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Contents

[1] Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

DECISIONS

[1] Text with EEA relevance.

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2019/1121

of 25 June 2019

on the signing, on behalf of the European Union, of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1), Article 100(2) and the first subparagraph of Article 207(4), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 23 April 2007, the Council authorised the Commission to negotiate a free trade agreement ('FTA') with Member States of the Association of Southeast Asian Nations (ASEAN). That authorisation provided for the possibility of bilateral negotiations.

(2) On 22 December 2009, the Council authorised the Commission to pursue bilateral FTA negotiations with individual ASEAN Member States. In June 2012, the Commission launched bilateral negotiations on an FTA with Viet Nam to be conducted in accordance with the existing negotiating directives.

(3) The negotiations for a Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam ('the Agreement') have been concluded.

(4) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing on behalf of the Union of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam ('the Agreement') is hereby authorised, subject to the conclusion of the said Agreement. ([1])

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

([1]) The text of the Agreement will be published together with the decision on its conclusion.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 25 June 2019.

For the Council
The President
A. ANTON

REGULATIONS

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC ([1]), and in particular Article 19(3) thereof,

Whereas:

(1) Article 19(1) of Directive 2003/87/EC requires that all allowances issued from 1 January 2012 onwards are held in a Union Registry. Such a Union Registry was initially established by Commission Regulation (EU) No 920/2010 ([2]).

(2) Commission Regulation (EU) No 389/2013 ([3]) repealed Regulation (EU) No 920/2010 to lay down general, operational and maintenance requirements concerning the Union Registry for the trading period starting on 1 January 2013 and subsequent periods, concerning the independent transaction log provided for in Article 20(1) of Directive 2003/87/EC, and concerning registries provided for in Article 6 of Decision No 280/2004/EC of the European Parliament and of the Council ([4]).

(3) The Union Registry ensures the accurate accounting of transactions under the system for greenhouse gas emission allowance trading within the Union (EU ETS), set up by Directive 2003/87/EC. The Union Registry is a standardised and secured electronic database containing common data elements to track the issue, holding, transfer and cancellation, as applicable, of allowances, and to provide for public access and confidentiality, as appropriate. It should ensure that there are no transfers, which are incompatible with the obligations resulting from Directive 2003/87/EC.

(4) A new period of economy-wide legislation applies from 2021 that is the start of a new period for the EU ETS. It is necessary to ensure that the implementation and the functioning of the registries system comply also with the requirements set for this new period.

(5) Directive (EU) 2018/410 of the European Parliament and of the Council ([5]) amended substantially Directive 2003/87/EC so as to enhance cost-effective emission reductions and low-carbon investments, requiring changes to the Union Registry. The provisions introduced by those amendments apply to the periods from 2021.

([1]) OJ L 275, 25.10.2003, p. 32.
([2]) Commission Regulation (EU) No 920/2010 of 7 October 2010 for a standardised and secured system of registries 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 (OJ L 270, 14.10.2010, 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 (EU) No 1193/2011 (OJ L 122, 3.5.2013, p. 1).
([4]) Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ L 49, 19.2.2004, p. 1).
([5]) Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ L 76, 19.3.2018, p. 3).

(6) Pursuant to Article 13 of Directive 2003/87/EC, allowances issued from 1 January 2013 onwards are valid indefinitely. However, from 2021 onwards, the allowances are to include an indication of the trading period of their creation. It is therefore necessary to provide the appropriate functionalities in the Union Registry. The indication showing in which ten-year period the allowances were created should only be visible to account holders where this is needed to distinguish the allowances created in one phase from those created in another phase. This is the case during the transition from the third trading period to the fourth, taking into account the fact that allowances created in the period starting in 2021 are only valid for emissions from 1 January 2021 onwards.

(7) In addition, restriction to the surrender of allowances should be applied to ensure that allowances can only be used for emissions from the first year of the ten-year period in which they were issued. The rules for the calculation of the compliance status figure are necessary in order to ensure the compliance with this restriction.

(8) Directive (EU) 2018/410 deleted paragraph 7 of Article 11b of Directive 2003/87/EC. The use of international credits in the EU ETS will therefore no longer be possible in the trading period starting from 1 January 2021. Consequently, no international credits may be held on ETS accounts and international credit entitlements will cease to exist. However, until all operations required in relation to the trading period between 2013 and 2020 are concluded, the use of international credits, and consequently of international credit entitlements, should be maintained. Non-eligible units should be removed from ETS accounts after the end of the continued applicability of the relevant provisions of Regulation (EU) No 389/2013.

(9) Following the classification of emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC as 'financial instruments' under Directive 2014/65/EU of the European Parliament and of the Council ([6]), it is appropriate to adapt the rules regulating the Union Registry to align them with the requirements of the financial market legislation to the extent necessary, in particular by ensuring the provision of relevant information allowing the effective enforcement of Directive 2014/65/EU and Regulation (EU) No 596/2014 of the European Parliament and of the Council ([7]).

(10) In accordance with Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council ([8]), financial instruments are to be identified by means of International Securities Identification Numbers (ISIN codes) defined in ISO 6166. In order to facilitate the fulfilment of reporting obligations by the account holders, the ISIN codes for emission allowances should be displayed in the Union Registry.

(11) The smooth implementation of the auctioning process under Commission Regulation (EU) No 1031/2010 ([9]), stemming primarily from the experience gained from the implementation of the auctioning process, and from the fact that from 3 January 2018 spot emission allowances listed in point (11) of Section C of Annex I to Directive 2014/65/EU are classified as financial instruments, requires amendments to Regulation (EU) No 389/2013. In particular, this classification means that spot emission allowances come within the scope of Directive 98/26/EC of the European Parliament and of the Council ([10]). The amendments are necessary to better align the processes covering the auctions in this Regulation with the requirements of Directive 98/26/EC including their harmonised implementation under national law, where necessary, for the purposes of the auctioning of emission allowances.

(12) As allowances exist only in dematerialised form and are fungible, the title to an allowance should be established by its existence in the account of the Union Registry in which it is held. Moreover, to reduce the risks associated with the reversal of transactions entered in the Union Registry, and the consequent disruption to the system and to the market that such reversal may cause, it is necessary to ensure that allowances are fully fungible. In particular, transactions can be reversed, revoked or unwound only in accordance with the rules of the Registry,

([6]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

([7]) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

([8]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

([9]) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).

([10]) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

within a period set by those rules. Nothing in this Regulation should prevent an account holder or a third party from exercising any right or claim resulting from the underlying transaction that they may have in law to recovery or restitution in respect of a transaction that has entered a system, such as in case of fraud or technical error, as long as this does not lead to the reversal, revocation or unwinding of the transaction. Furthermore, the acquisition of an allowance in good faith should be protected.

(13) The central administrator's main responsibilities should be to provide, operate and maintain the Union Registry and the European Union Transaction Log (EUTL), to manage central accounts and to perform operations which are carried out centrally. The national administrators' main responsibilities should be to be the contact point with their respective account holders in the Union Registry and perform all operations involving direct contact with them, including the opening, suspension of access to and closure of accounts.

(14) Where Member States allocate allowances free of charge on the basis of Article 10c of Directive 2003/87/EC, these allowances should be issued in accordance with Article 10c of that Directive.

(15) Regulation (EU) 2017/2392 of the European Parliament and of the Council ([11]) amended Directive 2003/87/EC. That amendment extended the derogation from the EU ETS obligations for flights to and from third countries until 31 December 2023. Accordingly, aircraft operators benefiting from the derogation are to continue to receive free allowances until that date. From 1 January 2021, the number of free allowances allocated to aircraft operators is subject to the application of the linear factor referred to in Article 9 of Directive 2003/87/EC.

(16) Article 11 of Directive 2003/87/EC provides that competent authorities are to transfer, by 28 February of each year, the number of allowances allocated to operators for free for that year. Where that Directive provides for the recalculation of the number of allowances allocated to an operator, the central administrator should ensure that the recalculation of the allocation is made in accordance with Directive 2003/87/EC and the required changes are carried out in the Union Registry and the EUTL before the national competent authority may transfer the allowances to the operator concerned.

(17) Nothing in this Regulation should prevent a competent authority from requiring an operator to transfer a number of allowances, received in excess of its adjusted allocation for the relevant year, to the EU Allocation Account in cases where there has been an over allocation of allowances, including as a result of an error in the original allocation or the operator having failed to correctly or completely submit to the competent authority relevant information provided that the central administrator has carried out a change to the national allocation table of the Member State.

(18) Allowances issued after an operator has ceased the activities performed in the installation to which those allowances relate, without informing the competent authority beforehand, cannot be classified as emissions allowances within the meaning of Directive 2003/87/EC. This implies that in case the excess allocation results from the operator not reporting the cessation of production, it should be possible to remove from the operator holding account the corresponding number of allowances even without the approval of the operator.

(19) Adequate and harmonised requirements on opening of accounts, authentication and access rights should be applied to protect the security of information held in the Union Registry and to avoid fraud. The requirements laid down in Regulation (EU) No 389/2013 should be reviewed and updated with the purpose of ensuring their effectiveness while taking into account proportionality. Although the administrators of the Union Registry are not directly subject to requirements laid down in Directive (EU) 2015/849 of the European Parliament and of the Council ([12]), requirements and safeguard measures of that Directive are also reflected in the rules governing the opening and maintaining of accounts in the Union Registry, with special regard to information of beneficial owners. The rules in Regulation (EU) No 389/2013 should be revised to allow national administrators to adapt their procedures to the actual risk represented by a particular action.

([11]) Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021 (OJ L 350, 29.12.2017, p. 7).

([12]) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

(20) If an original document, originating in another Member State, or a certified copy thereof, is submitted as evidence under Annexes IV or VIII, the rules of Regulation (EU) 2016/1191 of the European Parliament and of the Council ([13]) should be applied accordingly.

(21) National administrators, the central administrator and the Commission are to comply with Union and national legislation concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council ([14]), and Regulation (EU) 2018/1725 of the European Parliament and of the Council ([15]), where they are applicable to information held and processed pursuant to this Regulation.

(22) Records concerning all processes, operators and persons in the registries system should be kept, while personal data contained in them should be deleted after the expiry of the relevant retention period.

(23) The Commission and the national administrators are joint controllers of the information held and processed pursuant to this Regulation. The Union Registry and the EUTL performs tasks that are carried out in the public interest. In the case of a personal data breach, the relevant notification procedures pursuant to data protection legislation are applicable.

(24) National administrators, the central administrator and the Commission should ensure that information held and processed pursuant to this Regulation can only be used for the purpose of the functioning of the Union Registry.

(25) The rules governing the Union Registry should be simplified in order to reduce any administrative burden to the extent possible, without undermining the environmental integrity, security or reliability of the EU ETS. To define the direction and extent of possible simplifications and alleviations, the practical experience of national administrators of the Union Registry was gathered and Member States were consulted. The resulting new rules intend to provide for easier understanding and use of the Union Registry both by its users and administrators.

(26) Where necessary and for as long as necessary in order to protect the environmental integrity of the EU ETS, aviation operators and other operators in the EU ETS may not use allowances that are issued by a Member State which has notified the European Council of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union ('TEU').

(27) Linking the EU ETS with other emissions trading systems expands opportunities for emissions reductions, thereby cutting the cost of fighting climate change. The operationalisation of linking agreements pursuant to Article 25 of Directive 2003/87/EC requires a number of adaptations in the Union Registry. Therefore, Regulation (EU) No 389/2013 should be amended to, inter alia, ensure the recognition of allowances of third countries for compliance, enable the transfer of such allowances, the creation of accounts, transaction processes and to include the conditions for suspension of the link.

(28) All operations required in relation to the third trading period of the EU ETS between 2013 and 2020 should be completed in accordance with the rules laid down in Regulation (EU) No 389/2013. As Directive 2003/87/EC allowed for the use of international credits generated pursuant to the Kyoto Protocol, that Regulation should continue to apply to those operations. In order to provide clarity about the rules applying to all operations related to the third trading period in accordance with Directive 2003/87/EC, as amended by Directive 2009/29/EC of the European Parliament and of the Council ([16]), on the one hand, and the rules applying to all operations related to the fourth trading period in accordance with Directive 2003/87/EC, as amended by Directive (EU) 2018/410, on the other hand, the scope of application of those provisions of Regulation (EU) No 389/2013 which continue to apply, after the entry into force of the present Regulation, for the operations related to the third trading period should be limited to that purpose.

([13]) Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 (OJ L 200, 26.7.2016, p. 1).

([14]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

([15]) 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).

([16]) Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).

(29) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered an opinion on 18 October 2018,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

CHAPTER 1

Subject matter, scope and definitions

Article 1

Subject matter

This Regulation lays down general, operational and maintenance requirements concerning the Union Registry and the independent transaction log provided for in Article 20(1) of Directive 2003/87/EC.

Article 2

Scope

This Regulation applies to allowances created for the purposes of the European Union Emissions Trading System (EU ETS).

Article 3

Definitions

For the purposes of this Regulation, the definitions in Article 3 of Regulation (EU) No 1031/2010 and in Article 3 of Commission Delegated Regulation (EU) 2019/331 ([17]) shall apply. The following definitions shall also apply:

(1) 'central administrator' means the person designated by the Commission pursuant to Article 20 of Directive 2003/87/EC;

(2) 'national administrator' means the entity responsible for administering on behalf of a Member State a set of user accounts under the jurisdiction of a Member State in the Union Registry, designated in accordance with Article 7;

(3) 'account holder' means a natural or legal person that holds an account in the Union Registry;

(4) 'account information' means all information necessary to open an account or register a verifier, including all information on representatives assigned to them;

(5) 'competent authority' means the authority or authorities designated by a Member State pursuant to Article 18 of Directive 2003/87/EC;

(6) 'verifier' means a verifier as defined in Article 3(3) of Commission Implementing Regulation (EU) 2018/2067 ([18]);

(7) 'aviation allowances' means allowances created pursuant to Article 3c(2) of Directive 2003/87/EC, including allowances, created for the same purpose, stemming from emission trading systems that are linked to the EU ETS under Article 25 of that Directive;

(8) 'general allowances' means all other allowances created pursuant to Directive 2003/87/EC, including allowances stemming from emission trading systems that are linked with the EU ETS pursuant to Article 25 of that Directive;

(9) 'process' means an automated technical means to carry out an action relating to an account or a unit in the Union Registry;

(10) 'execution' means the finalisation of a process proposed for execution that may result in completion if all conditions are fulfilled or in termination;

([17]) Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 27.2.2019, p. 8).

([18]) Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 334, 31.12.2018, p. 94).

(11) 'working day' means any day of the year from Monday to Friday;

(12) 'transaction' means a process in the Union registry that involves the transfer of an allowance from one account to another account;

(13) 'surrender' means the accounting of an allowance by an operator or aircraft operator against the verified emissions of its installation or aircraft;

(14) 'deletion' means the definitive disposal of an allowance by its holder without accounting it against verified emissions;

(15) 'money laundering' means money laundering as defined in Article 1(3) of Directive (EU) 2015/849;

(16) 'serious crime' means serious crime as defined in Article 3(4) of Directive (EU) 2015/849;

(17) 'terrorist financing' means terrorist financing as defined in Article 1(5) of Directive (EU) 2015/849;

(18) 'directors' means the persons discharging managerial responsibilities as defined in Article 3(1) point (25) of Regulation (EU) No 596/2014;

(19) 'parent undertaking' means parent undertaking as defined in Article 2(9) of Directive 2013/34/EU of the European Parliament and of the Council ([19]);

(20) 'subsidiary undertaking' means subsidiary undertaking as defined in Article 2(10) of Directive 2013/34/EU;

(21) 'group' means group as defined in Article 2(11) of Directive 2013/34/EU;

(22) 'central counterparty' means central counterparty as defined in Article 2(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council ([20]);

CHAPTER 2

The registries system

Article 4

Union Registry

1. The central administrator shall operate and maintain the Union Registry, including its technical infrastructure.

2. Member States shall use the Union Registry for the purposes of meeting their obligations under Article 19 of Directive 2003/87/EC. The Union Registry shall provide national administrators and account holders with the processes set out in this Regulation.

3. The central administrator shall ensure that the Union Registry conforms to the hardware, network, software and security requirements set out in the data exchange and technical specifications provided for in Article 75 of this Regulation.

Article 5

European Union Transaction Log

1. A European Union Transaction Log (EUTL), to take the form of a standardised electronic database, is established, pursuant to Article 20 of Directive 2003/87/EC, for transactions within the scope of this Regulation.

2. The central administrator shall operate and maintain the EUTL in accordance with the provisions of this Regulation.

3. The central administrator shall ensure that the EUTL is capable of checking and recording all processes referred to under this Regulation, and complies with the hardware, network and software requirements set out in the data exchange and technical specifications provided for in Article 75 of this Regulation.

([19]) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

([20]) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

4. The central administrator shall ensure that the EUTL is capable of recording all processes described in Chapter 3 of Title I and in Titles II and III.

Article 6

Communication links between registries and the EUTL

1. The central administrator shall ensure that the Union Registry maintains a communication link with the registries of greenhouse gas emissions trading systems with whom a linking agreement is in force in accordance with Article 25 of Directive 2003/87/EC for the purposes of communicating transactions with allowances.

2. The central administrator shall ensure that the Union Registry maintains a direct communication link with the EUTL for the purposes of checking and recording transactions with allowances and the account management processes set out in Chapter 3 of Title I. All transactions involving allowances units shall take place within the Union Registry, and shall be recorded and checked by the EUTL. The central administrator may establish a restricted communication link between the EUTL and the registry of a third country which signed a treaty concerning its accession to the Union.

Article 7

National administrators

1. Each Member State shall designate a national administrator. The Member State shall access and administer pursuant to Article 10 its own accounts and the accounts in the Union Registry under its jurisdiction through its national administrator as defined in Annex I.

2. The Member States and the Commission shall ensure that there is no conflict of interest amongst national administrators, the central administrator and account holders.

3. Each Member State shall notify the Commission of the identity and contact details of its national administrator, including an emergency telephone number to be used in the case of a security incident.

4. The Commission shall coordinate the implementation of this Regulation with the national administrators of each Member State and the central administrator. In particular, the Commission shall pursue all appropriate consultations in accordance with the Treaties on issues and procedures related to the operation of registries regulated under this Regulation and the implementation of this Regulation. The terms of cooperation, agreed between the central administrator and the national administrators shall include common operational procedures for the implementation of this Regulation, change and incident management procedures for the Union Registry, technical specifications for the functioning and reliability of the Union Registry and the EUTL and provisions for the tasks of the controllers of personal data gathered pursuant to this Regulation. The terms of cooperation may include the modalities of the consolidation of the external communication links, the information technology infrastructure and user account access procedures. To ensure harmonised implementation of Chapter 3 of Title I, every two years the central administrator shall provide the national administrators a report on the relevant practices in place in each Member State.

5. The central administrator, the competent authorities and national administrators shall only perform processes necessary to carry out their respective functions as set out in Directive 2003/87/EC and the measures adopted pursuant to its provisions.

CHAPTER 3

Accounts

Section 1

General provisions applicable to all accounts

Article 8

Accounts

1. Member States and the central administrator shall ensure that the Union Registry contains accounts as specified in Annex I.

2. Each account type may hold the unit types as set out in Annex I.

Article 9

Account status

1. Accounts shall be in one of the following status: 'open', 'blocked', 'closure pending' or 'closed'. For particular years, accounts may also have the status 'excluded'.

2. No processes may be initiated from blocked accounts, except for the processes specified in Articles 22, 31 and 56.

3. Before an account is closed, it may be set to status 'closure pending' for the period of available remedies against closure or until the conditions of the closure are fulfilled but not longer than 10 years. No processes may be initiated from accounts in status 'closure pending', it may not acquire units and all access to these accounts shall be suspended. An account having the status 'closure pending' can be set to 'open' only if all conditions for opening an account are fulfilled.

4. No processes may be initiated from closed accounts. A closed account may not be re-opened, and may not acquire units.

5. Upon exclusion of an installation from the EU ETS pursuant to Articles 27 or 27a of Directive 2003/87/EC, the national administrator shall set the corresponding operator holding account to excluded status for the duration of the exclusion.

6. Upon notification from the competent authority that an aircraft operator's flights are no longer included in the EU ETS in accordance with Annex I to Directive 2003/87/EC in a given year, the national administrator shall set the corresponding aircraft operator holding account to excluded status, after giving prior notice to the aircraft operator concerned and until notification from the competent authority that an aircraft operator's flights are again included in the EU ETS.

7. No processes may be initiated from excluded accounts, except for the processes specified in Articles 22 and 57 and the processes specified in Articles 31 and 56 corresponding to the period where the account status was not set to excluded.

Article 10

The administering of accounts

1. Every account shall have an administrator who shall be responsible for administering the account on behalf of a Member State or on behalf of the Union.

2. The administrator of an account shall be determined for each account type as set out in Annex I.

3. The administrator of an account shall open, suspend access to, or close an account, change its status, approve authorised representatives, permit changes to account details that require the approval of the administrator, initiate transactions as requested by the account representative or the account holder in accordance with Article 20(6) and (7) and initiate transactions as instructed by the competent authority or the relevant law enforcement authority, in accordance with this Regulation.

4. The administrator may require the account holders and their representatives to agree to comply with reasonable terms and conditions consistent with this Regulation having regard to the issues set out in Annex II.

5. Accounts shall be governed by the laws and fall under the jurisdiction of the Member State of their administrator and the units held in them shall be considered to be situated in that Member State's territory.

Article 11

Notifications from the central administrator

The central administrator shall notify the account representatives and the national administrator of the proposal for execution and completion or termination of any process related to the account, and of the change of status of the account, through an automated mechanism described in the data exchange and technical specifications provided for in Article 75. Notifications shall be sent in the official language(s) of the Member State of the administrator of the account.

Section 2

Opening and updating accounts

Article 12

Opening accounts administered by the central administrator

The central administrator shall open all ETS management accounts in the Union Registry.

Article 13

Opening an auction collateral delivery account in the Union Registry

1. A clearing system or a settlement system as defined in Regulation (EU) No 1031/2010 that is connected to an auction platform appointed pursuant to Article 26 or Article 30 of that Regulation may submit to a national administrator a request for the opening of an auction collateral delivery account in the Union Registry. The person requesting the account shall provide the information set out in Annex IV.

2. Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 21, the national administrator shall open the auction collateral delivery account in the Union Registry or inform the person requesting the account of the refusal to open the account, pursuant to Article 19.

3. Allowances held in an auction collateral delivery account, shall constitute collateral security as defined in Article 2(m) of Directive 98/26/EC of the European Parliament and of the Council.

For the purposes of Article 9(2) of Directive 98/26/EC, an auction collateral delivery account held in the Union Registry shall constitute the relevant account and shall be deemed to be located in and governed by the laws of the Member State referred to in Article 10(5) of this Regulation.

Article 14

Opening operator holding accounts in the Union Registry

1. Within 20 working days of the entry into force of a greenhouse gas emissions permit, the relevant competent authority or the operator shall provide the relevant national administrator with the information set out in Annex VI and shall request the national administrator to open an operator holding account in the Union Registry.

2. Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 21, the national administrator shall open an operator holding account for each installation in the Union Registry or inform the prospective account holder of the refusal to open the account, pursuant to Article 19.

3. A new operator holding account may be opened only if the installation does not already have an operator holding account that was opened based on the same greenhouse gas emissions permit.

Article 15

Opening aircraft operator holding accounts in the Union Registry

1. Within 20 working days from the approval of the monitoring plan of an aircraft operator, the competent authority or aircraft operator shall provide the relevant national administrator with the information set out in Annex VII and shall request the national administrator to open an aircraft operator holding account in the Union Registry.

2. Each aircraft operator shall have one aircraft operator holding account.

3. Aircraft operators performing aviation activities with total annual emissions lower than 25 000 tonnes of carbon dioxide equivalent per year or operating fewer than 243 flights per period for three consecutive four-month period may mandate a natural person or a legal entity to open an aircraft operator holding account and to surrender the allowances pursuant to Article 12(2a) of Directive 2003/87/EC on their behalf. Responsibility for compliance still remains with the aircraft operator. When mandating the natural person or the legal entity, the aircraft operator shall ensure that there is no conflict of interest amongst the mandated person or entity and competent authorities, national administrators, verifiers or other bodies subject to the provisions of Directive 2003/87/EC and the acts adopted for its implementation. In this case, the natural person or legal entity mandated shall provide the information required in accordance with paragraph 1.

4. Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 21, the national administrator shall open an aircraft operator holding account for each aircraft operator in the Union Registry or inform the prospective account holder of the refusal to open the account, pursuant to Article 19.

