023 established a system for Iceland to allocate additional free allowances to aircraft operators. The Delegated Regulation (EU) 2019/1122 needs to be amended to reflect these changes.

Article 14(5) and (6) of Directive 2003/87/EC requires the Commission to publish certain emissions data aggregated per aircraft operator for transparency purposes. This transparency requirements should be reflected in the Delegated Regulation (EU) 2019/1122.

Over the past decade, the Registry has increased significantly and the allowances have been qualified as financial instruments. In order to ensure a proper financing of the Union Registry in line with the increased number of users and the increased coverage of the EU ETS, the growing value of allowances held in the Union Registry and the increased security challenges, the central administrator should be allowed to charge a fee under a new Article in the Delegated Regulation (EU) 2019/1122.

This amendment of Commission Delegated Regulation (EU) 2019/1122 provides an opportunity to introduce some elements of simplification or clarification that have emerged from the past experience.

bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

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(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/EC¹, and in particular Article 19(3) thereof, Whereas:

- (1) Directive 2003/87/EC established a system for greenhouse gas emission allowance trading within the Union ('EU ETS'). Commission Delegated Regulation (EU) 2019/1122² supplemented Directive 2003/87/EC as regards the functioning of the Union Registry. Due to the nature of maritime transport activities, in particular bulk commodity shipping, a shipping company might perform activities falling within the scope of the EU ETS, as defined in Annex I to Directive 2003/87/EC, in some reporting periods and outside of it in others. Competent authorities should therefore have the possibility to ask the national administrator to set the maritime operator holding account of a shipping company no longer included in the EU ETS to excluded status, after giving prior notice to the shipping company concerned. This status should remain until the competent authority notifies the national administrator that the shipping company is again included in the EU ETS.
- (2) Annex I to Directive 2003/87/EC has been amended by Directive (EU) 2023/959 of the European Parliament and of the Council³ and provides that installations are not covered by Directive 2003/87/EC where during the preceding relevant five-year period referred to in Article 11(1), second subparagraph, of that Directive, emissions from the combustion of biomass that complies with the criteria set out in Article 14 of that Directive contribute on average to more than 95 % of the total average greenhouse gas

¹ OJ L 275, 25.10.2003, p. 32, ELI: <http://data.europa.eu/eli/dir/2003/87/oj>.

² 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, 2.7.2019, p. 3, ELI: http://data.europa.eu/eli/reg_del/2019/1122/oj).

³ Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (OJ L 130, 16.5.2023, p. 134, ELI: <http://data.europa.eu/eli/dir/2023/959/oj>).

emissions. Therefore, national administrators need to be able to set these operator accounts to excluded status.

- (3) Article 30f(4) of Directive 2003/87/EC provides that regulated entities are to report historic emissions as from 2025. Article 30f(2) of that Directive provides that regulated entities are to report verified emissions as from 2026. To reduce the administrative burden and considering that it will only be possible for regulated entities to hold emission allowances on regulated entity holding accounts as from the start of auctioning in 2027, national administrators should create a national competent authority account that exclusively serves the purpose of reporting emissions in 2025 and verified emissions in 2026 at aggregated level.
- (4) To allow the Commission to calculate the cap for the emission trading system for combustion in the buildings and road transport sectors for the year 2028, detailed emissions for each regulated entity should be reported to the Commission by the national administrator by 30 June 2025 and by 30 June 2026, as applicable, by electronic means and by using the templates or file format specifications published by the Commission in accordance with Table IX-III of Annex IX to Delegated Regulation (EU) 2019/1122.
- (5) Article 13 of Directive 2003/87/EC provides that allowances issued from 1 January 2013 are to be valid indefinitely. Allowances issued before 1 January 2013, for the first and second phase of the EU ETS, are no longer valid and all such allowances held in accounts were invalidated at the end of the respective compliance period. As a result, a negative compliance figure cannot be corrected by a stationary installation and remains indefinitely. In order to avoid negative impacts on operators that have no technical nor legal means to comply with previous EU ETS obligations, that negative figure of the first and second phase of the EU ETS, should not be taken into account in the calculation of the compliance status.
- (6) Past experiences have shown the lack of compliance by some operators with surrendering obligations laid down in Articles 12(3) of Directive 2003/87/EC. In order to avoid distortion of the ETS objectives, and ensure compliance, if, on 1 October of each year, the number of allowances surrendered from a stationary installation holding account or an aircraft operator holding account is lower than its verified emissions in the current period and including the preceding year, the central administrator should ensure that the Union Registry sets the corresponding operator account to a blocked status.
- (7) Article 3c(6) of Directive 2003/87/EC established an additional support mechanism for the use of eligible aviation fuels. The support is provided in the form of allocating allowances to aircraft operators. Decision of the EEA Joint Committee No 334/2023 established a system for Iceland to allocate additional free allowances to aircraft operators. To ensure the appropriate accounting of the allowances, the aviation allocation table should be extended accordingly.
- (8) Article 14(6) of Directive 2003/87/EC requires the Commission to publish certain emissions data aggregated per aircraft operator. This data is not relevant for the compliance controlled by the Union Registry, the publication of data aggregated at different levels serves only transparency. The public website of the Union Registry already publishes a set of data per aircraft operator. Therefore, it is appropriate to use the same publicly available website for the publication of emissions data under that Article. For the same reason, the same website should be used for the publication of data on non-CO₂ effects of aviation reported under Article 14(5) of that Directive.