5. An aircraft operator shall have only one aircraft operator holding account.

Article 16

Opening trading accounts in the Union Registry

1. A request for opening a trading account in the Union Registry shall be submitted to the national administrator by the prospective account holder. The prospective account holder shall provide information as required by the national administrator, which shall include, at a minimum, the information set out in Annex IV.

2. The Member State of the national administrator may require as a condition for opening a trading account that the prospective account holders have their permanent residence or registration in the Member State of the national administrator administering the account.

3. The Member State of the national administrator may require as a condition for opening a trading account that prospective account holders are registered for value added tax (VAT) in the Member State of the national administrator of the account.

4. Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 21, the national administrator shall open a trading account in the Union Registry or inform the prospective account holder of the refusal to open the account, pursuant to Article 19.

Article 17

Opening national holding accounts in the Union Registry

The competent authority of a Member State shall instruct the national administrator to open a national holding account in the Union Registry within 20 working days of the receipt of the information set out in Annex III.

Article 18

Registering verifiers in the Union Registry

1. A request for registering a verifier in the Union Registry shall be submitted to the national administrator. The person requesting the registration shall provide information as required by the national administrator, including the information set out in Annexes III and V.

2. Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 21, the national administrator shall register the verifier in the Union Registry or inform the prospective verifier of the refusal, pursuant to Article 19.

Article 19

Refusal to open an account or register a verifier

1. The national administrator shall verify whether the information and documents provided for account opening or registration are complete, up-to-date, accurate and true.

In the event of justified doubts, the national administrator may request assistance by another national administrator in carrying out the verification referred to in the first subparagraph. The administrator that has received such request may refuse it. The prospective account holder or verifier may explicitly ask the national administrator to request such assistance. The national administrator shall inform the prospective account holder or verifier of such assistance request.

2. A national administrator may refuse to open an account or register a verifier:

(a) if the information and documents provided are incomplete, out-of-date or otherwise inaccurate or false;

(b) if a law enforcement authority provides information or if information is available by other means to a national administrator that the prospective account holder, or, if it is a legal person, any of the directors of the prospective account holder, is under investigation or has been convicted in the preceding five years for fraud involving allowances, money laundering, terrorist financing or other serious crimes for which the account may be an instrument;

(c) if the national administrator has reasonable grounds to believe that the accounts may be used for fraud involving allowances, money laundering, terrorist financing or other serious crimes;

(d) for reasons set out in national law.

3. Where the national administrator refuses to open an operator holding account or aircraft operator holding account in accordance with paragraph 2, the account may be opened upon instruction from the competent authority. All access to the account shall be suspended in accordance with Article 30(4) until the reasons for refusal listed in paragraph 2 are no longer present.

4. If the national administrator refuses to open an account, the person requesting the account opening may object to the competent authority or the relevant authority under national law, who shall either instruct the national administrator to open the account or uphold the refusal in a reasoned decision, subject to requirements of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.

Article 20

Authorised representatives

1. The central administrator shall ensure that authorised representatives of accounts in the Union Registry can access the relevant accounts and have one of the following rights on behalf of the account holder:

(a) initiate processes;

(b) approve processes, if required;

(c) initiate processes and approve processes initiated by another authorised representative.

2. At the opening, each account shall have at least two authorised representatives with one of the following combination of rights:

(a) one authorised representative with the right to initiate processes and one with right to approve processes;

(b) one authorised representative with the right to initiate processes and approve processes initiated by another authorised representative and one with right to approve processes;

(c) one authorised representative with right to initiate processes and one with the right to initiate processes and approve processes initiated by another authorised representative;

(d) two authorised representatives with the right to initiate processes and approve processes initiated by another authorised representative.

3. Verifiers shall have at least one authorised representative who initiates relevant processes on behalf of the verifier. A representative of a verifier may not be representative of any account.

4. Account holders may decide that the approval of a second authorised representative is not necessary to propose transfers for execution to accounts on the trusted account list set up pursuant to Article 23. The account holder may withdraw such decision. The decision and the withdrawal of the decision shall be communicated in a duly signed statement submitted to the national administrator.

5. In addition to the authorised representatives specified in paragraphs 1 and 2, accounts may also have authorised representatives with 'read only' access to the account.

6. If an authorised representative cannot access the Union Registry for technical or other reasons, the national administrator, in accordance with the rights assigned to that authorised representative, may initiate or approve transactions on behalf of the authorised representative upon request, provided that the national administrator allows such requests and that the access of the authorised representative was not suspended in accordance with this Regulation.

7. If authorised representatives of an account cannot access the Union Registry, account holders may request the national administrator to propose a process for execution in their name, in accordance with this Regulation, provided that the national administrator allows such requests. Such requests may not be made for accounts in closed status.

8. The data exchange and technical specifications laid down in Article 75 may set a maximum number of authorised representatives for each account type.

9. Authorised representatives shall be natural persons over 18 years of age. All authorised representatives of a single account shall be different persons but the same person can be an authorised representative on more than one account. The Member State of the national administrator may require that at least one of the authorised representatives of an account shall be a permanent resident in that Member State, except for representatives of verifiers.

Article 21

Nominating and approval of authorised representatives

1. When requesting the opening of an account or the registration of a verifier, the prospective account holder or verifier shall nominate a number of authorised representatives in accordance with Article 20.

2. When nominating an authorised representative, the account holder shall provide information as required by the administrator. That information shall include, at a minimum, the information set out in Annex VIII.

If the prospective authorised representative has already been nominated to an account and if the account holder so requests, the national administrator may use the documentation that was submitted at the earlier nomination for the purposes of verification referred to in paragraph 4.

3. Within 20 working days of the receipt of a complete set of information required in accordance with paragraph 2, the national administrator shall approve an authorised representative, or inform the account holder of its refusal. Where evaluation of the nominee information requires more time, the administrator may extend the evaluation process by up to 20 additional working days, and notify the extension to the account holder.

4. The national administrator shall verify whether the information and documents provided for nominating an authorised representative are complete, up-to-date, accurate and true.

In the event of justified doubts, the national administrator may request assistance by another national administrator in carrying out the verification referred to in the first subparagraph. The administrator that has received such request may refuse it. The prospective account holder or verifier may explicitly ask the national administrator to request such assistance. The national administrator shall inform the prospective account holder or verifier of such assistance request.

5. A national administrator may refuse to approve an authorised representative:

(a) if the information and documents provided are incomplete, out-of-date or otherwise inaccurate or false;

(b) if a law enforcement authority provides information or if information is available by other means to a national administrator that the prospective representative is under investigation or has been convicted in the preceding five years for fraud involving allowances, money laundering, terrorist financing or other serious crimes for which the account may be an instrument;

(c) for reasons set out in national law.

6. If the national administrator refused to approve an authorised representative, the account holder may object to the relevant authority under national law, who shall either instruct the national administrator to approve the representative or uphold the refusal in a reasoned decision, subject to requirements of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.

Article 22

Updating of account information and information on authorised representatives

1. All account holders shall notify the national administrator within 10 working days of changes to the account information. In addition, account holders shall confirm to the national administrator by 31 December each year that their account information remains complete, up-to-date, accurate and true.

2. Operators and aircraft operators shall notify the administrator of their account within 10 working days if they have undergone a merger or a split.

3. The notification of change shall be supported by information as required by the national administrator in conformity with this Section. Within 20 working days of the receipt of such a notification and supporting information, the relevant national administrator shall approve the update of the information. The administrator may refuse to update the information in accordance with Article 21(4) and (5). The account holder shall be notified of any such refusal. Objections to such refusals may be raised with the competent authority or the relevant authority under national law in accordance with Article 19(4).

4. At least once every three years, the national administrator shall review whether the account information remains complete, up-to-date, accurate and true, and shall request that the account holder notify any changes as appropriate. For operator holding accounts, aircraft operator holding accounts and verifiers, the review shall take place at least once every five years.

5. The account holder of an operator holding account may only sell or divest of its operator holding account together with the installation linked to the operator holding account.

6. Subject to paragraph 5, no account holder may sell or divest of the ownership of its account to another person.

7. Where the legal entity holding an account in the Union registry changes due to a merger or a split of account holders, the account holder shall be the legal successor of the previous account holder upon submission of the documentation required pursuant to Articles 14, 15 or 16.

8. An authorised representative may not transfer its status as such to another person.

9. An account holder or a verifier may request the removal of an authorised representative. Upon receipt of the request, the national administrator shall suspend the access of the authorised representative. Within 20 working days of the receipt of the request, the relevant administrator shall remove the authorised representative.

10. An account holder may nominate new authorised representatives in accordance with Article 21.

11. If the administering Member State of an aircraft operator changes in accordance with the procedure set out in Article 18a of Directive 2003/87/EC, the central administrator shall update the national administrator of the corresponding aircraft operator holding account. Where the administrator of an aircraft operator holding account changes, the new administrator may require the aircraft operator to submit the account opening information that it requires in accordance with Article 15 and the information about authorised representatives that it requires in accordance with Article 21.

12. Subject to paragraph 11, the Member State responsible for managing an account shall not change.

Article 23

Trusted account list

1. Accounts in the Union Registry may have a trusted account list.

2. Accounts held by the same account holder and administered by the same national administrator shall be automatically included on the trusted account list.

3. The EU Allocation Account and the Union Deletion Account shall be automatically included on the trusted account list

4. Changes to the trusted account list shall be proposed for execution and finalised through the procedure set out in Article 35. The change shall be initiated and approved by two authorised representatives entitled to initiate and approve processes respectively. The execution of the proposed change shall be immediate for the deletion of accounts from the trusted account list. For all other changes to the trusted account list the execution shall take place at 12.00 Central European Time (CET) on the fourth working day following the proposal.

Section 3

Closure of accounts

Article 24

Closure of accounts

Subject to Article 29, within 10 working days of the receipt of a request from the account holder of an account other than those specified in Articles 25 and 26, the administrator shall close the account.

Article 25

Closure of operator holding accounts

1. The competent authority shall notify the national administrator within 10 working days of the withdrawal of a greenhouse gas emissions permit or knowledge of cessation of operation of an installation. Within 10 working days of such a notification, the national administrator shall record the relevant date in the Union Registry.

2. The national administrator may close an operator holding account if the following conditions are fulfilled:

(a) the installation ceased operation or the greenhouse gas emissions permit was withdrawn;

(b) the year of last emission is registered in the Union Registry;

(c) verified emissions were registered for all years when the operator was included in the EU ETS;

(d) the operator of the relevant installation has surrendered an amount of allowances equal to or greater than its verified emissions;

(e) no return of excess allowances is pending pursuant to Article 48(4).

Article 26

Closure of aircraft operator holding accounts

1. The competent authority shall notify the national administrator within 10 working days of notification by the account holder or of discovering after examining other evidence, that the aircraft operator merged into another aircraft operator or the aircraft operator has ceased all its operations covered by Annex I to Directive 2003/87/EC.

2. The national administrator may close an aircraft operator holding account if the following conditions are fulfilled:

(a) notification pursuant to paragraph 1 has been made;

(b) the year of last emission is registered in the Union Registry;

(c) verified emissions were registered for all years when the aircraft operator was included in the EU ETS;

(d) the aircraft operator has surrendered an amount of allowances equal to or greater than its verified emissions;

(e) no return of excess allowances is pending pursuant to Article 50(6).

Article 27

Removing verifiers

1. Within 10 working days of the receipt of a request by a verifier to remove the verifier from the Union Registry, the national administrator shall remove the verifier.

2. The competent authority may also instruct the national administrator to remove a verifier from the Union Registry where one of the following conditions is fulfilled:

(a) the verifier's accreditation has expired or has been withdrawn;

(b) the verifier ceased operation.

Article 28

Closure of accounts and removal of authorised representatives on the administrator's initiative

1. If the situation giving rise to the suspension of access to accounts pursuant to Article 30 is not resolved within a reasonable period despite repeated notifications, the competent authority or the relevant law enforcement authority may instruct the national administrator to close those accounts for which access is suspended.

In the case of operator holding accounts or aircraft operator holding accounts the competent authority or the relevant law enforcement authority may instruct the national administrator to set to blocked status those accounts for which access is suspended until the competent authority determines that the situation giving rise to the suspension no longer subsists.

2. If on a trading account no transactions have been recorded for a period of one year, the national administrator may close that trading account after having notified the account holder that the trading account will be closed within 40 working days unless the national administrator receives a request that the account be maintained. If the national administrator does not receive any such request from the account holder, the national administrator may close the account or set its status to closure pending.

3. The national administrator shall close an operator holding account or an aircraft operator holding account upon instruction from the competent authority on the basis that there is no reasonable prospect of further allowances being surrendered or excess allowances being returned.

4. The national administrator may remove an authorised representative if it considers that the approval of the authorised representative should have been refused in accordance with Article 21(3), and in particular if it discovers that the documents and identification information provided upon nomination were incomplete, out-of-date or otherwise inaccurate or false.

5. The account holder may object to the change of account status of an account in accordance with paragraph 1 or the removal of an authorised representative in accordance with paragraph 4 with the authority competent under national law within 30 calendar days, who shall either instruct the national administrator to reinstate the account or the authorised representative or uphold the change of account status or removal in a reasoned decision, subject to requirements of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.

Article 29

Positive balance on accounts under closure

If there is a positive balance of allowances on an account which an administrator is to close in accordance with Articles 24, 25, 26 and 28, the administrator shall request the account holder to specify another account to which such allowances shall be transferred. If the account holder has not responded to the administrator's request within 40 working days, the administrator may transfer the allowances to its national holding account or set the account status to closure pending.

Section 4

Suspension of access to accounts

Article 30

Suspension of access to accounts

1. An administrator may suspend the access of an authorised representative to any account or verifier in the registry or to processes to which that authorised representative would otherwise have access if the administrator has reasonable grounds to believe that the authorised representative has:

(a) attempted to access accounts or processes for which he is not authorised;

(b) repeatedly attempted to access an account or a process using an incorrect username and password; or

(c) attempted to compromise the security, the availability, the integrity or the confidentiality of the Union Registry or the EUTL, or of the data handled or stored therein.

2. An administrator may suspend all access of authorised representatives to a specific account or a verifier where one of the following conditions is fulfilled:

(a) the account holder died or ceased to exist as a legal person;

(b) the account holder did not pay fees;

(c) the account holder violated the terms and conditions applicable to the account;

(d) the account holder did not agree to changes in the terms and conditions set by the national administrator or the central administrator;

(e) the account holder did not notify changes to account information or provide evidence concerning the changes to account information, or evidence concerning new requirements on account information;

(f) the account holder failed to maintain compliance with the Member State requirement to have an authorised representative with a permanent residence in the Member State of the national administrator;

(g) the account holder failed to maintain compliance with the Member State requirement that the account holder have a permanent residence or registration in the Member State of the administrator of the account.

3. An administrator may suspend all access of authorised representatives to a specific account or verifier in any of the following cases:

(a) for a maximum period of four weeks if the administrator has reasonable grounds to believe that the account was used or will be used for fraud, money laundering, terrorist financing, corruption or other serious crimes. In this case, provisions of Article 67 shall be applied accordingly. Upon instruction from the financial intelligence unit the period may be extended;

(b) on the basis of and in accordance with national law provisions that pursue a legitimate objective.

4. The national administrator may suspend all access of authorised representatives to a specific accounts or verifiers if it considers that the opening of the account or the registration of the verifier should have been refused in accordance with Article 19 or that the account holder no longer meets the requirements for the opening of the account.

5. The national administrator may suspend all access of authorised representatives to all accounts of an account holder if it receives information that the account holder has become subject of insolvency procedures. This suspension may be maintained until the national administrator receives official information about who has the rights to represent the account holder and the authorised representatives are confirmed or new authorised representatives are nominated in accordance with Article 21.

6. The administrator of the account shall reverse the suspension immediately once the situation giving rise to the suspension is resolved.

7. The account holder or account representative may object to the suspension of its access in accordance with paragraphs 1 to 3 to the competent authority or the relevant authority under national law within 30 calendar days, who shall either instruct the national administrator to reinstate access or uphold the suspension in a reasoned decision, subject to requirements of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.

8. The competent authority or the Commission may also instruct the national administrator or the central administrator to implement a suspension for one of the grounds set in paragraphs 1 to 5.

9. A national law enforcement authority of the Member State of the administrator may also request the administrator to implement a suspension on the basis of and in accordance with national law.

10. Where the holder of an operator holding account or aircraft operator holding account is prevented from surrendering in the 10 working days preceding the surrender time-limit laid down in Article 12(2a) and (3) of Directive 2003/87/EC due to suspension in accordance with this Article, the national administrator shall, if so requested by the account holder, surrender the number of allowances specified by the account holder.

11. If there is a positive balance of allowances on an account to which access was suspended, the competent authority or the relevant law enforcement authority, in accordance with relevant national law provisions, may instruct the national administrator to transfer immediately the allowances to the relevant national account or set the account status to 'closure pending'.

TITLE II

SPECIFIC PROVISIONS FOR THE UNION REGISTRY FOR THE UNION EMISSIONS TRADING SYSTEM

CHAPTER 1

Verified emissions and compliance

Article 31

Verified emissions data for an installation or aircraft operator

1. Whenever required by national law, each operator and aircraft operator shall select a verifier from the list of verifiers registered with the national administrator administering its account.

2. The national administrator, the competent authority or, upon decision of the competent authority, the account holder or the verifier shall enter emissions data for the previous year.

3. Annual emissions data shall be submitted using the format set out in Annex IX.

4. Upon the satisfactory verification in accordance with Article 15 of Directive 2003/87/EC of an operator's report on the emissions from an installation during a previous year, or of an aircraft operator's report on the emissions from all aviation activities it performed during a previous year, the verifier or the competent authority shall approve the annual emissions data.

5. The emissions approved in accordance with paragraph 4 shall be marked as 'verified' in the Union Registry by the national administrator or the competent authority. The competent authority may decide that instead of the national administrator, the verifier shall be responsible for marking emissions as 'verified' in the Union Registry. All approved emissions shall be marked 'verified' by 31 March.

6. The competent authority may instruct the national administrator to correct the annual verified emissions for an installation or an aircraft operator to ensure compliance with Articles 14 and 15 of Directive 2003/87/EC, by entering the corrected verified or estimated emissions for that installation or an aircraft operator for a given year in the Union Registry.

7. Where, on 1 May of each year, no verified emissions figure has been recorded in the Union Registry for an installation or an aircraft operator for a previous year or the verified emissions figure was proven to be incorrect, any substitute emissions figure estimate entered in the Union Registry shall be calculated as closely as possible in accordance with Articles 14 and 15 of Directive 2003/87/EC.

Article 32

Blocking of accounts due to a failure to submit verified emissions

1. If, on 1 April of each year, the annual emissions of an installation or aircraft operator for the preceding year have not been entered and marked as 'verified' in the Union Registry, the central administrator shall ensure that the Union Registry sets the corresponding operator holding account or aircraft operator holding account to a blocked status.

2. When all overdue verified emissions of the installation or aircraft operator for that year have been recorded in the Union Registry, the central administrator shall ensure that the Union Registry sets the account to open status.

Article 33

Calculation of compliance status figures

1. The central administrator shall ensure that on 1 May of each year, the Union Registry indicates the compliance status figure for the preceding year for every installation and aircraft operator with an operator or aircraft operator holding account that is not in a closed status by calculating the sum of all allowances surrendered for the current period less the sum of all verified emissions in the current period up to and including the preceding year, plus a correction factor. The compliance status figure shall not be calculated for accounts that had their previous compliance status figure zero or positive and the year of last emissions was set to a year before the preceding year. The calculation shall not take into account the surrender of allowances issued for a period subsequent to the current compliance period.

The central administrator shall ensure that the Union Registry calculates the compliance status figure before the closure of the account pursuant to Articles 25 and 26.

2. For the trading periods 2008-2012 and 2013-2020, the correction factor referred to in paragraph 1 shall be zero if the compliance status figure of the last year of the previous period was greater than zero, but shall remain the same as the compliance status figure of the last year of the previous period if this figure is less than or equal to zero. For the trading periods starting on 1 January 2021, the correction factor referred to in paragraph 1 shall be the same as the compliance status figure of the last year of the previous period.

3. The central administrator shall ensure that the Union Registry records the compliance status figure for every installation and aircraft operator for each year.

CHAPTER 2

Transactions

Section 1

General

Article 34

Only transactions expressly provided for in this Regulation for each account type shall be initiated by that account type.

Article 35

Execution of transfers

1. For all transactions specified in this Chapter, an out of band confirmation shall be required by the Union Registry before the transaction can be proposed for execution. Subject to Article 20(4), a transaction shall only be proposed for execution where an authorised representative initiated and another account representative has approved the transaction out of band.

2. The central administrator shall ensure that all transfers specified in Article 55 to accounts indicated on the trusted account list are executed immediately if they are proposed for execution between 10:00 and 16:00 CET on working days.

A transfer to accounts indicated on the trusted accounts list proposed for execution at any other time shall be executed on the same working day at 10:00 CET, if it is proposed for execution before 10:00 CET, or on the following working day at 10:00 CET, if it is proposed for execution after 16:00 CET.

3. The central administrator shall ensure that all transfers specified in Article 55 to accounts not indicated on the trusted account list and transfers from an Auction Collateral Delivery Account, proposed for execution before 12.00 CET of a working day, are executed at 12.00 CET of the following working day. Transactions proposed for execution after 12.00 CET of a working day shall be executed at 12.00 CET of the second working day following the day of proposal for execution.

4. The central administrator shall ensure that transfers are finalised before 16.00 CET on the day of execution.

5. The central administrator shall ensure that the Union Registry enables to abort a transaction, which is subject to execution rules set out in paragraph 3, before its execution. An authorised representative may initiate aborting a transaction at least two hours before its execution. If aborting a transaction was initiated because of suspected fraud, the account holder shall immediately report it to the competent national law enforcement authority. That report shall be forwarded to the national administrator within 7 working days.

6. If an account representative or the account holder suspects that a transfer, which is subject to execution rules in paragraph 3, was proposed for execution fraudulently, at the latest two hours before its execution, the account representative or the account holder may request the national administrator, or the central administrator where appropriate, to abort the transfer on behalf of the account representative or the account holder. The account holder shall report the suspected fraud to the competent national law enforcement authority immediately following the request. That report shall be forwarded to the national administrator or the central administrator where appropriate, within 7 working days.

7. Upon proposal for execution, a notification shall be sent to all account representatives indicating the proposed execution of the transfer. Upon initiation of aborting a transaction pursuant to paragraph 5, a notification shall be sent to all account representatives and the national administrator administering the account.

8. For the purposes of Article 3(11), Member States may decide that for a given year national public holidays are not to be considered as working days for the purposes of application of this Regulation in that Member State. Such decision shall specify those days and shall be published by 1 December of the year preceding the year concerned.

Article 36

Nature of allowances and finality of transactions

1. An allowance shall be a fungible, dematerialised instrument that is tradable on the market.

2. The dematerialized nature of allowances shall imply that the record of the Union Registry shall constitute prima facie and sufficient evidence of title over an allowance, and of any other matter which is by this Regulation directed or authorised to be recorded in the Union Registry.

3. The fungibility of allowances shall imply that any recovery or restitution obligations that may arise under national law in respect of an allowance shall only apply to the allowance in kind.

Subject to Article 58 and the reconciliation process provided for in Article 73, a transaction shall become final and irrevocable upon its finalisation pursuant to Article 74. Without prejudice to any provision of or remedy under national law that may result in a requirement or order to execute a new transaction in the Union Registry, no law, regulation, rule or practice on the setting aside of contracts or transactions shall lead to the unwinding in the registry of a transaction that has become final and irrevocable under this Regulation.

An account holder or a third party shall not be prevented from exercising any right or claim resulting from the underlying transaction that they may have in law, including to recovery, restitution or damages, in respect of a transaction that has become final in the Union Registry, for instance in case of fraud or technical error, as long as this does not lead to the reversal, revocation or unwinding of the transaction in the Union Registry.

4. A purchaser and holder of an allowance acting in good faith shall acquire title to an allowance free of any defects in the title of the transferor.

Section 2

Creation of allowances

Article 37

Creation of allowances

1. The central administrator may create an EU Total Quantity Account, an EU Aviation Total Quantity Account, an EU Auction Account and an EU Aviation Auction Account as appropriate, and shall create or cancel accounts and allowances as made necessary by Union acts, including as may be required by Directive 2003/87/EC or Article 10(1) of Regulation (EU) No 1031/2010.

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

3. Allowances created from 1 January 2021 onwards shall include an indication showing in which ten-year period beginning from 1 January 2021 they were created.

4. The central administrator shall ensure that the ISIN-codes defined in ISO 6166 for the allowances are displayed in the Union Registry.

5. Subject to paragraph 6, allowances created pursuant to the national allocation table of a Member State which has notified the European Council of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union, or to be auctioned by an Auction Platform appointed by such a Member State, shall be identified by a country code and shall be made distinguishable according to the year of creation.

6. Allowances created shall not be identified with a country code:

(a) For years where Union law does not yet cease to apply in that Member State by 30 April of the following year or where it is sufficiently ensured that the surrender of allowances must take place in a legally enforceable manner before the Treaties cease to apply in that Member State;

(b) If allowances were created in respect of years where ensuring compliance with Directive 2003/87/EC for emissions taking place during these years is required by an agreement setting out arrangements for the withdrawal of a Member State which has notified its intention to withdraw from the Union, and the instruments of ratification of both parties to the withdrawal agreement are deposited.

Section 3

Account transfers before auctions and allocation

Article 38

Transfer of general 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 Regulation (EU) No 1031/2010, general allowances from the EU Total Quantity Account into the EU Auction Account in a quantity corresponding to the annual volumes determined pursuant to Article 10 of that Regulation.

2. In case of adjustments to the annual volumes in conformity with Article 14 of Regulation (EU) No 1031/2010, the central administrator shall transfer a corresponding quantity of general allowances from the EU Total Quantity Account to the EU Auction Account or from the EU Auction Account to the EU Total Quantity Account, as the case may be.

Article 39

Transfer of general allowances to be allocated free of charge

The central administrator shall, in a timely manner, transfer general allowances from the EU Total Quantity Account into the EU Allocation Account in a quantity corresponding to the sum of the allowances allocated free of charge according to the national allocation table of each Member State.

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 Regulation (EU) No 1031/2010, aviation allowances from the EU Aviation Total Quantity Account to the EU Aviation Auction Account in a quantity corresponding to the annual volumes determined pursuant to that Regulation.

2. In case of adjustments to the annual volumes in conformity with Article 14 of Regulation (EU) No 1031/2010, the central administrator shall transfer a corresponding quantity of aviation allowances from the EU Aviation Total Quantity Account to the EU Aviation Auction Account or from the EU Aviation Auction Account to the EU Aviation Total Quantity Account, as the case may be.

Article 41

Transfer of aviation allowances to be allocated free of charge

1. The central administrator shall, in a timely manner, transfer aviation allowances from the EU Aviation Total Quantity Account to the EU Aviation Allocation Account in a quantity corresponding to the number of aviation allowances to be allocated free of charge determined by the Commission's decision adopted on the basis of Article 3e(3) of Directive 2003/87/EC.

2. If the number of aviation allowances to be allocated free of charge is increased by a decision pursuant to Article 3e(3) of Directive 2003/87/EC, the central administrator shall transfer further aviation allowances from the EU Aviation Total Quantity Account to the EU Aviation Allocation Account in a quantity corresponding to the increase of the number of aviation allowances to be allocated free of charge.

3. If the number of aviation allowances to be allocated free of charge is decreased by a decision pursuant to Article 3e(3) of Directive 2003/87/EC, the central administrator shall delete aviation allowances on the EU Aviation Allocation Account in a quantity corresponding to the decrease of the number of aviation allowances to be allocated free of charge.

Article 42

Transfer of aviation allowances to the special reserve

1. The central administrator shall, in a timely manner, transfer aviation allowances from the EU Aviation Total Quantity Account to the EU Special Reserve Account in a quantity corresponding to the number of aviation allowances in the special reserve determined by the decision adopted pursuant to Article 3e(3) of Directive 2003/87/EC.

2. If the number of aviation allowances in the special reserve is increased by a decision adopted pursuant to Article 3e(3) of Directive 2003/87/EC, the central administrator shall transfer further aviation allowances from the EU Aviation Total Quantity Account to the EU Special Reserve Account in a quantity corresponding to the increase of the number of aviation allowances in the special reserve.

3. If the number of aviation allowances in the special reserve is decreased by a decision adopted on the basis of Article 3e(3) of Directive 2003/87/EC, the central administrator shall delete aviation allowances on the EU Special Reserve Account in a quantity corresponding to the decrease of the number of allowances in the special reserve.

4. In the case of allocation from the special reserve pursuant to Article 3f of Directive 2003/87/EC, the resulting final amount of aviation allowances allocated free of charge to the aircraft operator for the whole trading period shall be automatically transferred from the EU Special Reserve Account to the EU Aviation Allocation Account.

Article 43

Transfer of general allowances to the EU Total Quantity-Account

At the end of each trading period, the central administrator shall transfer all allowances remaining on the EU Allocation Account to the EU Total Quantity Account.

Article 44

Transfer of aviation allowances to the EU Aviation Total Quantity Account

At the end of each trading period, the central administrator shall transfer all allowances remaining on the EU Special Reserve Account to the EU Aviation Total Quantity Account.

Article 45

Deletion of aviation allowances

The central administrator shall ensure that, at the end of each trading period, all allowances remaining on the EU Aviation Allocation Account shall be transferred to the Union Deletion Account.

Section 4

Allocation to stationary installations

Article 46

Entry of national allocation tables into the Union Registry

1. Each Member State shall notify its national allocation table for the period 2021-2025 and for the period 2026-2030 to the Commission by 31 December 2020 and 31 December 2025 respectively. Member States shall ensure that national allocation tables include the information set out in Annex X.

2. The Commission shall instruct the central administrator to enter the national allocation table into the Union Registry if it considers that the national allocation table is in conformity with Directive 2003/87/EC, Delegated Regulation (EU) 2019/331 and decisions adopted by the Commission pursuant to Article 10c of Directive 2003/87/EC. It shall otherwise reject the national allocation table within a reasonable period and inform the Member State concerned without delay, stating its reasons and setting out criteria to be fulfilled for a subsequent notification to be accepted. That Member State shall submit a revised national allocation table to the Commission within three months.

Article 47

Changes to the national allocation tables

1. The central administrator shall ensure that any change to the national allocation table pursuant to the rules governing free allocation to stationary installations are carried out in the Union Registry.

2. Upon introduction of a change pursuant to paragraph 1, a notification shall be sent to the national administrator administering the installation affected by the change.

3. A Member State shall notify the Commission of changes to its national allocation table concerning allocation free of charge pursuant to Article 10c of Directive 2003/87/EC.

On receiving a notification pursuant to the first subparagraph, the Commission shall instruct the central administrator to make the corresponding changes to the national allocation table held in the Union Registry if it considers that the changes to the national allocation table are in conformity with Article 10c of Directive 2003/87/EC. It shall otherwise reject the changes within a reasonable period and inform the Member State concerned without delay, stating its reasons and setting out criteria to be fulfilled for a subsequent notification to be accepted.

Article 48

Free allocation of general allowances

1. The national administrator shall indicate in the national allocation table for each operator, for each year and for each legal basis set out in Annex X, whether or not an installation should receive an allocation for that year.

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.

3. Where an excluded operator holding account does not receive allowances under paragraph 2, allowances for the years of exclusion shall not be transferred to the account, should it be set to open status for subsequent years.

4. The central administrator shall ensure that an operator can perform transfers returning excess allowances to the EU Allocation Account where the national allocation table of a Member State has been changed pursuant to Article 47 to correct for an over allocation of allowances to the operator, and the competent authority has requested the operator to return such excess allowances.

5. The competent authority may instruct the national administrator to transfer returning excess allowances to the EU Allocation Account where the over allocation of allowances is a consequence of allocation after an operator ceased the activities carried out in the installation to which the allocation relate, without informing the competent authority.

Section 5

Allocation to aircraft operators

Article 49

Changes to the national aviation allocation tables

1. Member States shall notify the Commission of changes to their national aviation allocation tables.

2. The Commission shall instruct the central administrator to make the corresponding changes to the national aviation allocation tables in the Union Registry if it considers that the change to the national aviation allocation table is in accordance with Directive 2003/87/EC, in particular with the allocations calculated and published pursuant to Article 3f(7) of that Directive in case of allocations from the special reserve. It shall otherwise reject the changes within a reasonable period and inform the Member State without delay, stating its reasons and setting out criteria to be fulfilled for a subsequent notification to be accepted.

3. If a merger between aircraft operators involves aircraft operators that are administered by different Member States, the change shall be initiated by the national administrator administering the aircraft operator whose allocation is to be merged into the allocation of another aircraft operator. Before carrying out the change, consent shall be obtained from the national administrator administering the aircraft operator whose allocation will incorporate the allocation of the merged aircraft operator.

Article 50

Free allocation of aviation allowances

1. The national administrator shall indicate for each aircraft operator and for each year whether or not the aircraft operator should receive an allocation for that year in the national aviation allocation table.

2. The central administrator shall ensure that the Union Registry transfers aviation 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.

3. Where an agreement pursuant to Article 25 of Directive 2003/87/EC is in force and requires transferring aviation allowances to aircraft operators holding accounts in the registry of another greenhouse gas emissions trading system, the central administrator, in cooperation with the administrator of the other registry, shall ensure that the Union Registry transfers those aviation allowances from the EU Aviation Allocation Account to the corresponding accounts in the other registry.

4. Where an agreement pursuant to Article 25 of Directive 2003/87/EC is in force and requires transferring aviation allowances corresponding to another greenhouse gas emissions trading system to aircraft operators holding accounts in the Union Registry, the central administrator, in cooperation with the administrator of the other registry, shall ensure that the Union Registry transfers those aviation allowances from the corresponding accounts of the other registry to the aircraft operator holding accounts in the Union Registry, upon approval by the competent authority responsible for the administration of the other greenhouse gas emissions trading system.

5. Where an excluded aircraft operator holding account does not receive allowances under paragraph 2, allowances for the years of exclusion shall not be transferred to the account, should it be set to open status for subsequent years.

6. The central administrator shall ensure that an aircraft operator can transfer returning excess allowances to the EU Aviation Allocation Account where the national aviation allocation table of a Member State has been changed pursuant to Article 49 to correct for an over allocation of allowances to the aircraft operator, and the competent authority has requested the aircraft operator to return such excess allowances.

7. The competent authority may instruct the national administrator to transfer returning excess allowances to the EU Allocation Account where the over allocation of allowances is a consequence of allocation after an aircraft operator ceased the activities to which the allocation relate, without informing the competent authority.

Article 51

Return of aviation allowances

When a change to the national aviation allocation table is carried out pursuant to Article 25a of Directive 2003/87/EC after the transfer of allowances to the aircraft operator holding accounts for a given year in accordance with Article 50 of this Regulation, the central administrator shall execute any transfer required by any measure adopted pursuant to Article 25a of Directive 2003/87/EC.

Section 6

Auction

Article 52

Entry of auction tables into the EUTL

1. Within one month of the determination and before the publication of an auction calendar pursuant to Articles 11(1), 13(1), 13(2) or 32(4) of Regulation (EU) No 1031/2010, the relevant settlement system or clearing system as defined in Regulation (EU) No 1031/2010 shall provide the Commission with the corresponding auction table.

The said settlement system or clearing system shall provide two auction tables for each calendar year from 2012, one for the auctioning of general allowances and one for the auctioning of aviation allowances and shall ensure that the auction tables includes the information set out in Annex XIII.

2. The Commission shall instruct the central administrator to enter the auction table into the EUTL if it considers that the auction table is in conformity with Regulation (EU) No 1031/2010. It shall otherwise reject the auction table within a reasonable period and inform the settlement system or clearing system, as defined in Regulation (EU) No 1031/2010, without delay, stating its reasons and setting out the criteria to be fulfilled for a subsequent submission to be accepted. The said settlement system or clearing system shall accordingly submit a revised auction table to the Commission within three months.

3. Each auction table or revised auction table which is subsequently entered into the EUTL pursuant to paragraph 2 of this Article shall constitute a transfer order, as defined in Article 2(i) of Directive 98/26/EC of the European Parliament and of the Council.

Without prejudice to Article 53(3), the moment of submission of each such auction table or revised auction table to the Commission, shall constitute the moment of entry of a transfer order into a system, as defined in Article 2(a) of Directive 98/26/EC, pursuant to Article 3(3) of that Directive.

Article 53

Changes to the auction tables

1. The relevant settlement system or clearing system as defined in Regulation (EU) No 1031/2010 shall immediately notify the Commission of any necessary amendment to the auction table.

2. The Commission shall instruct the central administrator to enter the revised auction table into the EUTL if it considers that the revised auction table is in conformity with Regulation (EU) No 1031/2010. It shall otherwise reject the changes within a reasonable period and inform the said settlement system or clearing system without delay, stating its reasons and setting out the criteria to be fulfilled for a subsequent notification to be accepted.

3. The Commission may instruct the central administrator to suspend the transfer of allowances as specified in an auction table if it becomes aware of a necessary amendment to the auction table that the aforementioned settlement system or clearing system has failed to notify.

Article 54

Auctioning of allowances

1. The Commission shall instruct the central administrator, in a timely manner, to transfer on request of the auctioning Member State as represented by its auctioneer, appointed in accordance with Regulation (EU) No 1031/2010, general allowances from the EU Auction Account, and/or aviation allowances from the EU Aviation Auction Account to the relevant auction collateral delivery account in accordance with the auction tables. The account holder of the relevant auction collateral delivery account shall ensure the transfer of the auctioned allowances to the successful bidders or their successors in title in accordance with Regulation (EU) No 1031/2010.

2. In accordance with Regulation (EU) No 1031/2010, the authorised representative of an auction collateral delivery account may be required to transfer any allowances that were not delivered from the auction collateral delivery account to the EU Auction Account or the EU Aviation Auction Account respectively.

Section 7

Trading

Article 55

Transfers of allowances

1. Subject to paragraph 2, upon request of an account holder, the central administrator shall ensure that the Union Registry carries out a transfer of allowances to any other account unless such a transfer is prevented by the status of the initiating or receiving account.

2. Operator holding accounts and aircraft operator holding accounts may only transfer allowances to an account on the trusted account list set up pursuant to Article 23.

3. Holders of operator holding or aircraft operator holding accounts may decide that transfers are possible from their account to accounts not on the trusted account list set up pursuant to Article 23. Holders of operator holding or aircraft operator holding accounts may withdraw such decision. The decision and withdrawal of the decision shall be communicated in a duly signed statement submitted to the national administrator.

4. Upon initiation of a transfer, the authorised representative initiating the transfer shall indicate in the Union Registry if the transfer represents a bilateral transaction unless that transaction is registered at a market venue, or it is cleared at a central counterparty, or it represents a transfer between different accounts of the same account holder in the Union Registry.

Section 8

Surrender of allowances

Article 56

Surrender of allowances

1. An operator or aircraft operator shall surrender allowances by proposing to the Union Registry to:

(a) transfer a specified number of allowances from the relevant operator holding account or aircraft operator holding account into the Union Deletion Account;

(b) record the number and type of transferred allowances as surrendered for the emissions of the operator's installation or the emissions of the aircraft operator in the current period.

2. The central administrator shall ensure that the Union Registry prevents proposal for execution of surrendering allowances that are not to be taken into account for the calculation of the compliance status figure pursuant to Article 33(1).

3. An allowance that was already surrendered may not be surrendered again.

4. Where an agreement is in force in accordance with Article 25 of Directive 2003/87/EC, paragraphs 1, 2 and 3 of this Article shall apply to units issued under the greenhouse gas emissions trading system linked to the EU ETS.

5. Allowances which have a country code pursuant to Article 37(5) may not be surrendered.

Section 9

Deletion of allowances

Article 57

Deletion of allowances

1. The central administrator shall ensure that the Union Registry carries out any request from an account holder pursuant to Article 12(4) of Directive 2003/87/EC to delete allowances held in the accounts of the account holder by:

(a) transferring a specified number of allowances from the relevant account into the Union Deletion Account;

(b) recording the number of transferred allowances as deleted for the current year.

2. Deleted allowances shall not be recorded as surrendered for any emissions.

Section 10

Transaction reversal

Article 58

Reversal of finalised processes initiated in error

1. If an account holder or a national administrator acting on behalf of the account holder unintentionally or erroneously initiated one of the transactions referred to in paragraph 2, the account holder may propose to the administrator of its account to carry out a reversal of the completed transaction in a written request. 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 ten working days of the finalisation of the process. The request shall contain a statement indicating that the transaction was initiated erroneously or unintentionally.

2. Account holders may propose the reversal of the following transactions:

(a) surrender of allowances;

(b) deletion of allowances.

3. If the administrator of the account establishes that the request fulfils the conditions under paragraph 1 and agrees with the request, it may propose the reversal of the transaction in the Union Registry.

4. If a national administrator unintentionally or erroneously initiated one of the transactions referred to in paragraph 5, it may propose to the central administrator to carry out a reversal of the completed transaction in a written request. The request shall contain a statement indicating that the transaction was initiated erroneously or unintentionally.

5. National administrators may propose the reversal of the following transactions:

(a) allocation of general allowances;

(b) allocation of aviation allowances.

6. The central administrator shall ensure that the Union Registry accepts the proposal for reversal made pursuant to paragraph 1, blocks the units that are to be transferred by the reversal and forwards the proposal to the central administrator provided that all of the following conditions are met:

(a) a transaction surrendering or deleting allowances to be reversed was not completed more than 30 working days prior to the account administrator's proposal in accordance with paragraph 3;

(b) after the reversal of surrendering transaction no operator or aircraft operator would become non-compliant as a result of the reversal.

7. The central administrator shall ensure that the Union Registry accepts the proposal for reversal made pursuant to paragraph 4, blocks the units that are to be transferred by the reversal and forwards the proposal to the central administrator provided that the following conditions are met:

(a) the destination account of the transaction to be reversed still holds the amount of units of the type that were involved in the transaction to be reversed;

(b) the allocation of general allowances to be reversed was carried out after the withdrawal date of the installation's permit or after the installation fully or partially ceased operations.

8. The central administrator shall ensure that the Union Registry completes the reversal with units of the same unit type on the destination account of the transaction that is being reversed.

CHAPTER 3

Links with other greenhouse gas emission trading systems

Article 59

Implementation of linking arrangements

The central administrator may create accounts and processes and undertake transactions and other operations at appropriate times to implement agreements and arrangements made pursuant to Articles 25 and 25a of Directive 2003/87/EC.

TITLE III

COMMON TECHNICAL PROVISIONS

CHAPTER 1

Technical requirements of the Union Registry and the EUTL

Section 1

Availability

Article 60

Availability and reliability of the Union Registry and the EUTL

1. The central administrator shall take all reasonable steps to ensure that:

(a) the Union Registry is available for access by account representatives and national administrators 24 hours a day, 7 days a week;

(b) the communication links referred to in Article 6 between the Union Registry and the EUTL are maintained 24 hours a day, 7 days a week;

(c) backup hardware and software necessary in the event of a breakdown in operations of the primary hardware and software is provided for;

(d) the Union Registry and the EUTL respond promptly to requests made by account representatives.

2. The central administrator shall ensure that the Union Registry and EUTL incorporate robust systems and procedures to safeguard all relevant data and facilitate the prompt recovery of data and operations in the event of failure or disaster.

3. The central administrator shall keep interruptions to the operation of the Union Registry and EUTL to a minimum.

Article 61

Helpdesks

1. National administrators shall provide assistance and support to account holders and account representatives in the Union Registry that are administered by them through national helpdesks.

2. The central administrator shall provide support to national administrators through a central helpdesk for the purposes of helping them to provide assistance in accordance with paragraph 1.

Section 2

Security and authentication

Article 62

Authentication of the Union Registry

The identity of the Union Registry shall be authenticated by the EUTL having regard to the data exchange and technical specifications provided for in Article 75.

Article 63

Accessing accounts in the Union Registry

1. Account representatives shall be able to access their accounts in the Union Registry through the secure area of the Union Registry. The central administrator shall ensure that the secure area of the Union Registry website is accessible through the internet. The website of the Union Registry shall be available in all official languages of the Union.

2. National administrators shall be able to access the accounts they administer in the Union Registry through the secure area of the Union Registry. The central administrator shall ensure that this secure area of the Union Registry website is accessible through the internet.

3. Communications between authorised representatives or national administrators and the secure area of the Union Registry shall be encrypted having regard to the security requirements set out in the data exchange and technical specifications provided for in Article 75.

4. The central administrator shall take all necessary steps to ensure that unauthorised access to the secure area of the Union Registry website does not occur.

5. If the security of the credentials of an authorised representative has been compromised, this authorised representative shall immediately suspend its access to the relevant account, inform the administrator of the account thereof and request new credentials. If the account cannot be accessed in order to suspend the access, the authorised representative shall immediately request the national administrator to suspend its access.

Article 64

Authentication and authorisation in the Union Registry

1. The central administrator shall ensure that national administrators and each authorised representative are assigned credentials to authenticate them for the purposes of accessing the Union Registry.

2. An authorised representative shall only have access to accounts in the Union Registry for which he is authorised and shall only be able to request the initiation of processes for which he is authorised pursuant to Article 21. That access or request shall take place through a secure area of the website of the Union Registry.

3. In addition to the credentials referred to in paragraph 1, an authorised representative shall use secondary authentication to access the Union Registry, having regard to the types of secondary authentication mechanisms set out in the data exchange and technical specifications provided for in Article 75.

4. The administrator of an account may assume that a user who was successfully authenticated by the Union Registry is the authorised representative registered under the provided authentication credentials, unless the authorised representative informs the administrator of the account that the security of his credentials has been compromised and requests a replacement of his credentials.

5. The authorised representative shall take all necessary measures to prevent the loss, theft or compromise of its credentials. The authorised representative shall immediately report to the national administrator the loss, theft or compromise of its credentials.

Article 65

Suspension of all access due to a security breach or a security risk

1. The central administrator may temporarily suspend access to the Union Registry or the EUTL or any part thereof where it has a reasonable suspicion that there is a breach of security or a serious risk affecting the security of the Union Registry or of the EUTL within the meaning of Commission Decision (EU, Euratom) 2017/46 ([21]), including the back-up facilities referred to in Article 60. In case the reasons for suspension persist for more than five working days, the Commission may instruct the central administrator to keep the suspension in place.

The central administrator shall promptly inform all national administrators about the suspension, its reasons and the likely duration.

2. A national administrator who becomes aware of a breach of security or a security risk shall promptly inform the central administrator. The central administrator may take the measures referred to in paragraph 1.

3. A national administrator who becomes aware of a situation, as described in paragraph 1, which requires the suspension of all access to the accounts that it administers in accordance with this Regulation, shall suspend all access to all accounts it administers and shall promptly inform the central administrator. The central administrator shall inform all national administrators as soon as possible.

4. Account holders shall be informed about measures taken pursuant to paragraphs 1, 2 and 3 with such prior notice of the suspension as practicable. The notice shall include the likely duration of the suspension and shall be clearly displayed on the public area of the Union Registry web site.

Article 66

Suspension of access to allowances in the case of a suspected fraudulent transaction

1. A national administrator or a national administrator acting on instruction of the competent authority or a relevant authority under national law may suspend access to allowances in the part of the Union Registry it administers in any of the following cases:

(a) for a maximum period of four weeks if it suspects that the allowances have been the subject of a transaction constituting fraud, money laundering, terrorist financing, corruption or other serious crime;

(b) if suspension is on the basis of and in accordance with national law provisions that pursue a legitimate objective.

For the purposes of point (a) of the first subparagraph, provisions of Article 67 shall be applied accordingly. Upon instruction from the financial intelligence unit the period may be extended.

([21]) Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission (OJ L 6, 11.1.2017, p. 40).

2. The Commission may instruct the central administrator to suspend access to allowances in the Union Registry or the EUTL for a maximum period of four weeks if it suspects that the allowances have been the subject of a transaction constituting fraud, money laundering, terrorist financing, corruption or other serious crime.

3. The national administrator or the Commission shall immediately inform the competent law enforcement authority of the suspension.

4. A national law enforcement authority of the Member State of the national administrator may also request the administrator to implement a suspension on the basis of and in accordance with national law.

Article 67

Cooperation with relevant competent authorities and notification of money laundering, terrorist financing or criminal activity

1. The central adminsitrator and the national administrators shall cooperate with public bodies charged with the supervision of compliance under Directive 2003/87/EC and public bodies competent for the oversight of primary and secondary markets in allowances in order to ensure that they can acquire a consolidated overview of allowances markets.

2. The national administrator, its directors and its employees shall cooperate fully with the relevant competent authorities to establish adequate and appropriate procedures to forestall and prevent operations related to money laundering or terrorist financing.

3. The national administrator, its directors and its employees, shall cooperate fully with the financial intelligence unit (FIU) referred to in Article 32 of Directive (EU) 2015/849 by promptly:

(a) informing the FIU, on their own initiative, where they know, suspect or have reasonable grounds to suspect that money laundering, terrorist financing or criminal activity is being or has been committed or attempted;

(b) providing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.

4. The information referred to in paragraph 2 shall be forwarded to the FIU of the Member State of the national administrator. The national measures transposing the compliance management and communication policies and procedures, referred to in Article 45(1) of Directive (EU) 2015/849, shall designate the person or persons responsible for forwarding information pursuant to this Article.