- (9) Article 58 of Delegated Regulation (EU) 2019/1122 allows for the account holder or a national administrator acting on behalf of the account holder to request a reversal of transactions performed in error or unintentionally. In order to give more flexibility to the account holder while ensuring the correct functioning of the accounting obligation of the Union Registry, the timeframe to submit such a request for reversal should be extended.
- (10) Rulings of the Court of Justice of the European Union, the European Free Trade Agreement Court and of national courts have led to operators or sectors being excluded from the scope of Directive 2003/87/EC. To ensure enforceability of such rulings and the restitution of allowances for which the surrenders have been invalidated by such court, the central administrator should reconstitute surrendered allowances to the operator holding account. In order for the restitution of allowances not to lead to windfall profit for the operator benefiting from the restitution, the number of allowances to be restituted should be determined taking into account the evolution of the value of allowances and the inflation.
- (11) Delegated Regulation (EU) 2019/1122 should therefore be amended accordingly.
- (12) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁴ and delivered an opinion on XXX.
- (13) Directive 2003/87/EC provides that the monitoring and reporting of emissions from trading system for combustion in the buildings and road transport sectors is to start in 2025. To ensure consistency and clarity, the rules for account opening of national competent authority account for the purpose of reporting the emissions for the year 2024 and for the purpose of reporting verified emissions for the year 2025, should apply as of 1 January 2025.
- (14) As of 1 January 2025, general allowances are to be issued also for the aviation sector, by means of free allocation and auctioning. General allowances should therefore be transferred from the EU Auction Account as of 1 January 2025.
- (15) Therefore, this Regulation should enter into force urgently,

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) Article 9 is amended as follows:

- (a) the following paragraphs 6b and 6c are inserted:

‘6b. Upon notification from the competent authority that a shipping company is no longer included in the EU ETS in accordance with Annex I to Directive 2003/87/EC in a given year,

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39–98 ELI: <http://data.europa.eu/eli/reg/2018/1725/oj>

the national administrator shall set the corresponding maritime operator holding account to excluded status, after giving prior notice to the shipping company concerned, and keep the account in that status until notification from the administering authority that a shipping company is again included in the EU ETS.

6c. Where an installation is not covered by the EU ETS in accordance with point 1 of Annex I to Directive 2003/87/EC, the national administrator shall set the corresponding operator account to excluded status for the duration of the exclusion.’;

(b) paragraph 7 is replaced by the following:

‘7. No processes may be initiated from excluded accounts, including transfers of allowances, except for the processes specified in Article 22, Article 48(4) and (5), Article 50(6) and (8), and Article 57 and the processes specified in Articles 31 and 56 corresponding to the period where the account status was not set to excluded.’;

(2) Article 15b is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

‘By way of derogation from the first subparagraph, for the requests submitted from 1 June 2026 until 31 December 2027, the deadline for the national administrator to open a regulated entity holding accounts shall be 40 working days from the receipt of a complete set of information in accordance with paragraph 1.’;

(b) paragraph 4 is deleted;

(c) the following paragraphs 7, 8 and 9 are added:

‘7. By way of derogation from paragraph 1 of this Article, from 1 June 2026 to 15 September 2026 regulated entities falling within the scope of Chapter IVa of Directive 2003/87/EC shall request to open a regulated entity holding account in the Union Registry in accordance with paragraph 1 of this Article.