5. The Member State of the national administrator shall ensure that the national measures transposing Articles 37, 38, 39, 42 and 46 of Directive (EU) 2015/849 apply to the national administrator.

6. Account holders shall immediately report any fraud or suspected fraud to the competent national law enforcement authority. That report shall be forwarded to the national administrators.

Article 68

Suspension of processes

1. The Commission may instruct the central administrator to temporarily suspend the acceptance by the EUTL of some or all processes originating from the Union Registry if it is not operated and maintained in accordance with the provisions of this Regulation. It shall immediately notify national administrators concerned.

2. The central administrator may temporarily suspend the initiation or acceptance of some or all processes in the Union Registry for the purposes of carrying out scheduled or emergency maintenance on the Union Registry.

3. A national administrator may request the Commission to reinstate processes suspended in accordance with paragraph 1 if it considers that the outstanding issues that caused the suspension have been resolved. If this is the case, the Commission shall instruct the central administrator to reinstate those processes. It shall otherwise reject the request within a reasonable period and inform the national administrator without delay, stating its reasons and setting out criteria to be fulfilled for a subsequent request to be accepted.

4. The Commission may, including at the request of a Member State which has notified the European Council of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union, instruct the central administrator to temporarily suspend the acceptance by the EUTL of relevant processes for that Member State relating to free allocation and auctioning.

Article 69

Suspension of linking agreements

In case of suspension or termination of an agreement under Article 25 of Directive 2003/87/EC, the central administrator shall take the appropriate measures in accordance with the agreement.

Section 3

Automated checking, recording and completing of processes

Article 70

Automated checking of processes

1. All processes must conform to the general IT-requirements of electronic messaging that ensure the successful reading, checking and recording of a process by the Union Registry. All processes must conform to the specific process-related requirements set out in this Regulation.

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 for all processes to identify irregularities and discrepancies, where a proposed process does not conform to the requirements of Directive 2003/87/EC and this Regulation.

Article 71

Detection of discrepancies

In the case of processes completed through the direct communication link between the Union Registry and the EUTL referred to in Article 6(2), the central administrator shall ensure that the EUTL terminates any processes where it identifies discrepancies upon conducting the automated checks referred to in Article 72(2), and informs thereof the Union Registry and the administrator of the accounts involved in the terminated transaction by returning an automated check response code. The central administrator shall ensure that the Union Registry immediately informs the relevant account holders that the process has been terminated.

Article 72

Detection of discrepancies within the Union Registry

1. The central administrator and Member States shall ensure that the Union Registry contain check input codes and check response codes to ensure the correct interpretation of information exchanged during each process. The check codes shall have regard to those contained in the data exchange and technical specifications provided for in Article 75.

2. The central administrator shall ensure that, prior to and during the execution of all processes, the Union Registry conducts appropriate automated checks to ensure that discrepancies are detected and incorrect processes are terminated in advance of automated checks being conducted by the EUTL.

Article 73

Reconciliation — detection of inconsistencies by the EUTL

1. The central administrator shall ensure that the EUTL periodically initiates data reconciliation to ensure that the EUTL's records of accounts and holdings of allowances match the records of these holdings in the Union Registry. The central administrator shall ensure that the EUTL records all processes.

2. If during the data reconciliation process referred to in paragraph 1, an inconsistency is identified by the EUTL, whereby the information regarding accounts, holdings of allowances provided by the Union Registry as part of the periodic reconciliation process differs from the information contained in the EUTL, the central administrator shall ensure that the EUTL prevents any further processes to be completed with any of the accounts, allowances which are the subject of the inconsistency. The central administrator shall ensure that the EUTL immediately informs the central administrator and the administrators of the relevant accounts of any inconsistency.

Article 74

Finalisation of processes

1. All transactions and other processes communicated to the EUTL in accordance with Article 6(2) shall be final when the EUTL notifies the Union Registry that it has completed the processes. The central administrator shall ensure that the EUTL automatically aborts the completion of a transaction or process if it could not be completed within 24 hours of its communication.

2. The data reconciliation process referred to in Article 73(1) shall be final when all inconsistencies between the information contained in the Union Registry and the information contained in the EUTL for a specific time and date have been resolved, and the data reconciliation process has been successfully re-initiated and completed.

Section 4

Specifications and change management

Article 75

Data exchange and technical specifications

1. The Commission shall make available to national administrators data exchange and technical specifications laying down operational requirements for the Union Registry including the identification codes, automated checks, response codes and data logging requirements, as well as the testing procedures and security requirements.

2. The data exchange and technical specifications shall be drawn up in consultation with the Member States.

3. Standards developed in accordance with agreements under Article 25 of Directive 2003/87/EC shall be consistent with the data exchange and technical specifications drawn up in accordance with paragraphs 1 and 2 of this Article.

Article 76

Change and release management

If a new version or release of the Union Registry software is required, the central administrator shall ensure that the testing procedures set out in the data exchange and technical specifications provided for in Article 75 are completed before a communication link is established and activated between the new version or release of that software and the EUTL.

CHAPTER 2

Records, reports, confidentiality and fees

Article 77

Processing of information and personal data

1. In relation to the processing of personal data in the Union Registry and the EUTL, the national administrators shall be regarded as controllers within the meaning of Article 4(7) of Regulation (EU) 2016/679. In relation to its responsibilities under this Regulation and the processing of personal data involved therein, the Commission shall be regarded as a controller within the meaning of Article 3(8) of Regulation (EU) 2018/1725.

2. In the case of a personal data breach detected by a national administrator, it shall without undue delay inform the central administrator and other national administrators about the nature and possible consequences of the breach and the measures taken and proposed to be taken to address the personal data breach and to mitigate the possible adverse effects.

3. In the case of a personal data breach detected by the central administrator, it shall without undue delay inform the national administrators about the nature and possible consequences of the breach and the measures taken by the central administrator and proposed to be taken by national administrators to address the personal data breach and to mitigate the possible adverse effects.

4. Arrangements on the respective responsibilities of the controllers for compliance with their data protection obligations shall be included in the terms of cooperation drawn up pursuant to Article 7(4).

5. The central administrator and Member States shall ensure that the Union Registry and the EUTL only store and process the information concerning the accounts, account holders and account representatives as set out in Table III-I of Annex III, Tables VI-I and VI-II of Annex VI, Table VII-I of Annex VII, and Table VIII-I of Annex VIII. Any other information to be provided pursuant to this Regulation shall be stored and processed outside the Union Registry or the EUTL.

6. National administrators shall ensure that information required by this Regulation but not stored in the Union Registry or the EUTL are processed in accordance with the relevant provisions of Union and national law.

7. No special categories of data as defined in Article 9 of Regulation (EU) 2016/679 and Article 10 of Regulation (EU) 2018/1725 shall be recorded in the Union Registry or the EUTL.

Article 78

Records

1. The central administrator shall ensure that the Union Registry stores records concerning all processes, log data and account holders for five years after the closure of an account.

2. Personal data shall be removed from the records after five years of the closure of an account or after five years of the closure of business relationship, as defined in Article 3(13) of Directive (EU) 2015/849, with a natural person.

3. Personal data may be retained, with access restricted to the central administrator, for additional five years only for the purposes of investigation, detection, prosecution, tax administration or enforcement, auditing and financial supervision of activities involving allowances, or of money laundering, terrorism financing, other serious crime or market abuse for which the accounts in the Union Registry may be an instrument, or of breaches of Union or national law ensuring the functioning the EU ETS.

4. For the purposes of investigation, detection, prosecution, tax administration or enforcement, auditing and financial supervision of activities involving allowances, or of money laundering, terrorism financing, other serious crime or market abuse for which the accounts in the Union Registry may be an instrument, or of breaches of Union or national law ensuring the functioning the EU ETS, personal data controlled by national administrators may be retained after the closure of the business relationship until the end of a period corresponding to the maximum prescription period of these offences laid down in the national law of the national administrator.

5. Account information containing personal data, gathered pursuant to the provisions of this Regulation and not stored in the Union Registry or the EUTL shall be retained according to the provisions of this Regulation.

6. The central administrator shall ensure that national administrators are able to access, query and export all records held in the Union Registry in relation to accounts that are or were administered by them.

Article 79

Reporting and availability of information

1. The central administrator shall make available the information referred to in Annex XIII to the recipients set out in Annex XIII in a transparent and organised manner. The central administrator shall take all reasonable steps to make available the information referred to in Annex XIII at the frequencies set out in Annex XIII. The central administrator shall not release additional information held in the EUTL or in the Union Registry unless this is permitted under Article 80.

2. National administrators may also make available the part of the information referred to in Annex XIII that they have access to in accordance with Article 80 at the frequencies and to the recipients set out in Annex XIII in a transparent and organised manner on a site publicly accessible via the internet. National administrators shall not release additional information held in the Union Registry unless this is permitted under Article 80.

Article 80

Confidentiality

1. All information, including the holdings of all accounts, all transactions made, the unique unit identification code of the allowances held or affected by a transaction, held in the EUTL and the Union Registry shall be considered confidential except as otherwise required by Union law, or by provisions of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.

The first subparagraph also applies to any information gathered pursuant to this Regulation and held by the central administrator or the national administrator.

2. The central administrator and the national administrators shall ensure that all persons who work or who have worked for them or entities to whom tasks are delegated, as well as experts instructed by them, are bound by the obligation of professional secrecy. They shall not divulge any confidential information which they may receive in the course of their duties, without prejudice to requirements of national criminal or taxation law or the other provisions of this Regulation.

3. The central administrator or national administrator may provide data stored in the Union Registry and the EUTL or gathered pursuant to this Regulation to the following entities:

(a) the police or another law enforcement or judicial authority and tax authorities of a Member State;

(b) the European Anti-fraud Office of the European Commission;

(c) the European Court of Auditors;

(d) Eurojust;

(e) the competent authorities referred to in Article 48 of Directive (EU) 2015/849;

(f) the competent authorities referred to in Article 67 of Directive 2014/65/EU;

(g) the competent authorities referred to in Article 22 of Regulation (EU) No 596/2014;

(h) European Securities and Markets Authority, established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([22]);

(i) Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council ([23])

(j) competent national supervisory authorities;

(k) the national administrators of Member States and the competent authorities referred to in Article 18 of Directive 2003/87/EC;

(l) the authorities mentioned in Article 6 of Directive 98/26/EC;

(m) the European Data Protection Supervisor and the competent national data protection authorities.

4. Data may be provided to the entities referred to in paragraph 3 upon their request to the central administrator or to a national administrator if such requests are justified and necessary for the purposes of investigation, detection, prosecution, tax administration or enforcement, auditing and financial supervision of activities involving allowances, or of money laundering, terrorism financing, other serious crime, market abuse for which the accounts in the Union Registry may be an instrument, or of breaches of Union or national law ensuring the functioning the EU ETS.

([22]) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

([23]) Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

Without prejudice to requirements of national criminal or taxation law, the central administrator, the national administrators or other authorities, bodies natural or legal persons, which receive confidential information pursuant to this Regulation, may use it only in the performance of their duties and for the exercise of their functions, in the case of the central administrator and the national administrators, within the scope of this Regulation or, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them and/or in the context of administrative or judicial proceedings specifically relating to the exercise of those functions.

Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions laid down in this Article. Nevertheless, this Article shall not prevent the central administrator and the national administrators from exchanging or transmitting confidential information in accordance with this Regulation.

This Article shall not prevent the central administrator and the national administrators from exchanging or transmitting, in accordance with national law, confidential information that has not been received from the central administrator or a national administrator of another Member State.

5. An entity receiving data in accordance with paragraph 4 shall ensure that the data received is only used for the purposes stated in the request in accordance with paragraph 4 and is not made available deliberately or accidentally to persons not involved in the intended purpose of the data use. This provision shall not preclude these entities to make the data available to other entities listed in paragraph 3, if this is necessary for the purposes stated in the request made in accordance with paragraph 4.

6. Upon their request, the central administrator may provide access to transaction data which do not allow the direct identification of specific persons to the entities referred to in paragraph 3 for the purpose of looking for suspicious transaction patterns. Entities with such access may notify suspicious transaction patterns to other entities listed in paragraph 3.

7. Europol shall obtain permanent read-only access to data stored in the Union Registry and the EUTL for the purposes of Article 18 of Regulation (EU) 2016/794 of the European Parliament and of the Council ([24]). Europol shall keep the Commission informed of the use it makes of the data.

8. National administrators shall make available through secure means to all other national administrators and the central administrator the name, nationality and date and place of birth of persons for whom they refused to open an account in accordance with points (a), (b) and (c) of Article 19(2), or whom they refused to nominate as an authorised representative in accordance with points (a) and (b) of Article 21(5), and the name, nationality and birth date of the account holder and the authorised representatives of accounts to which access has been suspended in accordance with Articles 30(1)(c), 30(2)(a), 30(3)(a) and (b) and Article 30(4) or of accounts that have been closed in accordance with Article 28. National administrators shall ensure that the information is kept up to date and no longer shared when the grounds giving rise to sharing cease to exist. The information shall not be shared for more than five years.

National administrators shall inform the persons concerned about the fact that their identity was shared with other national administrators and about the duration of this information sharing.

The persons concerned may object to the information sharing at the competent authority or the relevant authority under national law within 30 calendar days. The competent authority or the relevant authority shall instruct the national administrator either to stop sharing the information or maintain the sharing of information in a reasoned decision, subject to requirements of national law.

The persons concerned may require the national administrator sharing information pursuant to the first subparagraph to present them the personal data that was shared concerning them. National administrators shall comply with such requests within 20 working days of receiving the request.

9. National administrators may decide to notify to national law enforcement and tax authorities all transactions that involve a number of units above the number determined by the national administrator and to notify any account that is involved in a number of transactions within a period that is above a number determined by the national administrator.

10. The EUTL and the Union Registry shall not require account holders to submit price information concerning allowances.

([24]) Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

11. The auction monitor appointed pursuant to Article 24 of Regulation (EU) No 1031/2010 shall have access to all information concerning the auction collateral delivery account held in the Union Registry.

Article 81

Fees

1. The central administrator shall not charge any fees to account holders in the Union Registry.

2. National administrators may charge reasonable fees to account holders and verifiers administered by them.

3. National administrators shall notify the central administrator of the fees charged and of any changes in the fees within ten working days. The central administrator shall display fees on a public website.

Article 82

Interruption of operation

The central administrator shall ensure that interruptions to the operation of the Union Registry are kept to a minimum by taking all reasonable steps to ensure the availability and security of the Union Registry and of the EUTL within the meaning of Decision (EU, Euratom) 2017/46 and by providing for robust systems and procedures to safeguard all information.

TITLE IV

TRANSITIONAL AND FINAL PROVISIONS

Article 83

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to implement this Regulation, and in particular for national administrators to comply with their obligations to verify and review information submitted pursuant to Articles 19(1), 21(4) and 22(4).

Article 84

Further use of accounts

1. Accounts, as specified in Chapter 3 of Title I of this Regulation, opened or used pursuant to Commission Regulation (EU) No 389/2013 shall remain in use for the purposes of this Regulation.

2. Person holding accounts opened pursuant to Article 18 of Regulation (EU) No 389/2013 shall be transformed into trading accounts.

Article 85

Use restrictions

1. Kyoto units as defined in Article 3(12) of Regulation (EU) No 389/2013 may be held in ETS accounts in the Union Registry until 1 July 2023.

2. After the date referred to in paragraph 1, the central administrator shall provide national administrators with a list of the ETS accounts holding Kyoto units. On the basis of this list, the national administrator shall request the account holder to specify a KP account to which such international credits shall be transferred.

3. If the account holder has not responded to the national administrator's request within 40 working days, the national administrator shall transfer the international credits to a national KP account or an account defined by national law.

Article 86

Provision of new account information

Account information required by this Regulation that was not required by Regulation (EU) No 389/2013 shall be submitted to national administrators at the latest during the next review referred to in Article 22(4).

Article 87

Amendments to Regulation (EU) No 389/2013

Regulation (EU) No 389/2013 is amended as follows:

(1) in Article 7 the following paragraph 4 is added:

'4. The central administrator shall ensure that the Union Registry maintains a communication link with the registries of greenhouse gas emissions trading systems with whom a linking agreement is in force in accordance with Article 25 of Directive 2003/87/EC for the purposes of communicating transactions with allowances.';

(2) in Article 56 the following paragraphs 4 and 5 are added:

'4. Where an agreement pursuant to Article 25 of Directive 2003/87/EC is in force and requires transferring aviation allowances to aircraft operators holding accounts in the registry of another greenhouse gas emissions trading system, the central administrator, in cooperation with the administrator of the other registry, shall ensure that the Union Registry transfers those aviation allowances from the EU Aviation Allocation Account to the corresponding accounts in the other registry.

5. Where an agreement pursuant to Article 25 of Directive 2003/87/EC is in force and requires transferring aviation allowances corresponding to another greenhouse gas emissions trading system to aircraft operators holding accounts in the Union Registry, the central administrator, in cooperation with the administrator of the other registry, shall ensure that the Union Registry transfers those aviation allowances from the corresponding accounts of the other registry to the aircraft operator holding accounts in the Union Registry, upon approval by the competent authority responsible for the administration of the other greenhouse gas emissions trading system.';

(3) in Article 67 the following paragraph 5 is added:

'5. Where an agreement is in force in accordance with Article 25 of Directive 2003/87/EC, paragraphs 1, 2 and 3 of this Article shall apply to units issued under the greenhouse gas emissions trading system linked to the EU ETS.';

(4) Article 71 is replaced by the following:

'*Article 71*

Implementation of linking arrangements

The central administrator may create accounts and processes and undertake transactions and other operations at appropriate times to implement agreements and arrangements made pursuant to Articles 25 and 25a of Directive 2003/87/EC.';

(5) the following Article 99a is inserted:

'*Article 99a*

Suspension of linking agreements

In case of suspension or termination of an agreement under Article 25 of Directive 2003/87/EC, the central administrator shall take the measures in accordance with the agreement.';

(6) in Article 105, the following paragraph 3 is added:

'3. Standards developed in accordance with agreements under Article 25 of Directive 2003/87/EC shall be consistent with the data exchange and technical specifications drawn up in accordance with paragraphs 1 and 2.';

(7) Article 108 is replaced by the following:

'*Article 108*

Records

1. The central administrator shall ensure that the Union Registry stores records concerning all processes, log data and account holders for five years after the closure of an account.

2. Personal data shall be removed from the records after five years of the closure of an account or after five years of the closure of business relationship, as defined in Article 3(13) of Directive (EU) 2015/849, with the natural person.

3. Personal data may be retained, with access restricted to the central administrator, for additional five years only for the purposes of investigation, detection, prosecution, tax administration or enforcement, auditing and financial supervision of activities involving allowances, or of money laundering, terrorism financing, other serious crime or market abuse for which the accounts in the Union Registry may be an instrument, or of breaches of Union or national law ensuring the functioning the EU ETS.

4. For the purposes of investigation, detection, prosecution, tax administration or enforcement, auditing and financial supervision of activities involving allowances, or of money laundering, terrorism financing, other serious crime or market abuse for which the accounts in the Union Registry may be an instrument, or of breaches of Union or national law ensuring the functioning the EU ETS, personal data controlled by national administrators may be retained after the closure of the business relationship until the end of a period corresponding to the maximum prescription period of these offences laid down in the national law of the national administrator.

5. Account information containing personal data, gathered pursuant to the provisions of this Regulation and not stored in the Union Registry or the EUTL shall be retained according to the provisions of this Regulation.

6. The central administrator shall ensure that national administrators are able to access, query and export all records held in the Union Registry in relation to accounts that are or were administered by them.'

(8) in Annex XIV, the following point 4a is inserted:

'4a. On 1 May each year, the following information shall be published on agreements which are in force pursuant to Article 25 of Directive 2003/87/EC recorded by the EUTL by 30 April:

(a) holdings of allowances issued in the linked emissions trading system on all accounts in the Union Registry;

(b) number of allowances issued in the linked emissions trading system used for compliance in the EU ETS;

(c) sum of allowances issued in the linked emissions trading system that were transferred to accounts in the Union Registry in the preceding calendar year;

(d) sum of allowances that were transferred to accounts in the linked emissions trading system in the preceding calendar year.'.

Article 88

Repeal

Regulation (EU) No 389/2013 is repealed with effect from 1 January 2021.

However, Regulation (EU) No 389/2013 shall continue to apply until 1 January 2026 to all operations required in relation to the trading period between 2013 and 2020, to the second commitment period of the Kyoto Protocol and to the compliance period as defined in Article 3(30) of that Regulation.

Article 89

Entry into force and application

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, with the exception of Article 87, which shall apply from the day of entry into force.

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

Done at Brussels, 12 March 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Table I-I: Account types and unit types that may be held in each account type

Account type name	Account holder	Account Administrator	No of accounts of this type	Allowances		Units from ETS linked under Article 25 of Directive 2003/87/EC
				General allowances	Aviation allowances	
I. *ETS management accounts in the Union Registry*						
EU Total Quantity Account	EU	central administrator	1	**Yes**	No	No
EU Aviation Total Quantity Account	EU	central administrator	1	No	**Yes**	No
EU Auction Account	EU	central administrator	1	**Yes**	No	No
EU Allocation Account	EU	central administrator	1	**Yes**	No	No
EU Aviation Auction Account	EU	central administrator	1	No	**Yes**	No
EU Special Reserve Account	EU	central administrator	1	No	**Yes**	No
EU Aviation Allocation Account	EU	central administrator	1	No	**Yes**	No
Union Deletion Account	EU	central administrator	1	**Yes**	**Yes**	**Yes**
Auction Collateral Delivery Account	Auctioneer, Auction platform, Clearing System or Settlement System	national administrator that has opened the account	one or more for each auction platform	**Yes**	**Yes**	No
II. *ETS holding accounts in the Union Registry*						
Operator holding account	Operator	national administrator of the Member State where installation is located	one for each installation	**Yes**	**Yes**	**Yes**
Aircraft operator holding account	Aircraft operator	national administrator of the Member State administering the aircraft operator	one for each aircraft operator	**Yes**	**Yes**	**Yes**

Account type name	Account holder	Account Administrator	No of accounts of this type	Allowances		Units from ETS linked under Article 25 of Directive 2003/87/EC
				General allowances	Aviation allowances	
National holding account	Member State	national administrator of the Member State holding the account	one or more for each Member State	**Yes**	**Yes**	**Yes**
III. *ETS trading accounts in the Union Registry*						
Trading account	Person	national administrator or central administrator that has opened the account	as approved	**Yes**	**Yes**	**Yes**

ANNEX II

Terms and conditions

Payment of fees

1. The terms and conditions regarding any registry fees for establishing and maintaining accounts and registering and maintaining verifiers.

Modification of core terms and conditions

2. Modification of the core terms to reflect changes to this Regulation or changes to domestic legislation.

Dispute resolution

3. Provisions relating to disputes between account holders and choice of court for national administrator.

Responsibility and liability

4. The limitation of liability for the national administrator.

5. The limitation of liability for the account holder.

ANNEX III

Information to be submitted with requests for opening an account

1. The information set out in Table III-I.

Table III-I: account details for all accounts

	A	B	C	D	E	F
Item No.	Account detail item	Mandatory or Optional?	Type	Can be updated?	Update requires the approval of the administrator?	Displayed on the EUTL public website?
1	Account type	M	Choice	No	n.a.	Yes
2	Account holder name	M	Free	Yes	Yes	Yes
3	Account name (given by account holder)	M	Free	Yes	No	Yes
4	Account holder's address – country	M	Choice	Yes	Yes	Yes
5	Account holder's address — region or state	O	Free	Yes	Yes	Yes
6	Account holder's address – city	M	Free	Yes	Yes	Yes
7	Account holder's address – postcode	M	Free	Yes	Yes	Yes
8	Account holder's address – line 1	M	Free	Yes	Yes	Yes
9	Account holder's address – line 2	O	Free	Yes	Yes	Yes
10	Account holder's company registration number	M	Free	Yes	Yes	Yes
11	Account holder's telephone 1	M	Free	Yes	No	No (*)
12	Account holder's telephone 2	M	Free	Yes	No	No (*)
13	Account holder's email address	M	Free	Yes	No	No (*)
14	Date of birth (for natural persons)	M for natural persons	Free	No	n.a.	No
15	Place of birth – city (for natural persons)	M for natural persons	Free	No	n.a.	No
16	Place of birth — country	O	Free	No	n.a.	No

	A	B	C	D	E	F
Item No.	Account detail item	Mandatory or Optional?	Type	Can be updated?	Update requires the approval of the administrator?	Displayed on the EUTL public website?
17	Type of document supporting identity (for natural persons)	M	Choice	Yes	Yes	No
18	Identity document number (for natural persons)	M	Free	Yes	Yes	No
19	Identity document expiry date	M where assigned	Free	Yes	Yes	No
20	VAT registration number with country code	M where assigned	Free	Yes	Yes	No
21	Legal Entity Identifier in accordance with Article 26 of Regulation (EU) No 600/2014	M where assigned	Preset	Yes	No	Yes

(*) The account holder may decide that the information is displayed at the EUTL public website.

ANNEX IV

Information to be provided for opening an auction delivery account or a trading account

1. The information set out in Table III-I of Annex III.

2. Proof that the person requesting to open an account has an open bank account in a Member State of the European Economic Area.

3. Evidence to support the identity of the natural person requesting to open an account, which may be a copy of one of the following:

   (a) an identity card issued by a State that is a member of the European Economic Area or the Organisation for Economic Cooperation and Development;

   (b) a passport;

   (c) a document that is accepted as a personal identification document under the national law of the national administrator administering the account.

4. Evidence to support the address of the permanent residence of the natural person account holder, which may be a copy of one of the following:

   (a) the identity document submitted under point 3, if it contains the address of the permanent residence;

   (b) any other government-issued identity document that contains the address of permanent residence;

   (c) if the country of permanent residence does not issue identity documents that contain the address of permanent residence, a statement from the local authorities confirming the nominee's permanent residence;

   (d) any other document that is customarily accepted in the Member State of the administrator of the account as evidence of the permanent residence of the nominee.

5. The following documents in case of a legal person requesting to open an account:

   (a) a document proving the registration of the legal entity;

   (b) bank account details;

   (c) a confirmation of VAT registration;

   (d) the name, date of birth and nationality of the legal entity's beneficial owner as defined in point (6) of Article 3 of Directive (EU) 2015/849 including the type of ownership or control they are exercising;

   (e) list of directors.

6. If a legal person requests to open an account, national administrators may ask for the submission of the following additional documents:

   (a) a copy of the instruments establishing the legal entity;

   (b) a copy of the annual report or of the latest audited financial statements, or if no audited financial statements available, a copy of the financial statements stamped by the tax office or the financial director.

7. Evidence to support the registered address of the legal person account holder, if this is not clear from the document submitted in accordance with point 5.

8. The criminal record, or any other document that is accepted by the administrator of the account as criminal record, of the natural person requesting to open an account.

   If a legal person requests the opening of an account, the national administrator may request the criminal record, or any other document that is accepted by the administrator of the account as criminal record, of the beneficial owner and/or the directors of this legal person. If national administrator requests the criminal record, the justification for such request shall be recorded.

Instead of requesting the submission of a criminal record, the national administrator may request the competent authority for keeping criminal records to provide the relevant information electronically, in accordance with national law.

Documents submitted under this point may not be retained after the opening of the account.

9. If a document is provided in original to the national administrator, it may make a copy of it and indicate its authenticity on the copy.

10. A copy of a document may be submitted as evidence under this Annex if it is certified as a true copy by a notary public or other similar person specified by the national administrator. Without prejudice to the rules set out in Regulation (EU) 2016/1191, regarding documents issued outside the Member State where the copy of the document is submitted, the copy shall be legalised, except otherwise provided for by national law. The date of the certification or legalisation shall not be more than three months prior to the date of application.

11. The administrator of the account may require that the documents submitted be accompanied with a certified translation into a language specified by the administrator.

12. Instead of obtaining paper documents proving information required under this Annex, national administrators may use digital tools to retrieve the relevant information, provided that such tools are authorised under national law to provide that information.

ANNEX V

Additional information to be provided for registering verifiers

A document proving that the verifier requesting registration is accredited as a verifier in accordance with Article 15 of Directive 2003/87/EC.

ANNEX VI

Information to be provided for opening an operator holding account

1. The information set out in Table III-I of Annex III.

2. Under the data provided in accordance with Table III-I of Annex III, the operator of the installation shall be named the account holder. The name provided for the account holder should be identical to name of the natural or legal person that is the holder of the relevant greenhouse gas permit.

3. If the account holder is part of a group, it shall provide a document clearly identifying the structure of the group. If that document is a copy, it shall be certified as a true copy by a notary public or other similar person specified by the national administrator. If the certified copy is issued outside the Member State requesting a copy, the copy shall be legalised, except otherwise provided for by national law. The date of the certification or legalisation shall not be more than three months prior to the date of application.

4. The information set out in Table VI-I and VI-II of this Annex.

5. If a legal person requests to open an account, national administrators may ask for the submission of the following additional documents:

   (a) a document proving the registration of the legal entity;

   (b) bank account details;

   (c) a confirmation of VAT registration;

   (d) the name, date of birth and nationality of the legal entity's beneficial owner as defined in Article 3(6) of Directive (EU) 2015/849 including the type of ownership or control they are exercising;

   (e) a copy of the instruments establishing the legal entity;

   (f) a copy of the annual report or of the latest audited financial statements, or if no audited financial statements available, a copy of the financial statements stamped by the tax office or the financial director.

6. Instead of obtaining paper documents proving information required under this Annex, national administrators may use digital tools to retrieve the relevant information, provided that such tools are authorised under national law to provide that information.

Table VI-I: account details for operator holding accounts

	A	B	C	D	E	F
Item No.	Account detail item	Mandatory or Optional?	Type	Can be updated?	Update requires the approval of the administrator?	Displayed on the EUTL public website?
1	Permit ID	M	Free	Yes	Yes	Yes
2	Permit entry into force date	M	Free	Yes	—	Yes
3	Installation name	M	Free	Yes	Yes	Yes
4	Installation activity type	M	Choice	Yes	Yes	Yes
5	Installation address – country	M	Preset	Yes	Yes	Yes
6	Installation address — region or state	O	Free	Yes	Yes	Yes
7	Installation address – city	M	Free	Yes	Yes	Yes
8	Installation address – postcode	M	Free	Yes	Yes	Yes

	A	B	C	D	E	F
Item No.	Account detail item	Mandatory or Optional?	Type	Can be updated?	Update requires the approval of the administrator?	Displayed on the EUTL public website?
9	Installation address – line 1	M	Free	Yes	Yes	Yes
10	Installation address – line 2	O	Free	Yes	Yes	Yes
11	Installation telephone 1	M	Free	Yes	No	No
12	Installation telephone 2	M	Free	Yes	No	No
13	Installation email address	M	Free	Yes	No	No
14	Name of parent undertaking	M Where assigned	Free	Yes	No	Yes
15	Name of subsidiary undertaking	M Where assigned	Free	Yes	No	Yes
16	Account holder ID of the parent undertaking (given by the Union Registry)	M Where assigned	Preset	Yes	No	No
17	EPRTR identification number	M Where assigned	Free	Yes	No	Yes
18	Latitude	O	Free	Yes	No	Yes
19	Longitude	O	Free	Yes	No	Yes
20	Year of first emission	M	Free			Yes

Table VI-II: Details of the installation contact person

	A	B	C	D	E	F
Item No.	Account detail item	Mandatory or Optional?	Type	Can be updated?	Update requires the approval of the administrator?	Displayed on the EUTL public website?
1	Contact person within Member State first name	O	Free	Yes	No	No
2	Contact person within Member State last name	O	Free	Yes	No	No
3	Contact person address – country	O	Preset	Yes	No	No
4	Contact person address – region or state	O	Free	Yes	No	No

	A	B	C	D	E	F
Item No.	Account detail item	Mandatory or Optional?	Type	Can be updated?	Update requires the approval of the administrator?	Displayed on the EUTL public website?
5	Contact person address – city	O	Free	Yes	No	No
6	Contact person address – postcode	O	Free	Yes	No	No
7	Contact person address – line 1	O	Free	Yes	No	No
8	Contact person address – line 2	O	Free	Yes	No	No
9	Contact person telephone 1	O	Free	Yes	No	No
10	Contact person telephone 2	O	Free	Yes	No	No
11	Contact person email address	O	Free	Yes	No	No

ANNEX VII

Information to be provided for opening an aircraft operator holding account

1. The information set out in Table III-I of Annex III and VII-I of Annex VII.

2. Under the data provided in accordance with Table III-I, the aircraft operator shall be named as the account holder. The name recorded for the account holder shall be identical to the name in the Monitoring Plan. In case the name in the Monitoring Plan is obsolete, the name in the trading registry or the name used by Eurocontrol shall be used.

3. If the account holder is part of a group, it shall provide a document clearly identifying the structure of the group. If that document is a copy, this shall be certified as a true copy by a notary public or other similar person specified by the national administrator. If the certified copy is issued outside the Member State requesting a copy, the copy shall be legalised, except otherwise provided for by national law. The date of the certification or legalisation shall not be more than three months prior to the date of application.

4. The call sign is International Civil Aviation Organisation (ICAO) designator in box 7 of the flight plan or, if not available, the registration marking of the aircraft.

5. If a legal person requests to open an account, national administrators may ask for the submission of the following additional documents:

   (a) a document proving the registration of the legal entity;

   (b) bank account details;

   (c) a confirmation of VAT registration;

   (d) the name, date of birth and nationality of the legal entity's beneficial owner as defined in Article 3(6) of Directive (EU) 2015/849 including the type of ownership or control they are exercising;

   (e) a copy of the instruments establishing the legal entity;

   (f) a copy of the annual report or of the latest audited financial statements, or if no audited financial statements available, a copy of the financial statements stamped by the tax office or the financial director.

6. Instead of obtaining paper documents proving information required under this Annex, national administrators may use digital tools to retrieve the relevant information, provided that such tools are authorised under national law to provide that information.

Table VII-I: account details for aircraft operator holding accounts

	A	B	C	D	E	F
Item No.	Account detail item	Mandatory or Optional?	Type	Can be updated?	Update requires the approval of the administrator?	Displayed on the EUTL public website?
1	Unique code under Commission Regulation 748/2009	M	Free	Yes	Yes	Yes
2	Call sign (ICAO designator)	O	Free	Yes	Yes	Yes
3	Monitoring plan ID	M	Free	Yes	Yes	Yes
4	Monitoring plan – first year of applicability	M	Free	Yes	Yes	Yes

ANNEX VIII

Information concerning authorised representatives to be provided to the administrator of the account

1. The information set out in Table VIII-I of Annex VIII.

Table VIII-I: Authorised representative details

	A	B	C	D	E	F
Item No.	Account detail item	Mandatory or Optional?	Type	Can be updated?	Update requires the approval of the administrator?	Displayed on the EUTL public website?
1	First name	M	Free	Yes	Yes	No
2	Last name	M	Free	Yes	Yes	No
3	Title	O	Free	Yes	No	No
4	Job title	O	Free	Yes	No	No
5	Employer name	O	Free	Yes	No	No
6	Department at the employer	O	Free	Yes	No	No
7	Country	M	Preset	No	n.a.	No
8	Region or state	O	Free	Yes	Yes	No
9	City	M	Free	Yes	Yes	No
10	Postcode	M	Free	Yes	Yes	No
11	Address – line 1	M	Free	Yes	Yes	No
12	Address – line 2	O	Free	Yes	Yes	No
13	Telephone 1	M	Free	Yes	No	No
14	Mobile phone	M	Free	Yes	Yes	No
15	Email address	M	Free	Yes	Yes	No
16	Date of birth	M	Free	No	n.a.	No
17	Place of birth – city	M	Free	No	n.a.	No
18	Place of birth – country	M	Free	No	n.a.	No
19	Type of document supporting identity	M	Choice	Yes	Yes	No

	A	B	C	D	E	F
Item No.	Account detail item	Mandatory or Optional?	Type	Can be updated?	Update requires the approval of the administrator?	Displayed on the EUTL public website?
20	Identity document number	M	Free	Yes	Yes	No
21	Identity document expiry date	M Where assigned	Free	Yes	Yes	No
22	National registration number	O	Free	Yes	Yes	No
23	Preferred language	O	Choice	Yes	No	No
24	Rights as authorised representative	M	Multiple Choice	Yes	Yes	No

2. A duly signed statement from the account holder indicating that it wishes to nominate a particular person as authorised representative, confirming that the authorised representative has the right to initiate, to approve, to initiate and approve transactions on behalf of the account holder or 'read only' access (as set out in paragraphs 1 and 5 of Article 20 respectively).

3. Evidence to support the identity of the nominee, which may be a copy of one of the following:

   (a) an identity card issued by a state that is a member of the European Economic Area or the Organisation for Economic Cooperation and Development;

   (b) a passport;

   (c) a document that is accepted as a personal identification document under the national law of the national administrator administering the account.

4. Evidence to support the address of the permanent residence of the nominee, which may be a copy of one of the following:

   (a) the identity document submitted under point 3., if it contains the address of the permanent residence;

   (b) any other government-issued identity document that contains the address of permanent residence;

   (c) if the country of permanent residence does not issue identity documents that contain the address of permanent residence, a statement from the local authorities confirming the nominee's permanent residence;

   (d) any other document that is customarily accepted in the Member State of the administrator of the account as evidence of the permanent residence of the nominee;

5. The criminal record, or any other document that is accepted by the administrator of the account as criminal record, of the nominee, except for authorised representatives of verifiers.

   Instead of requesting the submission of a criminal record, the national administrator may request the competent authority for keeping criminal records to provide the relevant information electronically, in accordance with national law.

   Documents submitted under this point may not be retained after the nomination of the account representative has been approved.

6. If a document is provided in original to the national administrator, it may make a copy of it and indicate its authenticity on the copy.

7. A copy of a document may be submitted as evidence under this Annex if it is certified as a true copy by a notary public or other similar person specified by the national administrator. Without prejudice to the rules set out in Regulation (EU) 2016/1191, regarding documents issued outside the Member State where the copy of the document is submitted, the copy shall be legalised, except otherwise provided for by national law. The date of the certification or legalisation shall not be more than three months prior to the date of application.

8. The administrator of the account may require that the documents submitted be accompanied with a certified translation into a language specified by the national administrator.

9. Instead of obtaining paper documents proving information required under this Annex, national administrators may use digital tools to retrieve the relevant information, provided that such tools are authorised under national law to provide that information.

ANNEX IX

Formats for submitting annual emissions data

1. Emissions data for operators shall contain the information set out in Table IX-I, having regard to the electronic format for submitting emissions data described in the data exchange and technical specifications provided for in Article 75.

Table IX-I: Emissions data for operators

1	Installation ID:		
2	Reporting year		
Greenhouse Gas Emissions			
		in tons	*in tons of CO_2eq*
3	CO_2 emissions		
4	N_2O emissions		
5	PFC emissions		
6	Total emissions	—	Σ (C3 + C4 + C5)

2. Emissions data for aircraft operators shall contain the information set out in Table IX-II, having regard to the electronic format for submitting emissions data described in the data exchange and technical specifications provided for in Article 75.

Table IX-II: Emissions data for aircraft operators

1	Aircraft operator ID:	
2	Reporting year	
Greenhouse Gas Emissions		
		in tons of CO_2
3	Domestic emissions (Relates to all flights which departed from an aerodrome situated in the territory of a Member State and arrived at an aerodrome situated in the territory of the same Member State)	
4	Non domestic emissions (Relates to all flights which departed from an aerodrome situated in the territory of a Member State and arrived at an aerodrome situated in the territory of another Member State)	
5	Total emissions	Σ (C3 + C4)

ANNEX X

National allocation table

Row No		Quantity of general allowances allocated free of charge					
		Pursuant to Article 10a(7) of Directive 2003/87/EC	Pursuant to Article 10c of Directive 2003/87/EC (transferrable)		Pursuant to another provision of Directive 2003/87/EC	Total	
1	Country code of Member State						Manual input
2	Installation ID						Manual input
3	Quantity to be allocated:						
4	in year X						Manual input
5	in year X + 1						Manual input
6	in year X + 2						Manual input
7	in year X + 3						Manual input
8	in year X + 4						Manual input
9	in year X + 5						Manual input
10	in year X + 6						Manual input
11	in year X + 7						Manual input
12	in year X + 8						Manual input
13	in year X + 9						Manual input

Rows No 2 to 13 shall be repeated for each installation.

ANNEX XI

National aviation allocation table

Row No		Quantity of aviation allowances allocated free of charge			
		Pursuant to Article 3e of Directive 2003/87/EC	Pursuant to Article 3f of Directive 2003/87/EC	In Total	
1	Country code of Member State				Manual input
2	Aircraft operator ID				Manual input
3	Quantity to be allocated				
4	in year X				Manual input
5	in year X + 1				Manual input
6	in year X + 2				Manual input
7	in year X + 3				Manual input
8	in year X + 4				Manual input
9	in year X + 5				Manual input
10	in year X + 6				Manual input
11	in year X + 7				Manual input
12	in year X + 8				Manual input
13	in year X + 9				Manual input

Rows No 2 to 13 shall be repeated for each aircraft operator.

ANNEX XII

Auction table

Row No	Information on the auction platform				
1	Identification code of the auction platform				
2	Identity of the auction monitor				
3	The Auction Collateral Delivery Account number				
4	Information on individual auctions of (general allowances/aviation allowances)				
5	Individual volume of the auction	Date and time of delivery to the Auction Collateral Delivery Account	Identity of the auctioneer(s) connected to each auction	Volume for the respective auctioneer(s) in the individual volume of the auction, including, where applicable, the respective volume of allowances under Article 10a(8) of Directive 2003/87/EC	Manual input
6					Manual input
7					Manual input
8					Manual input
9					Manual input
10					Manual input
11					Manual input
12					Manual input
13					Manual input
14					Manual input
15					Manual input
16					Manual input
17					Manual input
18					Manual input
19					Manual input

ANNEX XIII

Reporting requirements of the central administrator

I. Union Registry information related to the EU ETS

Information available to the public

1. The EUTL shall display on the public website of the EUTL the following information for each account:

   (a) all information indicated as to be 'displayed on the EUTL public website' in Table III-I of Annex III, Table VI-I of Annex VI, and Table VII-I of Annex VII;

   (b) allowances allocated to individual account holders pursuant to Articles 48 and 50;

   (c) the status of the account in accordance with Article 9(1);

   (d) the year of first emissions and the year of last emissions;

   (e) the number of allowances surrendered in accordance with Article 6;

   (f) the verified emissions figure, along with its corrections for the installation related to the operator holding account for year X shall be displayed from 1 April onwards of year (X+1);

   (g) a symbol and a statement indicating whether the installation or aircraft operator related to the operator holding account surrendered a number of allowances by 30 April that is at least equal to all its emissions in all past years.

   The information referred to in points (a) to (d) shall be updated every 24 hours.

   For the purposes of point (g), the symbols and the statements to be displayed are set out in Table XIV-I. The symbol shall be updated on 1 May and, except for the addition of a * in cases described under row 5 of Table XIV-I, it shall not change until the next 1 May, unless the account is closed before.

Table XIV-I: Compliance statements

Row No.	Compliance status figure according to Article 33	Verified emissions are recorded for last complete year?	Symbol	Statement
			to be displayed on the EUTL public website	
1	0 or any positive number	Yes	A	'The number of allowances surrendered by 30 April is greater than or equal to verified emissions'
2	any negative number	Yes	B	'The number of allowances surrendered by 30 April is lower than verified emissions'
3	any number	No	C	'Verified emissions for preceding year were not entered until 30 April'
4	any number	No (because the allowance surrender process and/or verified emissions update process being suspended for the Member State's registry)	X	'Entering verified emissions and/or surrendering was impossible until 30 April due to the allowance surrender process and/or verified emissions update process being suspended for the Member State's registry'
5	any number	Yes or No (but subsequently updated by the competent authority)	* *[added to the initial symbol]*	'Verified emissions were estimated or corrected by the competent authority.'

2. The EUTL shall display on the public website of the EUTL the following general information, and shall update it every 24 hours:

   (a) the national allocation table of each Member State, including indications of any changes made to the table in accordance with Article 47;

   (b) the national aviation allocation table of each Member State, including indications of any changes made to the table in accordance with Article 49;

   (c) the total number of allowances held in the Union Registry in all user accounts on the previous day;

   (d) the fees charged by national administrators in accordance with Article 81.

3. The EUTL shall display on its public website the following general information, on 30 April of each year:

   (a) the sum of verified emissions by Member State entered for the preceding calendar year as a percentage of the sum of verified emissions of the year before that year;

   (b) the percentage share belonging to accounts administered by a particular Member State in the number and volume of all allowance and Kyoto unit transfer transactions in the preceding calendar year;

   (c) the percentage share belonging to accounts administered by a particular Member State in the number and volume of all allowance and Kyoto unit transfer transactions in the preceding calendar year between accounts administered by different Member States.

4. The EUTL shall display on the public website of the EUTL the following information about each completed transaction recorded by the EUTL by 30 April of a given year on 1 May three years later:

   (a) account holder name and Account identifier of the transferring account;

   (b) account holder name and Account identifier of the acquiring account;

   (c) the amount of allowances or Kyoto units involved in the transaction, including the country code, but without unique unit identification code of the allowances and the unique numeric value of the unit serial number of the Kyoto units;

   (d) transaction identification code;

   (e) date and time at which the transaction was completed (in Central European Time);

   (f) type of the transaction.

   The first paragraph shall not apply to transactions, where both the transferring and acquiring account was an ETS management account as indicated in Table I-I of Annex I.

5. On 1 May each year, the following information shall be published on agreements which are in force pursuant to Article 25 of Directive 2003/87/EC recorded by the EUTL by 30 April:

   (a) holdings of allowances issued in the linked emissions trading system on all accounts in the Union Registry;

   (b) number of allowances issued in the linked emissions trading system used for compliance in the EU ETS;

   (c) sum of allowances issued in the linked emissions trading system that were transferred to accounts in the Union Registry in the preceding calendar year;

   (d) sum of allowances that were transferred to accounts in the linked emissions trading system in the preceding calendar year.

Information available to account holders

6. The Union Registry shall display on the part of the Union Registry's website only accessible to the account holder the following information, and shall update it in real time:

   (a) current holdings of allowances and Kyoto units, including the country code, and, as appropriate, the indication showing in which ten-year period the allowances were created, but without the unique unit identification code of the allowances and the unique numeric value of the unit serial number of the Kyoto units;

(b) list of proposed transactions initiated by that account holder, detailing for each proposed transaction

(i) the elements listed in point 4 of this Annex;

(ii) the account number and the name of the account holder of the acquiring account

(iii) the date and time at which the transaction was proposed (in Central European Time);

(iv) the current status of that proposed transaction;

(v) any response codes returned consequent to the checks made by the Registry and the EUTL

(c) a list of allowances or Kyoto units transferred or acquired by that account as a result of completed transactions, detailing for each transaction

(i) the elements listed in point 4;

(ii) the account number and the name of the account holder of the transferring and the acquiring account.

COMMISSION DELEGATED REGULATION (EU) 2019/1123

of 12 March 2019

amending Regulation (EU) No 389/2013 as regards the technical implementation of the second commitment period of the Kyoto Protocol

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC ([1]), and in particular Article 10(6) thereof,

Whereas:

(1) Article 19(1) of Directive 2003/87/EC of the European Parliament and the Council ([2]) requires that all allowances issued from 1 January 2012 onwards are held in a Union Registry. Such a Union Registry was initially established by Commission Regulation (EU) No 920/2010 ([3]).

(2) Commission Regulation (EU) No 389/2013 ([4]) repealed Regulation (EU) No 920/2010 to lay down general, operational and maintenance requirements concerning the Union Registry for the trading period starting on 1 January 2013 and subsequent periods, concerning the independent transaction log provided for in Article 20(1) of Directive 2003/87/EC, and concerning registries provided for in Article 6 of Decision No 280/2004/EC of the European Parliament and of the Council ([5]).

(3) Article 10(1) of Regulation (EU) No 525/2013 provides for the establishment of registries for the fulfilment of obligations stemming from the Kyoto Protocol. Regulation (EU) No 389/2013 governs also the functioning of these registries.

(4) The Conference of the Parties to the United Nations Framework Convention on Climate Change serving as the meeting of the Parties to the Kyoto Protocol adopted the Doha amendment, establishing a second commitment period of the Kyoto Protocol, starting on 1 January 2013 and ending on 31 December 2020 ('the Doha Amendment'). The Union approved the Doha Amendment by Council Decision (EU) 2015/1339 ([6]). It is necessary to implement the Doha Amendment to the Kyoto Protocol in the Union Registry and in the national Kyoto Protocol registries. However, the relevant provisions should apply only as of the date of entry into force of the Doha Amendment to the Kyoto Protocol.

(5) Norway and Liechtenstein are participating in the EU Emissions Trading System established by Directive 2003/87/EC, but are not parties to the joint fulfilment agreement ([7]) during the second commitment period of the Kyoto Protocol. Therefore, a specific clearing procedure should be established at the end of the second commitment period as provided for by Article 10(6) of Regulation (EU) No 525/2013.