8. By way of derogation from paragraph 2 of this Article, the national administrator shall open a national competent authority account for the purpose of reporting the emissions for the year 2024 in accordance with Article 30f(4) of Directive 2003/87/EC and for the purpose of reporting verified emissions for the year 2025 in accordance with Article 30f(2) of that Directive. Aggregated emissions at the national level shall be reported by the national administrator in the Union Registry via the national competent authority account by 30 June 2025 and by 30 June 2026, as applicable. Detailed emissions for each regulated entity shall be reported to the Commission by 30 June 2025 and by 30 June 2026, as applicable, by the national administrator by other electronic means than via the Union Registry and by using the templates or file format specifications published by the Commission in accordance with Table IX-IV of Annex IX to this Regulation.

9. National competent authority accounts shall not hold allowances.’.

(3) in Article 20, the following paragraph 10 is added:

‘10. For national competent authority accounts opened in accordance with Article 15b(8), the requirement to have authorised representatives in accordance with this Article shall not apply. For such accounts at least one contact person shall be nominated.’;

(4) in Article 22, paragraph 1 is replaced by the following:

‘1. All account holders shall notify the national administrator within 10 working days of changes to the account information. In addition, holders of stationary installation holding

accounts, aircraft operator holding accounts and maritime operator holding accounts, shall confirm to the national administrator by 30 June each year that their account information remains complete, up-to-date, accurate and true, whereas holders of regulated entity holding accounts shall give that information by 31 March each year.’;

(5) the following Article 26c is inserted:

‘Article 26c

Closure of national competent authority accounts

The national administrator may close a national competent authority account if the emissions reported under Article 15b(8) have been registered.’;

(6) the following Article 32a is inserted:

‘Article 32a

Blocking of accounts due to a failure to surrender allowances

1. If, on 1 October of each year, the number of allowances surrendered for the current period pursuant to Article 56 from a stationary installation holding account or an aircraft operator holding account receiving free allocation of allowances, is lower than its verified emissions in the current period and including the preceding year, plus a correction factor, the central administrator shall ensure that the Union Registry sets the corresponding operator account to a blocked status.

2. When all overdue allowances have been surrendered from an operator account pursuant to Article 56, the central administrator shall ensure that the Union Registry sets the corresponding operator account to open status.’;

(7) in Article 33, the following paragraph 1d is inserted:

‘1d. When the negative compliance status figure results only from the first or second EU ETS phase and where it cannot be corrected in future phases by an operator of a stationary installation, that negative figure shall not be taken into account in the calculation of the compliance status figure in accordance with paragraph 1.’;

(8) Article 40 is replaced by the following:

‘Article 40

Transfer of aviation allowances to be auctioned

1. The central administrator shall, in a timely manner, transfer on behalf of the relevant auctioning Member State as represented by its auctioneer appointed in accordance with Commission Delegated Regulation (EU) No 2023/2830* general allowances for aviation from the EU Aviation Total Quantity Account to the EU Auction Account in a quantity corresponding to the annual volumes determined pursuant to that Regulation.

2. In case of adjustments of the annual volumes of allowances in accordance with Article 14 of Regulation (EU) No 2023/2830, the central administrator shall transfer a corresponding quantity of general allowances from the EU Aviation Total Quantity Account to the EU Auction Account or from the EU Auction Account to the EU Aviation Total Quantity Account, as the case may be.