([1]) OJ L 165, 18.6.2013, p. 13.
([2]) 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).
([3]) Commission Regulation (EU) No 920/2010 of 7 October 2010 for a standardised and secured system of registries 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 (OJ L 270, 14.10.2010, p. 1).
([4]) 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 (EU) No 1193/2011 (OJ L 122, 3.5.2013, p. 1).
([5]) Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ L 49, 19.2.2004, p. 1).
([6]) Council Decision (EU) 2015/1339 of 13 July 2015 on the conclusion, on behalf of the European Union, of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ L 207, 4.8.2015, p. 1).
([7]) Council Decision (EU) 2015/1340 of 13 July 2015 on the conclusion, on behalf of the European Union, of the Agreement between the European Union and its Member States, of the one part, and Iceland, of the other part, concerning Iceland's participation in the joint fulfilment of commitments of the European Union, its Member States and Iceland for the second commitment period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (OJ L 207, 4.8.2015, p. 15).

(6) All operations required in relation to the third trading period of the EU Emissions Trading System between 2013 and 2020 should be completed in accordance with the rules laid down in Regulation (EU) No 389/2013. As Directive 2003/87/EC allowed for 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 third trading period in accordance with Directive 2003/87/EC, as amended by Directive 2009/29/EC of the European Parliament and of the Council ([8]), on the one hand, and the rules applying to all operations related to the fourth trading period in accordance with Directive 2003/87/EC, as amended by Directive (EU) 2018/410 of the European Parliament and of the Council ([9]), on the other hand, the scope of application of those provisions of Regulation (EU) No 389/2013 which continue to apply, after the entry into force of the present Regulation, for the operations related to the third trading period will be limited to that purpose,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EU) No 389/2013, the following Article 73h is inserted:

'*Article 73h*

Clearing process for countries not parties to a joint fulfilment agreement

1. Within 6 months after the closure of the trading period 2013-2020, the central administrator shall calculate the clearing value for countries not parties to a joint fulfilment agreement by subtracting the amount equal to the allowances in the EU ETS resulting from the inclusion of that country in the EU ETS for the trading period 2013-2020 from the total amount of general allowances surrendered by operators administered by the national administrator of that country for the period 2013-2020.

2. The central administrator shall notify the national administrators about the result of the calculation pursuant to paragraph 1.

3. Within 5 working days of the notification set out in paragraph 2, the Central Administrator shall transfer an amount of AAUs equal to the clearing value calculated pursuant to paragraph 1 from the ETS Central Clearing Account in the Union Registry to a KP party holding account in the KP registry of each country with a positive clearing value.

4. Within 5 working days of the notification set out in paragraph 2, each KP registry administrator whose country has a negative clearing value shall transfer an amount of AAUs to that is equal to the positive equivalent of the clearing value calculated pursuant to paragraph 1 to the ETS Central Clearing Account in the Union Registry.

5. Before performing the transfer referred to in paragraphs 3 and 4 of this Article, the relevant national administrator or the central administrator shall first transfer a number of AAUs required to satisfy the share of proceeds applied to first international transfers of AAUs in accordance with Article 10(1) of Regulation (EU) No 525/2013.

6. Within 6 months after the closure of the trading period 2013-2020, the central administrator shall calculate the clearing value for countries not parties to a joint fulfilment agreement by subtracting the amount equal to the verified emissions by aircraft operators that are included in the national inventory under the UNFCCC of that country from the total amount of general allowances surrendered by aircraft operators administered by the national administrator of that country for the period 2013-2020.

7. The central administrator shall notify the national administrators about the result of the calculation pursuant to paragraph 6.

8. Within 5 working days of the notification pursuant to paragraph 7, each KP registry administrator whose country has a positive clearing value shall transfer an amount of AAUs equal to the clearing value calculated pursuant to paragraph 6 to the ETS Central Clearing Account in the Union Registry.

([8]) Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).

([9]) Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ L 76, 19.3.2018, p. 3).

9. Within 5 working days of the notification pursuant to paragraph 7, the Central Administrator shall transfer an amount of AAUs equal to the positive equivalent of the clearing value calculated pursuant to paragraph 6 from the ETS Central Clearing Account in the Union Registry to a KP party holding account in the KP registry of each country with a negative clearing value.

10. Before performing the transfer referred to in paragraphs 8 and 9 of this Article, the relevant national administrator or the central administrator shall first transfer a number of AAUs required to satisfy the share of proceeds applied to first international transfers of AAUs in accordance with Article 10(1) of Regulation (EU) No 525/2013.'

Article 2

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 the date of publication by the Commission in the *Official Journal of the European Union* of a communication on the entry into force of the Doha Amendment to the Kyoto Protocol.

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

Done at Brussels, 12 March 2019.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2019/1124

of 13 March 2019

amending Delegated Regulation (EU) 2019/1122 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 ([1]), and in particular Article 12(1) thereof,

Whereas:

(1) 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 ([2]) lays down the rules for the functioning of the Union Registry, established under Directive 2003/87/EC of the European Parliament and the Council ([3]).

(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) No 389/2013 ([4]). As Decision No 406/2009/EC of the European Parliament and of the Council ([5]) 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 with Regulation (EU) 2018/842, on the other hand, the scope of application of those provisions of Regulation (EU) No 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 Delegated Regulation (EU) 2019/1122, 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.

([1]) OJ L 156, 19.6.2018; p. 26.
([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 (see page 3 of this Official Journal).
([3]) 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).
([4]) 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 (EU) No 1193/2011 (OJ L 122, 3.5.2013, p. 1).
([5]) 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).

(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) 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) 2018/842 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,

(*) 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 1 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 AEAs 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 AEAs

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 AEAs 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 AEAs 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

AEAs 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 AEAs to each ESR Compliance Account

1. At the beginning of the compliance period, the central administrator shall transfer a quantity of AEAs 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 AEAs, international credits, tCERs and lCERs, 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 AEAs 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 AEAs 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 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.

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 per cent 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 per cent 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 (EU) No 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 per cent 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 per cent 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 ecntral 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 daministrator 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 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.

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 March 2019.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

In Annex I to Delegated Regulation (EU) 2019/1122, the following table is added:

'**Table I-II: Accounts for the purpose of accounting transactions pursuant to Title IIA**

Account type name	Account holder	Account Administrator	No. of accounts of this type	AEA	Accounted emissions/ accounted removals	LMU	MFLFA
EU ESR AEA Total Quantity Account	EU	central administrator	1	Yes	No	No	No
ESR Deletion Account	EU	central administrator	1	Yes	No	Yes	No
EU Annex II AEA Total Quantity Account	EU	central administrator	1	Yes	No	No	No
EU ESR Safety Reserve Account	EU	central administrator	1	Yes	No	No	No
ESR Compliance Account	Member State	central administrator	1 for each of the 10 compliance years for each Member State	Yes	No	Yes	No'

ANNEX II

In Annex XIII to Delegated Regulation (EU) 2019/1122, the following point II is added:

'II. **Information related to accounting of transactions under Title IIA**

Information available to the public

7. The central administrator shall make publicly available the following information for each ESR compliance account and update it within 24 hours when relevant:

   (a) information on the Member State holding the account;

   (b) Annual Emission Allocations as determined pursuant to Article 4(3) and Article 10 of Regulation (EU) 2018/842;

   (c) the status of each ESR Compliance Account in accordance with Article 10;

   (d) the relevant greenhouse gas emissions data pursuant to Article 59d;

   (e) the compliance status figure pursuant to Article 59f for each ESR Compliance Account as follows:

      (i) A for compliance;

      (ii) I for non-compliance;

   (f) the quantity of greenhouse gas emissions introduced pursuant to Article 59g;

   (g) the following information about each completed transaction:

      (i) account holder name and account holder ID of the transferring account;

      (ii) account holder name and account holder ID of the acquiring account;

      (iii) the amount of AEAs involved in the transaction, without unique unit identification code of the AEA;

      (iv) transaction identification code;

      (v) date and time at which the transaction was completed (in Central European Time);

      (vi) type of the transaction.

Information available to account holders

8. The Union Registry shall display on the part of the Union Registry's website only accessible to the holder of the ESR compliance account the following information, and shall update it in real time:

   (a) current holdings of AEAs, without the unique unit identification code of the AEAs;

   (b) list of proposed transactions initiated by that account holder, detailing for each proposed transaction;

      (i) the elements in point 7(g);

      (ii) the date and time at which the transaction was proposed (in central European time);

      (iii) the current status of that proposed transaction;

      (iv) any response codes returned consequent to the checks made by the registry and the EUTL;

   (c) a list of AEAs acquired by that account as a result of completed transactions, detailing for each transaction the elements in point 7(g);

   (d) a list of AEAs transferred out of that account as a result of completed transactions, detailing for each transaction the elements in point 7(g).'

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1125

of 5 June 2019

concerning the authorisation of zinc chelate of methionine sulfate as a feed additive for all animal species

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ([1]), and in particular Article 9(2) thereof,

Whereas:

(1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.

(2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of zinc chelate of methionine sulfate. That application was accompanied by the particulars and documents required under Article 7(3) of that Regulation.

(3) That application concerns the authorisation of zinc chelate of methionine sulfate as a feed additive for all animal species to be classified in the additive category 'nutritional additives'.

(4) The European Food Safety Authority ('the Authority') concluded in its opinions of 18 May 2017 ([2]) and 4 October 2018 ([3]) that, under the proposed conditions of use, zinc chelate of methionine sulfate does not have an adverse effect on animal health and consumer safety. It also concluded that the additive is considered as a potential skin sensitizer and an eye and skin irritant and stated a risk for the users of the additive upon inhalation. Therefore, the Commission considers that appropriate protective measures should be taken to prevent adverse effects on human health, in particular as regards the users of the additive. The Authority also concluded that that additive does not pose an additional risk for the environment compared to other compounds of zinc and that it is an efficacious source of zinc for all animal species. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.

(5) The assessment of that additive shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are, subject to respective protective measures for the users of the additive, satisfied. Accordingly, the use of that additive should be authorised as specified in the Annex to this Regulation.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The substance specified in the Annex, belonging to the additive category 'nutritional additives' and to the functional group 'compounds of trace elements', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

([1]) OJ L 268, 18.10.2003, p. 29.
([2]) *EFSA Journal* 2017;15(6):4859.
([3]) *EFSA Journal* 2018;16(10):5463.

Article 2

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

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

Done at Brussels, 5 June 2019.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						Content of element (Zn) in mg/kg of complete feed with a moisture content of 12 %			
Category of nutritional additives. Functional group: compounds of trace elements									
3b614	—	Zinc chelate of methionine sulfate	*Additive composition:* Zinc chelate of methionine sulfate as a powder with a zinc content between 2 % and 15 %. *Characterisation of the active substance:* Zinc, 2-amino-4 methylsulfanyl-butanoic acid, sulfate; zinc chelated with methionine in a molar ratio 1:1. Chemical formula: $C_5H_{11}NO_6S_2Zn$ CAS Number: 56329-42-1 *Analytical methods* (1): For the quantification of total zinc in the feed additive and premixtures: — EN 15510: Inductively Coupled Plasma – Atomic Emission Spectrometry (ICP-AES), or — EN 15621: Inductively Coupled Plasma – Atomic Emission Spectrometry (ICP-AES) after pressure digestion.	All animal species	—	—	Dogs and cats: 200 (total) Salmonids and milk replacers for calves: 180 (total) Piglets, sows, rabbits and all fish other than salmonids: 150 (total) Other species and categories: 120 (total)	1. The additive shall be incorporated into feed in the form of a premixture. 2. Zinc chelate of methionine sulfate may be placed on the market and used as an additive consisting of a preparation. 3. For users of the additive and premixtures, feed business operators shall establish operational procedures and appropriate organisational measures to address the potential risks by inhalation, dermal contact or eyes contact. Where risks cannot be reduced to an acceptable level by those procedures and measures, the additive and premixtures shall be used with appropriate personal protective equipment.	22 July 2029

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						Content of element (Zn) in mg/kg of complete feed with a moisture content of 12 %			
			For the quantification of methionine content in the feed additive: — ion exchange chromatography coupled with post-column derivatisation and photometric detection (IEC-UV/FD) – EN ISO 17180 or VDLUFA 4.11.6 and EN ISO 13903 For the quantification of total zinc in feed materials and compound feed: — Regulation (EC) No 152/2009 — Atomic Absorption Spectrometry (AAS); or — EN 15510: Inductively Coupled Plasma – Atomic Emission Spectrometry (ICP-AES); or — EN 15621: Inductively Coupled Plasma – Atomic Emission Spectrometry (ICP-AES) after pressure digestion.					

(1) Details of the analytical methods are available at the following address of the Reference Laboratory: https://ec.europa.eu/jrc/eurl/feed-additives/evaluation-reports

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1126

of 25 June 2019

entering a name in the register of protected designations of origin and protected geographical indications 'Jambon du Kintoa' (PDO)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([1]), and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, France's application to register the name 'Jambon du Kintoa' was published in the *Official Journal of the European Union* ([2]).

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Jambon du Kintoa' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Jambon du Kintoa' (PDO) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.2. – Meat products (cooked, salted, smoked, etc.), as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ([3]).

Article 2

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

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

Done at Brussels, 25 June 2019.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

([1]) OJ L 343, 14.12.2012, p. 1.
([2]) OJ C 36, 29.1.2019, p. 19.
([3]) Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

DECISIONS

COMMISSION DECISION (EU) 2019/1127

of 4 October 2018

on the State aid SA.45359 — 2017/C (ex 2016/N) which Slovakia is planning to implement for Jaguar Land Rover Slovakia s.r.o.

(notified under document C(2018) 6545)

(Only the English version is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited ([1]) and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 12 May 2016, Slovakia notified to the Commission a EUR 125 046 543 regional investment aid in form of a direct grant in favour of Jaguar Land Rover Slovakia s.r.o. ('the beneficiary') subject to Commission approval. Jaguar Land Rover Slovakia s.r.o. is part of the Jaguar Land Rover Group ([2]) ('JLR').

(2) By letter dated 24 May 2017 (the 'Opening decision') the Commission informed Slovakia that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the notified State aid and in respect of possible additional non-notified State aid, and invited Slovakia to submit its comments within one month.

(3) The Slovak authorities submitted their comments on the Commission decision to initiate the procedure laid down in Article 108(2) TFEU by letter of 20 July 2017.

(4) The Opening decision was published in the *Official Journal of the European Union* ([3]) on 8 December 2017. The Commission called upon other interested parties to submit their comments within one month.

(5) The only comment the Commission received from other interested parties was submitted by JLR on 19 December 2017. The Commission forwarded the comment to Slovakia on 17 January 2018. Slovakia's comments on the JLR submission were registered on 5 February 2018.

(6) The Commission sent information requests on 9 and 23 February 2018 to which Slovakia replied on 9 March and on 12 and 18 April 2018. The Commission sent a further information request to Slovakia on 11 June 2018 to which Slovakia replied on 3 July 2018.

(7) Meetings took place between the Commission services and the Slovak authorities on 10 October 2017, 27 November 2017 and 1 March 2018.

([1]) OJ C 422, 8.12.2017, p. 21.
([2]) As further defined in section 2.3 of this Decision.
([3]) Cf. footnote 1.

(8) The Commission received a letter from JLR dated 14 May 2018 to which it replied by letter of 22 May 2018. The Commission received further information from JLR on 2 July 2018.

(9) By letter of 3 July 2018, Slovakia agreed that this Decision will be adopted and notified to Slovakia in the English language.

(10) In the Opening decision, the Commission expressed doubts both on the compatibility of the notified aid and on possible additional non-notified aid. In view that the possible additional non-notified aid could have had an impact on the compatibility of the notified aid, and in particular on proportionality and regarding a manifest negative effect, the Commission, in this Decision, assesses first whether there was additional non-notified aid. That assessment is crucial in defining the scope of the compatibility assessment.

2. DETAILED DESCRIPTION OF THE AID

2.1. Objective of the aid

(11) The Slovak authorities intend to promote regional development by providing regional aid for an investment by the large undertaking JLR for building and tooling a premium aluminium vehicle manufacturing facility in Nitra, which is situated in the Nitra region of Slovakia, an area eligible for regional aid under Article 107(3)(a) TFEU, with a standard regional aid ceiling of 25 % under the Slovak regional aid map for the time period from 1 July 2014 to 31 December 2020 ([4]).

2.2. The notified project

(12) The investment project with proposed eligible investment costs of EUR 1 406 621 000 in nominal value (EUR 1 369 295 298 in current value ([5])) aims at establishing a new car manufacturing plant with an annual capacity of 150 000 'Premium D SUV segment' vehicles ([6]). The investment started in December 2015 and is to be completed in 2020. The investment takes place in an industrial park under construction, the Nitra Strategic Park ('NSP'), on land which, at the time of the creation of the NSP on 8 July 2015, was still predominantly privately owned agricultural land. The project is expected to create 2 834 new direct jobs.

(13) The scope of the notified investment project, as proposed to the Slovak authorities in the formal aid application of 24 November 2015, refers to a production capacity of 150 000 vehicles per annum. The scope of the investment project, as originally proposed in JLR's draft aid application submitted to the Slovak authorities on 25 June 2015, referred to an investment with an annual production capacity of 300 000 vehicles to be implemented in two phases and including the production of two further models which had yet to be decided. Slovakia explained that in the autumn of 2015 JLR decided to reduce the initial scope of the project to a plant with the notified production capacity of 150 000 vehicles per annum. The product to be manufactured in Phase 2 at the site was not yet known at that time, and there was no commitment yet on the envisaged expansion of the investment into Phase 2.

2.3. The beneficiary

(14) The recipient of the State aid is Jaguar Land Rover Slovakia s.r.o. As described in the Opening decision, Jaguar Land Rover Slovakia s.r.o. is 85 % owned by Jaguar Land Rover Limited and 15 % owned by Jaguar Land Rover Holdings Limited. Jaguar Land Rover Limited is 100 % owned by Jaguar Land Rover Holdings Limited which in turn is 100 % owned by Jaguar Land Rover Automotive plc. The immediate parent of Jaguar Land Rover Automotive plc is Tata Motors Limited India ('Tata Motors'). The main business activities of Tata Motors are the manufacture and sale of passenger vehicles, commercial vehicles, buses and coaches. The term JLR in this Decision does not include Tata Motors.

([4]) SA.37447 (N/2013) (OJ C 210, 4.7.2014, p. 4).

([5]) The current values in this Decision are calculated on the basis of a discounting rate of 1,17 %, applicable at the time of submitting the definite aid application, that is to say 24 November 2015. Current values are discounted to the United Kingdom financial year 2015/2016, which is the planned date of award. JLR uses the United Kingdom financial year running from 1 April to 31 March.

([6]) Planned production of All-new Land Rover Discovery, known as […] (*), and […], known as […].
(*) *Business secret*

(15) The Slovak authorities confirmed and provided information on the basis of which the Commission verified that JLR and its parent company Tata Motors do not constitute companies in difficulty within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ([7]).

2.4. **Aid amount and aid intensity**

2.4.1. *The notified aid*

(16) The notified direct grant of EUR 129 812 750 in nominal value or EUR 125 046 543 in current value ([8]) refers to the eligible expenditure of EUR 1 369 295 298 in current value referred to in recital 12, and thus corresponds to an aid intensity of 9,13 %. The notified regional investment aid is to be granted from the national State budget.

2.4.2. *The possible additional non-notified aid*

(17) In section 3.1.2 of the Opening decision, the Commission considered that Slovakia may have granted, in addition to the notified aid, unlawful aid in the form of infrastructural development, including the sale of land below market price, in the NSP and exemption from the obligation to pay an Agricultural Land Transformation fee ('ALF fee'). The entity made responsible by the Slovak authorities for the implementation of the NSP is MH Invest ('MHI'), a 100 % State-owned company that is controlled, governed and financed by the Ministry of Transport, Construction and Regional Development of Slovakia. MHI is the initial owner of the sites of the NSP. The Slovak authorities, through MHI's commissioning of third parties, are carrying out works on the NSP, namely preparatory land remediation works, utilities works, rail and road connections, flood defence and ground water management works. Železnice sloveskej republiky ('Slovak Railways'), also a 100 % State-owned company, is constructing a multimodal transport terminal within the NSP. The total cost of those works and that terminal is estimated at about EUR 500 million.

(18) As stated in section 3.1.3 of the Opening decision, one of the changes to Regulation 58 of the Government of the Slovak Republic of 13 March 2013 on fees for the disappropriation and unauthorised engagement of agricultural land ([9]) introduced the so-called Exemption H from the ALF fee which applies to land purchased by 100 % State-owned companies that construct strategic industrial parks that are recognised as 'significant investments' within the meaning of Act No 175/1999 ([10]) on significant investments ('Significant Investment Act'). Exemption H entered into force on 31 October 2015. The NSP was recognised as 'significant investment' on 8 July 2015.

(19) The possible additional non-notified aid measures are to be granted from the national State budget.

2.5. **Duration**

(20) The notified measure is to be paid out between 2017 and 2021. The beneficiary is expected to benefit from the other measures which may qualify as non-notified aid as from the moment of the purchase agreement for what concerns the land purchased by JLR and possible exemption from the ALF fee and as from the moment of infrastructural development for infrastructure outside the boundaries of the 185 hectares purchased by JLR from the Slovak authorities ('JLR Site').

3. **GROUND FOR INITIATING THE PROCEDURE**

(21) The Commission opened the formal investigation on 24 May 2017. It was unable to exclude that JLR was receiving, in addition to the notified aid, non-notified aid in the form of infrastructural development, including the sale of land below market price, in the NSP and an exemption from the obligation to pay an ALF fee. The underlying assessment took account both of the notified and the possible additional non-notified aid measures.

([7]) OJ C 249, 31.7.2014, p. 1.
([8]) Based on a discounting rate of 1,17 %, as referred to in footnote 5.
([9]) http://www.zakonypreludi.sk/zz/2013-58
([10]) Act No 175/1999 of 29 June 1999 on Certain Measures Relating to the Preparation of Significant Investments and on Amendment to Certain Laws.

3.1. **The possible additional non-notified aid**

3.1.1. *Possible aid in the form of infrastructural development, including the transfer of NSP land below market value*

(22) The Commission considered that there was a possibility that the sale to JLR of land in the NSP may have involved certain advantages that could qualify as additional State aid.

(23) MHI, becoming the initial owner of the future site of the NSP, had, by 31 December 2016, already incurred an expenditure of EUR 75 million for the acquisition of NSP land on which the notified JLR project would be located. It was also incurring a significant amount of additional expenditure for the development of the site itself. At the same time, JLR's contribution in relation to the purchase of the JLR site appeared to be only a fraction of the corresponding acquisition and development costs. The difference between the cost incurred by Slovakia to acquire the land and to develop the NSP on it, and the price to be paid by JLR for the NSP land raised the question whether the sale of NSP land to JLR involved State aid.

(24) Slovakia argued that the development of the NSP could not involve State aid as it falls within the public remit for the reasons referred to in paragraph 17 of the Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU ([11]). Therefore Slovakia argued that the development of the NSP is not an economic activity, and its public financing does not constitute State aid. In addition, according to Slovakia, JLR would pay a market price for the land it purchases in the NSP which is established on the basis of valuations carried out by independent experts.

(25) The Commission, however, had doubts that the development of the NSP was analogous to the situation referred to in paragraph 17 of the Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU, which is only applicable to measures that do not involve dedicated infrastructure.

(26) The Commission understood that contractual agreements between Slovakia and the beneficiary were to give JLR outright ownership, or option rights for later purchase, of almost all the commercially exploitable land of the NSP.

(27) The Commission considers infrastructure to be dedicated if it is built for a pre-identified undertaking and is tailored to this undertaking's specific needs ([12]). In its preliminary view, the Commission considered that the NSP could be regarded as infrastructure dedicated to JLR for the following reasons: (a) a large surface area was reserved to the company under contractual terms; (b) the beneficiary might have been a pre-identified undertaking; and (c) the NSP appeared to have been tailored to the beneficiary's specific needs.

(28) The Commission therefore considered that if the NSP constitutes infrastructure dedicated to JLR, the company would under normal market conditions have had to pay for the costs for developing the site, with the exception of costs relating to truly general infrastructure items and which should be identified in this Decision.

(29) Even assuming that the NSP was not a dedicated infrastructure, the method used to establish the market price to be paid by JLR raised doubts. In particular, the Commission questioned whether the value of specific development works carried out and financed by Slovakia and directly benefitting JLR was properly reflected in the valuations prepared by the independent experts, and whether JLR was to pay a proportionate share of the NSP development cost commensurate with its ownership interest in the park.

3.1.2. *Possible aid in the form of the exemption from a fee, the ALF fee, that is payable when agricultural land is transformed into industrial land*

(30) The Commission considered that JLR may have benefitted from an advantage in form of an exemption ('exemption H') from a fee which is payable under Slovak law when agricultural land is converted into industrial land. In fact, the Commission could not exclude that despite the interjection of a State-owned company in the transaction which scope is to buy the agricultural land from third parties, prepare it for industrial use, including, amongst others, land remediation and access to public utilities, and sell it to the investor, there could have been imputability of the aid to the Slovak State and selective advantage to the beneficiary. Thus, the Commission considered that the exemption from the fee may have constituted State aid within the meaning of Article 107(1) TFEU in favour of JLR.

([11]) OJ C 262, 19.7.2016, p. 1.

([12]) This understanding is in accordance with Article 2(33) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (GBER) (OJ L 187, 26.6.2014, p. 1).

3.2. **Compatibility of the notified aid**

3.2.1. *Introduction*

(31) The Commission could not, on the basis of the preliminary investigation, establish the conformity of the notified regional aid with the provisions of the Guidelines on Regional State Aid for 2014-2020 ([13]) ('RAG').

(32) In particular, it could not conclude that the notified regional aid measure satisfies the minimum requirements of the RAG, and therefore expressed doubts on (a) the eligibility of certain elements that apparently form part of the eligible investment costs; (b) the incentive effect of the aid; (c) the proportionality of the aid; (d) the occurrence of a manifest negative effect on Union cohesion; and (e) the occurrence of a manifest negative effect on trade within the meaning of paragraph 119 of the RAG in that the aid intensity ceiling might be exceeded. In addition it considered that the possible additional aid elements in the infrastructural development and the exemption from the ALF fee could in particular affect the proportionality of the notified aid and conformity with the maximum aid intensity ceiling.

3.2.2. *Eligibility of 'provision costs' as investment cost*

(33) The Commission noted that the notified eligible costs include an item 'provision' (described as 'unexpected overspend') amounting to at least GBP [60-85] million (EUR [72-102] million ([14])). It expressed doubts as to whether 'provision costs' are eligible for the purpose of regional investment aid.

3.2.3. *Lack of incentive effect of the notified regional aid grant*

(34) The Commission had doubts that the notified regional aid had incentive effect, that is to say whether it was necessary to attract JLR's investment to Nitra. It was not convinced that the submitted documentation of the process preparing JLR's location decision proved that Mexico had been a credible alternative scenario when that decision was taken. In particular, the Commission noted references to plans by JLR to build two plants at different locations in documents relating to the January 2015 offsite meeting of members of the Executive Board, and differences in the level of detailed assessment for European sites, compared to Mexico. The Mexico alternative also appeared to have a significant delay. The Commission considered that the real counterfactual location with which Nitra was competing for the location of the new JLR plant may have been Jawor, Poland, and not the Mexican location. The existence of a large gap in Net Present Value ('NPV') between Mexico and Nitra, which is only partially compensated by the notified regional aid, was a further element putting into question the incentive effect of the aid. Therefore, the Commission could not exclude that JLR's strategic considerations for the choice of Nitra over Mexico were decisive for the choice of Nitra, that is to say the investment would have been carried out in Nitra even without the EUR 125 million, in current value, of notified aid, or at least with a lower amount. JLR's strategic considerations were (a) distance to JLR headquarters; (b) delays in timing; (c) natural disaster risks in Mexico due to volcanic activity; (d) political instability, government effectiveness and corruption risks; (e) brand equity considerations; and (f) investment in the Union as hedge against the possibility of the United Kingdom's withdrawal from the Union.

3.2.4. *Lack of proportionality*

(35) Since the notified aid is just below the maximum amount of aid that can be granted for an investment of the given size in Nitra, under Slovakia's current regional aid map ('adjusted aid amount'), the Commission had doubts about whether the total aid amount would still be proportionate if JLR actually benefitted from the possible additional aid elements. In addition, the Commission doubted whether the proportionality threshold of EUR 413 million, namely the viability gap between Mexico and Slovakia calculated by JLR and amounting to one of the two proportionality thresholds laid down in the RAG ([15]), could not 'be reached already at a much lower level'.

([13]) OJ C 209, 23.7.2013, p. 1.
([14]) Throughout this Decision an exchange rate of GBP:EUR of 1:1,2 was applied as this was the long-term business planning rate used by JLR.
([15]) The other one is the adjusted regional aid ceiling.

3.2.5. *Manifest negative effects — anti-cohesion effect*

(36) The Commission expressed doubts as to whether the Mexico alternative was credible and whether in reality the alternative location was not Jawor in Poland. Internal company calculations showed that the investment would have been more profitable in Jawor, which is in a region with the same regional State aid intensity ceiling as Nitra, that is to say 25 %. Therefore, the Commission was of the preliminary view that, if the Mexico alternative would prove to be non-credible, and if the real counterfactual to Nitra was Jawor, then it cannot be excluded that the aid package provided to JLR by Slovakia has a manifest negative effect pursuant to paragraph 121 of the RAG.

3.2.6. *Manifest negative effect on trade — maximum aid intensity ceiling exceeded*

(37) The notified regional aid grant in current value results in an aid intensity prima facie below the maximum allowable aid intensity for an investment of the given size in the region of Nitra. However, any additional aid element in the form of infrastructural development, including the transfer of land below market value or the exemption from the ALF fee, or both, would raise the total aid amount above that allowable aid intensity level, and thus constitute a manifest negative effect on trade pursuant to paragraph 119 of the RAG. As the Commission could not exclude additional aid elements, it expressed doubts about whether the overall aid measure did not lead to a manifest negative effect on trade.

4. COMMENTS FROM SLOVAKIA

4.1. Comments from Slovakia on the possible additional non-notified aid

4.1.1. *Possible aid in the form of infrastructural development, including the transfer of NSP land below market value*

(38) The Slovak authorities consider that the NSP does not constitute dedicated infrastructure to JLR for several reasons. They argue that the land which constitutes the NSP had been identified for industrial use long before JLR started its location search and that the Slovak authorities had offered the greenfield land of the NSP previously to other investors. Moreover the Slovak authorities argue that JLR does not own the NSP and neither does it have an exclusive license or concession over the NSP and that JLR does not have a de facto exclusive control over the NSP. They argue further that the existence of the NSP as an industrially zoned area with existing industrial development was actually a factor in JLR's choice of locating in Nitra, not the other way around, and that the approach of the Slovak authorities to the development of the NSP is standard practice used by Slovakia and other Member States to avoid wasteful public spending while maximising regional development.

(39) The Slovak authorities clarified the historical evolution leading to the NSP. The term 'strategic park', and in turn the 'Nitra Strategic Park', is a term first introduced in the Significant Investment Act in 1999. The NSP comprises an area of 704 hectares over which the Slovak authorities have compulsory purchase powers in order to implement the strategic park which is adjacent to the existing Nitra North industrial park ([16]). The two parks together form the integrated industrial zone known as Nitra North. The NSP is situated across five municipalities, namely Nitra and Luzianky with small parts of it also on the territory of Cakajovce, Zbehy and Jelsovce.

(40) The need for development of industrial land in the region of Nitra was first identified in the 1998 Zoning Plan of the Nitra region ([17]). The municipalities of Nitra and Luzianky were identified as prospective industrial centres.

(41) In order to foster industrial development, the Slovak government recognised that it needed to find a way to address the issue of the fragmented land ownership which was an obstacle for the attraction of large investment projects. Land in Slovakia is highly fragmented due to historic inheritance laws where siblings inherited an equal share of their parents' land. That has resulted in a high number of co-owners of small fragmented plots of land. Therefore in 1999, Slovakia enacted the Significant Investment Act to govern the procedure of issuing certificates of significant investments in order to facilitate the acquisition of land for the implementation of large investment projects.

([16]) The Opening decision mentioned in paragraph 13 that the NSP is located next to an already existing industrial park of 29,7 hectares. This information appears to be not correct as the Nitra North industrial park is considerably larger. In the annotated map in Schedule 7 of the Investment Agreement an area of 27 hectares inside the NSP is coloured as 'Industrial Park'. This does not coincide with the Nitra North industrial park.

([17]) 1998 Nitra Region Zoning Plan No 188, of 28 April 1998.

(42) The need for the development of industrial land was further confirmed in 2003 when the municipality of Nitra figured on a list of sites recommended by the 'Study for the Location of Industrial Parks in Selected Areas of the Slovak Republic', acknowledged by Governmental resolution No 690 of 16 July 2003. It concerned an area of 231 hectares. In 2004, the Nitra region earmarked the area in which it planned to rezone agricultural land for industrial use. Geographically, that area included the Nitra North industrial park in the south and stretched out over the South Land and most of the JLR Site. Further in 2004, Governmental Resolution 88/2004 implemented financial measures for the regional development of Nitra and various other cities across Slovakia to enable the construction of the necessary technical infrastructure required to attract investment. In 2006, the municipality of Luzianky established its 2006 Zoning Plan that reserved a territory of 106 hectares for inclusion in the industrial zone Nitra North.

(43) In 2007, the first companies were established in the Nitra North industrial park. Sony, which later was known as Foxconn, became one of its anchor investors. In 2011, a zoning decision was issued in order to connect the R1 highway to the area of the industrial zone.

(44) The 2012 Zoning Plan of the Nitra region confirmed that the industrial zone Nitra North is 'designated as an area suitable for the location of an industrial park, or industrial production units. This area [was] not fully built up and [had] development potential'. The Slovak government recognised that more had to be done to address the investment obstacle created by fragmented land ownership. Therefore, in 2013, the Significant Investment Act was amended with provisions allowing the speeding up of the process of executing a significant investment by establishing a more flexible process of issuing a significant investment certificate and reducing the bureaucratic demands of the process.

(45) In 2014, the municipality of Luzianky amended its 2006 Zoning Plan to facilitate a detailed planned development of its section of the industrial zone, measuring 158 hectares, as a result of potential interest by an industrial investor who eventually decided to invest elsewhere. The 2014 Luzianky Zoning Plan laid down the detailed plans for infrastructural developments to prepare the area for industrial use. One of the basic principles of the proposed urban development concept of the site was the functional and spatial linkage of the proposed development areas to the territory of the Nitra North industrial park. The Zoning Plan explicitly identified the site development limits and needs such as need for transport connections, railway track protection zone, river Nitra bio-corridor, solution for the high level of groundwater, necessity to build retention reservoirs and pumping stations, necessity to secure drinking water supply, public sewerage system, protection from precipitation water, presence of high-pressure pipeline, connection to telecom network.

(46) On 27 May 2015, the Slovak government launched a new legislative initiative to arrange the prerequisites for the creation of so-called strategic industrial and technology parks by an undertaking that is 100 % owned by the State and responsible for the preparation of the site, including the construction of necessary infrastructure. That initiative resulted in Amendment 154/2015 of 30 June 2015 to the Significant Investment Act. At the same time a change to Regulation 58 ([18]) was proposed as referred to in paragraph 10 of the Opening decision. On 8 July 2015 ([19]), the Slovak government issued a certificate of significant investment to build the NSP.

(47) Since the Slovak authorities had established industrial zoning arrangements, had an industrial development strategy which had already been partly implemented via the Nitra North industrial park, had developed detailed physical plans for developing the remainder of the area and had offered greenfield opportunities to other investors, they consider that it cannot be argued that the NSP is developed for JLR as *ex-ante* identified undertaking. Moreover, the Slovak authorities stressed that every single step of the historical evolution leading to the development of the NSP had been taken before JLR decided to locate its plant, and long before JLR committed contractually to locate in Nitra.

(48) The Slovak authorities referred to several JLR documents which demonstrate that the pre-existing plans for the development of the NSP together with the fact of a pre-existing industrial park with an adjacent industrially zoned area for expansion was factored positively into JLR's localisation assessment. On 27 April 2015 for example, Nitra was in third place but one of the positive factors was that it concerned a '[s]ite on established industrial estate'.

(49) Furthermore, the Slovak authorities explained that the JLR site and the related works were not tailored to the specific needs of JLR.

([18]) Regulation 58 of the Government of the Slovak Republic of 13 March 2013 on fees for the disappropriation and unauthorised engagement of agricultural land.

([19]) Governmental Resolution 401/2015 of 8 July 2015.

(50) The reference to the supervisory rights in the Investment Agreement signed between Slovakia and JLR on 11 December 2015 ('Investment Agreement') only refers to the completion of the land remediation works. MHI has to complete certain works to ensure that the land meets the standard agreed between MHI and JLR and on which the sale price had been based. According to the Slovak authorities, those supervisory rights were driven by standard project management concerns rather than business-specific development specifications. MHI is not bound to take the possible feedback of JLR into account. MHI is only required to ask for feedback on design drawings and specifications concerning the site remediation works for the JLR Site. It does not include *ex post* control on the execution of the works.

(51) The Slovak authorities further clarified the nature of the infrastructure works related to the NSP. As in earlier projects involving the public development of industrial parks, those works meant to provide all companies located in the park with infrastructure services, including access to public utilities and road/rail connections. The infrastructure works include the following elements:

(a) the preparatory land remediation works, of a value of EUR 221 million, do not go beyond standard development works needed to make the public terrain buildable. All works that go beyond standard development are paid for by JLR and are listed in the Investment Agreement. They contain elements such as internal roads or extra foundations necessary to accept JLR specific loads of building structure;

(b) the infrastructure works related to public utilities, of a value of EUR 11,28 million are to ensure that the industrial site or sites within the park are connected to utilities. The public utilities stop at the access points to the site or sites. Utility-related infrastructures within the boundaries of the JLR Site are paid for by JLR. In addition JLR pays a market price to access utility services. There are no specific rules that apply to the NSP that are different from those that apply in the wider municipal areas. JLR is to pay all connection fees and distribution fees relating to the JLR site that would normally be due, in compliance with fees regulated by the Regulatory Office for Network Industries ([20]). JLR has not received any exemptions;

(c) road infrastructure of a value of EUR 185,9 million, including highway connection, local public roads, road system and public parking across the entire park, fire station, police station, and road maintenance facility. The road infrastructure serves all the undertakings in the Nitra North industrial zone, consisting of the NSP and Nitra North industrial park, as well as the wider region. None of the roads is for the exclusive use of JLR or built to its specifications. The road works do not go beyond standard development;

(d) the geographical characteristics of the zone required a flood defence system and ground water management of a value of EUR 25 million;

(e) the Multimodal Transport Terminal Luzianky of a value of EUR 51,85 million that is being built, operated and financed by Slovak Railways from resources generated from its commercial activities which are accounted for separately from its publicly funded non-economic activities. The Multimodal Transport Terminal Luzianky has three functional parts: (a) the finished vehicle storage area that will be connected to the JLR production plant on one side and directly with the outbound rail distribution site on the other side. The leasing of storage area is to constitute the core service provided. JLR is seeking contractual exclusivity with respect to the storage area; (b) the outbound rail distribution facility is intended to load finished products onto railcars. That part of the terminal will not be contractually exclusive to JLR; and (c) the container transhipment hub. The works on the container transhipment hub have not started yet as Slovak Railways is still analysing potential demand and profitability of the investment. It would be open for any user under market conditions. Slovak Railways is negotiating access charge, also referred to as user fees, with JLR that will allow Slovak Railways to generate a return on capital employed as well as cover variable costs. The user fees are calculated over a period of 30 years on a commercial basis, using the NPV method, and cover all related investment costs, operating costs and costs for renewal investments. The fees are market oriented and should ensure an appropriate return on investment, namely […] Internal Rate of Return and an NPV of EUR […] million.

([20]) Úrad pre reguláciu sieťových odvetví.

(52) The Slovak authorities further clarified what proportion of the NSP will be occupied by JLR:

(a) the Slovak authorities first explained that after the Opening decision, JLR has waived some of its rights. Under clause 4.10 of the investment agreement, MHI was bound to grant an option to JLR to buy all or part of the South Land within 12 months from the execution of the JLR Site Purchase Agreement. On 29 June 2017, JLR waived that option over the South Land, before the signature of the JLR Site Purchase Agreement on 12 December 2017. The Slovak authorities informed the Commission that the entire South Land will be owned by other undertakings, for example Gestamp and Prologis;

(b) Article 4.9 of the Investment Agreement gave JLR a right of first refusal to buy all or part of the North Land, valid for 20 years from the date of execution of the JLR Site Purchase Agreement. On 25 August 2017, JLR waived that right over 40,1 hectares of the total North Land 69 hectares. Any land is to be acquired at the market price on the date of purchase of the land, to be defined by independent experts;

(c) with regard to the clause contained in Article 4.2(b)(ii) of the Investment Agreement, according to which Slovakia undertakes, upon JLR's written request within 10 years after the signature of the JLR Site Purchase Agreement, to 'procure that the Strategic Park is extended so that it includes the Expansion Land', the Slovak authorities explained that that clause reflects only a political promise by Slovakia to acquire the land, and to grant to JLR an option to buy that piece of land at some time in the future, and on terms, including price, which have yet to be negotiated.

(53) The Slovak authorities consider that none of the rights created by the Investment Agreement regarding the South Land, the North Land or the Expansion Land confer any control over the land to JLR. Thus, the JLR Site has only a surface of 185 hectares, which constitutes 26 % of the total surface of the NSP, or 55 % of the commercially exploitable surface, in view that 366 hectares of the NSP are technical land.

(54) As explained by the Slovak authorities, the price to be paid by JLR for the acquisition of the JLR Site was established on the basis of independent valuations carried out by three experts, namely […], […], and CB Richard Ellis. Those experts estimated the market price in accordance with the Commission Communication on State aid elements in sales of land and buildings by public authorities ([21]), which constituted the relevant Commission guidance applicable at the time of the valuations. The Slovak authorities further clarified that the CB Richard Ellis report that was submitted to the Commission during the notification procedure was submitted erroneously because it does not constitute a site valuation report, but a separate market intelligence report.

(55) All valuations were carried out on the basis that the land will be sold 'ready for construction', that is to say remediated and zoned for industrial use. The Slovak authorities therefore conclude that the market price estimates include the value of the remediation works. The final purchase price of EUR 15,83 per square metre was set as the average of the three independent valuations of EUR 15, EUR 15,5 and EUR 17 per square metre respectively. The Investment Agreement requires JLR to pay separately for any bespoke works going beyond standard specifications for land 'ready for construction'.

4.1.2. *Possible aid in the form of the exemption from a fee, the ALF fee, that is payable when agricultural land is transformed into industrial land*

(56) The Slovak authorities explained that Exemption H is an exemption from the ALF fee which applies to land purchased by fully State-owned companies, in this case MHI, for the purpose of developing an industrial park that is recognised as a 'significant investment'. Therefore Exemption H applies exclusively to the development of public land by public authorities. Its purpose is to remove the administrative burden of making intra-state financial transfers. Without the exemption, the ALF fee would have been payable by MHI as the owner and developer of land in the NSP as soon as the site is transformed into industrial land. As owner and developer of the site, MHI's function was to install infrastructure and to rezone the land in order to make it 'ready for construction', and then to sell it on to investors, including to JLR. No fee was payable by JLR who, as agreed under the Investment Agreement, would acquire the land only after its conversion to industrial land. The Slovak authorities explained that the reference in an internal JLR document suggesting that JLR would benefit from an exemption of the ALF fee was based on the mistaken interpretation by the author of that document that the fee was payable by JLR. They also informed the Commission that the total amount of fees for converting all agricultural land located in the area of the future NSP into land for industrial use that would have become due in the absence of exemption H, would have amounted to about EUR 30 million of which only about EUR 8 million would relate to the JLR Site.

([21]) OJ C 209, 10.7.1997, p. 3.

4.2. **Comments from Slovakia on the compatibility of the notified aid**

4.2.1. *Eligibility of 'provision costs' as investment cost*

(57) The Slovak authorities confirmed the eligible cost items as listed in Table 1 of the Opening decision. The proposed eligible investment costs indicated amounted to EUR 1 406 620 591 in nominal value, equivalent to EUR 1 369 295 298 in current value. The presentation in the JLR documentation dated 18 November 2015 that referred to provision costs was made for financial analysis purposes, and did not include provision costs outside the eligible costs items as listed in Table 1 of the Opening decision. Those eligible cost items reflected the costs anticipated at the time of the aid application and include an amount for provisioning for each of the eligible cost items, as part of a prudent cost estimation approach. The Slovak authorities therefore consider the full amount of EUR 1 406 620 591 in nominal value to be eligible.

4.2.2. *Lack of incentive effect of the notified regional aid grant*

(58) Slovakia considers that it carried out an appropriate check of the credibility of the counterfactual and that the Commission's doubts are unfounded because Mexico was a credible alternative location to the plant in the Union. According to Slovakia, in spring 2015 Mexico was still a possible location for the planned investment and it was not considered as a site for an additional, parallel investment. Therefore, the State aid offered by Slovakia was necessary to bring the JLR investment to Slovakia.

(59) Slovakia emphasizes that Mexico was a credible alternative location for three reasons:

(a) when JLR prepared its location decision, many car producers, including premium OEMs, were already operating in Mexico, or were implementing investments there. Several car manufacturers started works on investments in Mexico after JLR took its location decision. In particular, both VW and Audi have plants in Puebla, and can therefore be expected to have been confronted with the same qualitative risks as identified by JLR. Those risks had not affected the location decisions of VW/Audi in favour of Puebla;

(b) JLR made available many recent documents from a variety of sources that demonstrate that Mexico was considered in depth, and that a full financial analysis comparing Mexico against Slovakia had been made. Mexico had already been identified as the most promising location in North America at the end of January 2015 in the context of the Oak feasibility study. After an extensive research comparing different sites in Mexico, Puebla was chosen at the Strategy Council of 27 April 2015 as the preferred non-Union alternative due to its proximity to ports, favourable tariffs, established supplier base and labour market advantages. As the European selection process, the Darwin feasibility study, was lagging behind, some meetings and documents focused on the outcome of Project Darwin, and therefore contain less detail about Mexico. Regarding the presentation of 10 July 2015, Slovakia commented that the fact that less slides were devoted to the Oak alternative can be explained by the context of the meeting and the extent to which those present had already seen information on Mexico and Puebla. To prepare the July location recommendation of the Globalisation Forum meeting, JLR calculated detailed financial models comparing the costs at the competing sites. Those financial calculations were performed on an identical basis for both sites and were accompanied by a qualitative assessment of their pros and cons;

(c) Mexico was the alternative to Slovakia that was presented at the subsequent JLR management and board meetings where the location decision was made.

(60) Slovakia provided further evidence such as the presentations to the Board, the feasibility study carried out for Mexico, the information exchanged with the Mexican authorities, the findings of the senior management site visit of June 2015 to the shortlisted sites in Puebla, during which the qualitative strategic factors were further explored and the *Counterfactual cost differential to CEE*, dated 10 June 2015.

(61) The Slovak authorities suggest that the Commission's doubts rely on inaccurate press reports which are clearly contradicted by recent internal JLR documents dated between March and July 2015. The Slovak authorities produced copious evidence to prove that in spring 2015 Mexico was still under consideration and had not been abandoned in favour of a location in the Union. That evidence originates from a variety of sources and different levels of the JLR organisation, namely the JLR senior management, JLR working teams, external consultants and Mexican government officials. Documents elaborated in preparation and follow-up to the visit to Puebla in June 2015 by a JLR delegation at senior executive level, are of particular relevance. Mexico was only put on hold when JLR decided to progress with Nitra in summer 2015.