*Commission Delegated Regulation (EU) 2023/2830 of 17 October 2023 supplementing Directive 2003/87/EC of the European Parliament and of the Council by laying down rules on

the timing, administration and other aspects of auctioning of greenhouse gas emission allowances, C/2023/6751, ELI: http://data.europa.eu/eli/reg_del/2023/2830/oj;

(9) in Article 48, paragraph 2 is replaced by the following:

‘2. The central administrator shall ensure that the Union Registry transfers general allowances automatically from the EU Allocation Account in accordance with the relevant national allocation table to the relevant open or blocked operator holding account, having regard to the modalities of the automatic transfer specified in the data exchange and technical specifications provided for in Article 75.’;

(10) in Article 49, the following paragraph 1a is inserted:

‘1a. Changes to the national aviation allocation tables done in accordance with Decision of the EEA joint Committee No 334/2023* shall be notified to the Commission by the Member State allocating the allowances.

** Decision of the EEA joint Committee No 334/2023 of 8 December 2023 amending Annex XX (Environment) to the EEA Agreement [2024/1419] (OJ L, 2024/1419, 13.6.2024, ELI: <http://data.europa.eu/eli/dec/2024/1419/oj>).’;

(11) in Article 50, paragraph 2 is replaced by the following:

‘2. The central administrator shall ensure that the Union Registry transfers aviation allowance, and from 1 January 2025 general allowances, automatically from the EU Aviation Allocation Account to the relevant open or blocked aircraft operator holding account in accordance with the relevant allocation table, having regard to the modalities of the automatic transfer specified in the data exchange and technical specifications provided for in Article 75.’

(12) in Article 54(1), point (c) is replaced by the following:

‘(c) from 1 January 2025, general allowances for aviation from the EU Auction Account;’;

(13) Article 58 is amended as follows:

(a) in paragraph 1, the second sentence is replaced by the following:

‘The request shall be duly signed by the authorised representative or representatives of the account holder that are authorised to initiate the type of transaction to be reversed and shall be posted within thirty working days of the finalisation of the process.’;

(b) in paragraph 6, point (a) is replaced by the following:

‘(a) a transaction surrendering or deleting allowances to be reversed was not completed more than 40 working days prior to the account administrator's proposal in accordance with paragraph 3;’;

(14) the following Article 58a is inserted before Chapter 3:

‘Article 58a

Restitution of allowances

‘1. The central administrator shall reconstitute surrendered allowances to the operator holding account to give effect to a Member State’s decision and ruling in accordance with Article 27 or Article 27a of Directive 2003/87/EC, or a ruling of the Court of Justice of the European Union, or of the European Free Trade Agreement Court finding that the activities carried out by the operator are out of the scope of that Directive.

2. The number of allowances to be restituted shall be determined by applying the following formula and shall be rounded to the nearest integer:

The number of allowances to be restituted =

The number of the allowances surrendered in excess
× (inflation adjusted average value of allowances in the year of surrender
÷ the average value of allowances in the year of restitution)

Where:

The average value of allowances in the year of the surrender is determined based on the average auction clearing price for that year on the common auction platform pursuant to Article 26(1) of Delegated Regulation (EU) 2023/2830***.

The average value of allowances in the year of the restitution is determined based on the average auction clearing price for that year on the common auction platform pursuant to Article 26(1) of Delegated Regulation (EU) 2023/2830

The inflation is determined based on the consumer index based on the European Union's harmonised Index of Consumer Price.

3. The same type of allowances that were initially surrendered shall be restituted from the Union deletion account to the operator holding account.';

*** Commission Delegated Regulation (EU) 2023/2830 of 17 October 2023 supplementing Directive 2003/87/EC of the European Parliament and of the Council by laying down rules on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances (OJ L, 2023/2830, 20.12.2023, ELI: http://data.europa.eu/eli/reg_del/2023/2830/oj).';

- (15) Annex I is amended in accordance with Annex I to this Regulation;
- (16) Annex VII is amended in accordance with Annex II to this Regulation;
- (17) Annex IX is amended in accordance with Annex III to this Regulation;
- (18) Annex XI is replaced by the text in Annex IV to this Regulation;
- (19) Annex XIII is amended in accordance with Annex V to this Regulation.

Article 2

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

Article 1, points (2), (3), (5), (8) and (12), and Annex I, Annex III and Annex V, point (1), shall apply from 1 January 2025.

This Regulation shall be binding in its entirety and directly applicable in all Member.

Done at Brussels,

For the Commission
The President

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