(62) The Ernst & Young study entitled 'Project Oak — Golden Site Report Out' is dated 20 March 2015. It was used by JLR in the review of the viability of the sites it shortlisted in Mexico. The minutes of the International Development Council meeting of 30 March 2015 state that '[i]t was agreed that current work to evaluate alternative options in Turkey and Mexico should continue'. The action log and minutes of the Strategy Council meeting of 27 April 2015 note 'Puebla, Mexico approved as the non-EU alternative'. The overview of the Mexico filtering process, as presented to the Globalisation Forum of 10 July 2015, confirms this decision with the following status reported on 11 May 2015: '[the Mexican states of] H[…] and G[…] on hold; Puebla taken forward for continued investigations (based on H[…], A[…] and S[…] sites)'. H[…] became 'the preferred option due to its port proximity, established supply base and labour market'. At the Globalisation Strategy Forum meeting of 15 May 2015, Slovakia and Poland were shortlisted under Project Darwin alongside Mexico under Project Oak. On 22 May 2015, JLR received the formal response from the State of Puebla relating to available incentives, seismic risk, VW restriction covenants and timeline. The minutes and action log of the International Development Council of 1 June 2015 note in the *Darwin update* section that 'the key discussion items were: […] The progress in Mexico discussions and plans for another field trip to evaluate Puebla further were explained'. The cash flow assessment included in the presentation of 10 June 2015 entitled 'Project Darwin — counter-factual cost differential to CEE', shows that JLR's analysis was to benchmark 'MX vs PL' and 'MX vs SK'. The Strategy Council meeting of 15 June 2015 that focused on project Darwin nonetheless featured an action point 'Conduct Mexico field trip to discuss RFP on Puebla site'. In the week of 15 June 2015, a team led by JLR's Director of Global Business Expansion carried out a field trip to the State of Puebla, visiting the H[…] and A[…] sites. On 25 June 2015, JLR confirmed in writing to the Governor of the State of Puebla that H[…] was shortlisted. The notes prepared for the meeting of the Globalisation Forum of 10 July 2015 provide a summary of the findings resulting from the visit to the H[…] and A[…] sites. As it results from the minutes of this Globalisation Forum meeting, its objective 'was to decide on a preferred site from the Darwin and Oak projects and to concur the process through to a contractually binding Investment Agreement targeted for 30 September. Sites under consideration were in Nitra (Slovakia), Jawor (Poland) and Puebla (Mexico)'. Its minutes further note: 'Nitra (preferred site from the Darwin process) when compared to Puebla (preferred site from the Oak process) was illustrated as being at a significant cost disadvantage'. The presentation prepared for that meeting states: 'After taking into account the non-quantifiable risk factors and the other quantifiable considerations, assuming that the level of EU State aid under consideration is delivered, we believe this is sufficient to offset Mexico cost advantage and recommend to put Puebla (MX) on hold'. The minutes of the meeting of the JLR Board of 3 August 2015 state that '[f]ollowing a rigorous site evaluation process, at the 10th July Globalisation Forum, it was agreed that Nitra in Slovakia should be progressed as the recommended site, subject to Board approval'. The underlying presentation to the JLR Board meeting described the '[p]rocess to shortlist to one site from Darwin and Oak projects'.

(63) The Slovak authorities explained that JLR did not submit an official aid application to the Mexican authorities because there is no State aid regime in Mexico. However, JLR received detailed information from the Puebla government on what could be offered if JLR decided to invest there.

(64) The Slovak authorities affirm that the investment in Mexico was not considered as a second investment in addition to the plant in the Union. They suggest that the Commission doubts are based on a single, admittedly somewhat misleading JLR document and argue that that document misrepresents the discussions of the offsite meeting of the Executive Committee Members of 21 January 2015, that is to say six months before the decision about the location. That JLR document was at any rate superseded by a considerable amount of evidence, produced at a later stage, discussing the two locations as alternatives. They explain furthermore that the

additional capacity resulting from the new plant (300 000 vehicles per year) amounts already to 50 % of JLR's capacity. It would be unrealistic to assume that JLR would consider investing in a second project of the same scale at the same time, or even in the short/medium term.

(65) The Slovak authorities explained why the meeting report and presentation of the 21 January 2015 offsite meeting of the Executive Committee Members refer to the building of two plants. According to Slovakia, JLR always planned to initially start operations in the new plant with 150 000 vehicles per year, that is to say phase 1 of plant 1, and ramp up to 300 000 vehicles in [2020-2025] that is to say phase 2 of plant 1. At the time of the January 2015 meeting, demand for JLR vehicles was however growing so strongly that the Executive Committee Members also briefly considered building a second plant at another location within five to 10 years after the completion of works on the first site, if there was sufficient demand. That future site was not discussed in any detail in the meeting as that decision was a long way off. The Slovak authorities noted that the statement in the minutes of the offsite meeting suggesting that JLR will need two plants to satisfy projected demand was the result of either the confusion of the two phases of Plant 1 or those minutes emphasized excessively the limited discussion about having a potential second plant at some point in the more distant future.

(66) The Slovak authorities emphasize that JLR's internal documents consistently demonstrate its intention to invest in a single location. The minutes of the Globalisation Forum of 10 July 2015 record that the Nitra site was chosen over Mexico as the preferred location, and that the two sites were compared to each other as alternatives. JLR only considered manufacturing on one site: '[w]e are ready to short-list to one country from Darwin and Oak projects'.

(67) Strategic reasons played an important role in the decision but the aid was still necessary to tilt the location decision to Slovakia. The Slovak authorities argue that it is incorrect to maintain that the State aid offered covers only an 'insignificant' proportion of the NPV gap following the Commission's view in the Opening decision that the nominal aid amounted to 47 % of the NVP gap ([22]). JLR's internal documents explicitly mention that the location decision was finely balanced and critically depended on the granting of the State aid. To that effect, the minutes of the Tata Board meeting of 18 September 2015 state that 'factoring elements of qualitative and risk, the total revised State aid of GBP [150-200] million ([23]) in cash was sufficient to continue to progress Nitra over Mexico'. Similarly, JLR's decision of November 2015 to confirm Nitra as the location of the plant was based on the 'condition that the full amount of State aid is received'. As a consequence, JLR insisted on recording in the Investment Agreement that its investment obligations were conditional upon receiving 100 % of the regional aid grant.

(68) Further, Slovakia pointed out that as regards the risk of implementation delay in Mexico, that element was explicitly taken into account in the financial comparison and was therefore duly considered. Slovakia referred to the presentation to the Globalisation Forum of 10 July 2015 stating 'longer timeline to Job #1 anticipated in Mexico […] 6-9 month range illustrated above'.

4.2.3. *Lack of proportionality*

(69) The Slovak authorities argue that no additional aid elements were granted to JLR, and therefore consider the aid to be proportionate.

4.2.4. *Manifest negative effects — anti-cohesion effect*

(70) The Slovak authorities emphasized that the Slovak aid has no anti-cohesion effect to the detriment of Poland and reminded that '[o]n 10 July the Globalisation Forum determined that Jawor (Poland) was not a viable location due to serious concerns regarding site fundamentals and deliverability. The company therefore had to choose between Nitra (Slovakia) and Puebla (Mexico). The company selected Slovakia as the preferred location and authorised an in-depth feasibility study. Mexico was put on hold'. Jawor was dismissed as an alternative to Nitra when a decision was taken on 10 July 2015 on the final location recommendation to be ratified by the Board in early August 2015. The JLR and Tata Motors Boards, at their meetings of 3 and 7 August 2015 respectively, did not consider Jawor to be an alternative to Nitra.

([22]) Using the figures as the Commission did in footnote 55 of the Opening decision.
([23]) Corresponding to an eligible investment cost of GBP [1 700-2 100] million.

4.2.5. *Manifest negative effect on trade — maximum aid intensity ceiling exceeded*

(71) As the Slovak authorities take the view that no aid in addition to the notified aid was granted, they reject the doubt raised by the Commission that the allowable aid intensity ceiling is exceeded and that therefore the aid could have a manifest negative effect on trade.

5. COMMENTS FROM JLR

5.1. Introduction

(72) JLR supports the comments of the Slovak authorities of 20 July 2017 and elaborated on some particular elements.

5.2. Comments from JLR on the possible additional non-notified aid

(73) JLR considers that the Slovak effort to develop the NSP was necessary to render the site viable and attractive for investment. JLR was well aware of the fact that it should not benefit from infrastructure exclusively, that it should pay normal access charges or taxes that normally fell due, pay a market price for the land that it would acquire and pay the costs for any features of the site which were not standard and tailored to the specific needs of the company.

(74) JLR insists that the NSP and the infrastructure development are not dedicated to JLR. The fact that the zoning plans and legislative acts date as from the 1990s is proof that the plans were not developed solely in response to JLR's interest. To the contrary, the existence of the Nitra North industrial park zone and the availability of long established plans to further develop the industrial area were factors that influenced JLR's decisional process in Nitra's favour. That influence is documented in internal decision documents of JLR that include references such as 'situated on a professionally developed industrial park' ([24]), 'best insurance policy due to site readiness and infrastructure' ([25]) and '[s]ite in established industrial park with adjacent factories' ([26]).

(75) In addition, JLR points out that it acquired only 55 %, that is to say 185 hectares out of 338 hectares, of the NSP surface that can be commercially exploited, and that rights of first refusal or options to buy do not give JLR the ability to occupy or control the land. JLR also reminds that it partially waived its right of first refusal for the North Land on 25 August 2017. It kept it for a surface area of 28,5 hectares.

(76) JLR holds that it paid the full market price for the land which it bought 'ready for construction' because its price was independently determined by three expert valuations, and those valuations explicitly refer to land that is made 'ready for construction', that is to say the land benefitted from the corresponding general land preparation works necessary to reach that standard. JLR further outlines that it paid the full costs of all works that were carried out to JLR's specification to go beyond that standard. The cost of such works is almost double the amount of EUR 16,9 million initially laid down in the Investment Agreement for that purpose.

(77) JLR further clarifies that the amount of EUR 75 million, referred to in paragraph 16 of the Opening decision, is not the price for which MHI bought the land of the JLR Site from third parties, but the total MHI expenditure for land purchases in the entire NSP.

(78) JLR also submits that it did not benefit from any exemption from the ALF fee. JLR did not buy agricultural land, but industrial land, and all three land valuations used to determine the market price referred explicitly to land with the characteristic of land ready for construction in industrial zones. JLR admits that one of its internal documents indeed indicated an ALF fee exemption up to EUR [50-110] million but explains that that was an incorrect understanding by a consultant and was not based upon information provided by the Slovak authorities.

([24]) IDC report, dated 30 March 2015.
([25]) IDC presentation, dated 1 June 2015.
([26]) Strategy Council Presentation, dated 15 June 2015.

5.3. **Comments on the compatibility of the notified aid**

(79) JLR insists that the regional State aid was a necessary component in bringing the investment to Nitra. JLR affirms that it took 'strategic considerations' into account together with the possibility to receive State aid to compensate for additional costs, but emphasizes that those strategic considerations alone, or with a lower amount of aid, would have been insufficient to trigger the location decision in favour of Nitra.

(80) JLR underlines that other vehicle manufacturers decided to invest in Mexico, both before and after it took its location decision. The investments by other vehicle manufacturers in Mexico confirm the credibility of Mexico as potential location for JLR's investment project. In fact, JLR spent over 18 months assessing the Mexican option. That assessment included setting up a project team, procuring external consultants, engaging with Mexican government officials, as well as carrying out fieldtrips, even by the most senior executive in the JLR Global Business Expansion team.

(81) JLR stresses that it had considered Mexico as a feasible alternative all along the decisional process, as is proven by many contemporary internal documents submitted to the Commission. JLR considers that views to the contrary presented in certain press reports referred to in the Opening decision are purely speculative, and do not reflect JLR's decision making process.

(82) Furthermore, JLR states that the intention was to invest in a single location. To invest at the same time, or in the near future, into a second plant in a different location was never considered. JLR admits that the minutes of the 21 January 2015 offsite meeting of the Executive Committee Members refer indeed to a Plant 2 since at that meeting it was speculated, and therefore recorded in the minutes, that if there was sufficient demand, JLR could consider building another plant at another location within five to 10 years after completion of the initial investment. JLR insists however that this long-term possibility was not discussed in any detail neither in the meeting materials, nor at the meeting itself. The meeting materials rather refer to Phase 1 and Phase 2 of the investment project at the same location, that is to say to JLR's strategy to start operations with 150 000 vehicles per annum in 2018 for the first phase (Phase 1 for Plant 1) and increase capacity to 300 000 vehicles per annum in [2020-2025] (Phase 2 for Plant 1). JLR furthermore suggests that building in parallel two additional plants, one in the Union and one in North America, each with a capacity of 300 000 vehicles per annum, would be inconceivable, given that JLR had sold only 462 209 vehicles in the financial year 2014/2015. In view of those figures, there is no commercially rational basis to believe that JLR could have intended to expand its annual capacity in the short-to-medium term by 600 000 vehicles.

(83) JLR underlines that the Jawor site in Poland was not a feasible alternative to Nitra or Mexico as it suffered from fundamental problems, in particular a road dissecting the site. Jawor was for that reason not considered by the Board as a potential alternative to Nitra, as documented by the Board meeting presentation of 18 November 2015.

6. **ASSESSMENT OF THE AID**

6.1. **Introduction**

(84) In this section, the Commission will first focus on the question of whether the total aid to JLR is limited to the notified aid, or whether JLR benefits from additional aid elements, in particular market conformity of sale price, publicly financed dedicated/bespoke infrastructure works and exemption from the ALF fee. After considering the legality of the aid, the Commission will elaborate a definite view on the compatibility of the aid received.

6.2. **Existence of aid**

6.2.1. *The notified direct grant*

(85) For the reasons set out in the Opening decision the Commission considers that the notified direct grant constitutes State aid within the meaning of Article 107(1) TFEU and this in view that the grant is awarded through State resources, is selective, constitutes an economic advantage to JLR, is likely to affect trade between Member States and distorts or threatens to distort competition.

6.2.2. *The possible additional non-notified aid*

(86) As mentioned in section 3.1, the Commission considered in the Opening decision that there was a possibility that JLR may have benefited from a certain amount of additional State aid in the context of the development of the NSP and the purchase of the JLR site. It considered three ways in which the transaction could have resulted in additional State aid to JLR:

(a) paragraph 118 of the Opening decision stated that if the NSP qualified as infrastructure dedicated to JLR, JLR's consideration for ownership interest and other rights relating to the NSP would under normal market conditions have to cover the infrastructural development costs incurred by the Slovak State in the construction of the NSP, with the exception of the costs relating to the development of infrastructures that are of truly general nature, which were still to be defined;

(b) even if it is concluded that the NSP as a whole does not qualify as an infrastructure dedicated to JLR, the Opening decision questioned whether some of the works carried out by Slovakia to develop and connect the JLR site were not designed specifically to serve the specific needs of JLR and whether the value of those works was properly reflected in the valuations prepared by the independent experts and the price eventually paid by JLR for the land and the relevant infrastructures;

(c) finally, the Opening decision also mentioned that the exemption from the ALF fee could be regarded as an additional aid measure in favour of JLR.

6.2.2.1. The question of whether the NSP can be regarded as an infrastructure dedicated to JLR

(87) To conclude that JLR should bear the full infrastructural development costs incurred by the Slovak State, the following two conditions have to be simultaneously fulfilled: (a) the NSP constitutes dedicated infrastructure that is to say, JLR qualifies as a pre-identified undertaking and the NSP is tailored to JLR's needs; and (b) the costs exclude costs of truly general nature.

(88) The Commission considers that the two conditions referred to in recital 87 are not met simultaneously therefore the 704 hectares of the NSP do not qualify as an infrastructure that is dedicated to JLR. The historical evolution of its creation, as outlined by the Slovak authorities and summarized in section 4.1.1 of this Decision, clarifies that the NSP was legally established on 8 July 2015 by the underlying Certificate of Significant Investment which conferred compulsory purchase powers to the Slovak authorities. The industrial zoning of the NSP however started well before JLR showed interest in the area, and there already were concrete plans to further develop the industrial area Nitra North at that time. For example, in 2014, detailed infrastructural plans were already available as part of the Luzianky Zoning Plan. Furthermore, part of the industrial zone had already been implemented, amongst others via the Nitra North industrial park. In essence, the NSP constitutes an extension of the Nitra North industrial park. The Commission therefore decides that JLR does not qualify as an *ex ante* identified undertaking for the NSP development as such.

(89) Moreover, only part of the NSP is purchased by JLR. The NSP consists of commercially exploitable land for sale to investors such as JLR and of so-called 'technical land'. The technical land covers over half of the NSP and is needed for infrastructural measures serving the entire Nitra North industrial zone, including the Nitra North industrial park, and to some extent also areas outside its limits. The technical land accommodates for example the highway bypass or the main entry road into Drazovce, as well as numerous protection zones required by the geographical characteristics which include for example flood defences, where construction activities are limited. In addition, Slovakia provided information confirming that the land purchased by JLR represents only 26 % of the total NSP, 55 % of the NSP if the technical land is excluded, and that a number of other companies are already established on the NSP.

(90) The Commission therefore concludes that the 704 hectares NSP as such cannot be considered as infrastructure dedicated to JLR.

6.2.2.2. The question of whether JLR paid the market price for the NSP land and infrastructure

(91) As stated in paragraph 119 of the Opening decision, even where all the 704 hectares of the NSP cannot be considered as infrastructure dedicated to JLR, the transaction may still involve State aid in favour of JLR, either because of certain infrastructural development measures which may have been designed to satisfy the specific needs of JLR or because the land may have been sold below the market price. The Commission therefore needs to evaluate the infrastructural measures and the land sale transaction individually.

Infrastructural measures

(92) The infrastructure costs borne by the Slovak State referred to in recital 51 relate to land remediation, road infrastructure, utilities, flood defence and water management and the Multimodal Transport Terminal Luzianky.

(93) In Commission Decision SA.36346 — Germany — GRW land development scheme for industrial and commercial use ([27]), the Commission analysed whether the public financing of land development works for future sale to industrial undertakings under market conditions constituted aid for the initial owner or investor for carrying out land development. The Commission found that making a public terrain ready to build upon and ensuring that it is connected to utilities, like water, gas, sewage and electricity and to transport networks like rail and roads, does not constitute an economic activity, but was part of the public tasks of the State, namely the provision and supervision of land in line with local urban and spatial development plans. Bespoke development for pre-identified buyers of land was excluded from the scope of the measure, and buyers had to acquire the land under market conditions.

(94) The Commission considers that the costs incurred by Slovakia for the preparatory land remediation works on the commercially exploitable part of the NSP do not go beyond standard development costs to make the public terrain ready to build upon and those works form part of the public task of the Slovak State, namely the provision and supervision of land in line with local urban and spatial development plans. Since those works fall within the public remit, their public financing does not constitute State aid for the land owner or investor for the carrying out of the development works. In this case the owner or investor is MHI. However, the question of whether the ultimate buyer of the land, in this case JLR, benefits from advantages that qualify as State aid is separate from that of whether there was State aid in favour of the land owner or developer. As MHI acts on behalf of the State, and is financed by the State, its actions are imputable to the State. State aid to JLR via the land remediation works and sale price can be excluded if MHI does not carry out, without appropriate remuneration, land remediation works on the JLR site that go beyond the works necessary to make the land 'ready for construction' and if the land transfer takes place under market conditions.

(95) The Investment Agreement includes an exhaustive list of the scope of the site remediation works and refers to a preparation for standard manufacturing use. All additional land remediation works that are required by the specific needs of JLR are identified in the Investment Agreement under the heading 'Investor Specific Preparatory Works' ([28]), and are separately paid for by JLR. The Commission also takes note of the confirmation by the Slovak authorities that the supervisory rights of JLR over the construction phase were limited to verifying that the land would meet the standard of 'industrial land ready for construction', a standard that was agreed upon in the context of the purchase by JLR from MHI and which determined the sale price. The Commission concludes that the site remediation works to make the land ready to be built upon, and the additional works to the specifications of JLR, do not involve state aid to JLR, on the condition that they are covered by a land purchase agreement which conforms the market standards, or covered by an appropriate remuneration corresponding to market terms agreed in the Investment Agreement and additional payments. The assessment about whether that condition is met is set out in recitals 105 to 108 of this Decision.

(96) The Opening decision notes that the development of the NSP did not only involve public investment in site remediation works to make the land ready to be built upon, but also the development of a wide range of infrastructures. Those infrastructure works aimed at making public utilities and road and rail access available to JLR are situated outside the JLR Site and outside the sites of other undertakings and are not tailor-made for a pre-identified user as set out in recitals 97 to 104.

([27]) SA.36346 (2013/N) (OJ C 141, 9.5.2014, p. 1).

([28]) The Slovak authorities noted that while the Opening decision mentions certain Investor Specific Works amounting to EUR 16,9 million which should be paid for by JLR, the costs for those works had already risen to EUR 30,1 million.

(97) The Slovak authorities confirmed that all utility infrastructure works within the borders of the JLR Site are paid for by JLR, and that JLR will pay a market price to access and use services of public utilities. The Slovak authorities provided an overview of the legislation applying to the calculation of user fees for public utilities. The applicable rules are set out at Member State level and Slovakia confirmed that no specific rules apply to users in the NSP that are different from those that apply nation-wide. The connection and distribution fees paid by JLR are based on standard price lists applicable in similar situations. Thus JLR will pay all connection fees and distribution fees, in compliance with the applicable provisions that apply nation-wide and that are regulated by the Regulatory Office for Network Industries. That is to say JLR will not benefit from any exemptions. The Commission considers the works on utilities infrastructure entirely within the public remit of the Slovak state and concludes that the utilities infrastructure works are not dedicated to JLR.

(98) The investment in road infrastructure referred to in recital 51 serves all the undertakings in the industrial zone consisting of NSP and Nitra North industrial park as well as in the wider region. None of the roads is for the exclusive use of JLR or built to its specific needs. The roads are available for free public use. The Slovak authorities have confirmed that the road works do not go beyond standard road development and they provided evidence that the rules applicable to the project concerned were the same as for other projects. The internal roads within the boundaries of the JLR Site are paid for by JLR. The Commission therefore considers the works on the roads infrastructure entirely within the public remit of the Slovak State and concludes that the road infrastructure works are not dedicated to JLR.

(99) The Commission has considered previously ([29]) that when a parking lot is not built specifically for one undertaking but is part of the economic development plan for the industrial park, it can be considered as not dedicated and involving no State aid. The Commission notes that the construction of publicly accessible parking facilities featured already in the 2014 zoning plan of the municipality of Luzianky. The Commission therefore concludes that the parking development is within the public remit of the Slovak State and the works are not dedicated to JLR.

(100) The Commission considers that the investments relating to the fire station, police station, road maintenance facility, flood defence system and ground water management are typical public tasks within the public remit of the State and hence do not concern an economic activity. Their public financing does not constitute state aid.

(101) In view that the Multimodal Transport Terminal Luzianky is funded by Slovak Railways, which is a State-owned railway infrastructure company, the investment could potentially be imputable to the Slovak State. The Commission first examined whether there could be an advantage for JLR.

(102) The Slovak authorities explained that the Multimodal Transport Terminal is financed by Slovak Railways from resources generated from its commercial activities which are accounted for separately from its publicly funded non-economic activities. For part of the infrastructure relative to the finished vehicle storage area, JLR is seeking contractual exclusivity. The other two functional parts of the Multimodal Transport Terminal will be open to any user on market conditions. Therefore, it appears that at least part of the infrastructure is built to the specific needs of JLR as a pre-identified undertaking.

(103) The Slovak authorities further confirmed that user fees for all parts of the Terminal will be calculated on a commercial basis and will cover all related investment costs, operating costs and costs for renewal or replacement investments. The fees will be market oriented and target an Internal Rate of Return for the project of […]. The user fees over a period of 30 years should ensure a return on investment for the project, as evaluated by an *ex ante* NPV calculation of EUR […] million.

(104) Therefore, the Commission considers that Slovak Railways acts just like a market economy operator would do in a similar situation. When economic transactions carried out by public bodies are carried out in line with normal market conditions, they do not confer an advantage on its counterpart ([30]). The Commission therefore concludes that JLR receives no State aid in the use of the Multimodal Transport Terminal Luzianky.

([29]) Commission Decision (EU) 2015/508 of 1 October 2014 on the alleged infrastructure aid implemented by Germany in favour of Propapier PM2 GmbH — State aid SA.36147 (C 30/10) (ex NN 45/10; ex CP 327/08) (OJ L 89, 1.4.2015, p. 72).

([30]) Judgment of the Court of Justice of 10 July 1996, *SFEI and Others*, C-39-94, ECLI:EU:C:1996:285, paragraphs 60-61.

The land transaction

(105) Slovakia, through MHI, sold 185 hectares of construction-ready commercially exploitable land, referred to as the JLR Site, to JLR at a price of 15,83 EUR per square metre or almost EUR 30 million in total. recitals 40 and 41 of Commission Decision SA.36346 lay down that the final buyer of redeveloped land is not to be considered as a beneficiary in the meaning of Article 107(1) TFEU for the land development measure if that final buyer pays a market price for the redeveloped land. In that regard, the Commission notes that the final purchase price for the JLR Site was established as an average of three independent valuation reports established by internationally recognised experts, who apply the professional valuation standards and methods of the Royal Institution of Chartered Surveyors. All three evaluation reports include a declaration of independence, were made available to the Commission, and apply to a site which is zoned for industrial use, for which utilities connection points are available at the border of the site, which has been remediated and levelled, and for which no further costs resulting from the conversion of agricultural land use to industrial land use are due. The reports also assume that all existing utilities and a railway line across the industrial site are relocated, and that road systems and public parking are developed throughout the park. The three reports use a comparable methodology to evaluate the price, comparing the land with other plots sold or on sale in Slovakia ([31]) and adjusting those sale or asking prices based upon factors such as size of the plot, location, available infrastructure, date, shape, visibility. In addition, the […] report used a discounted cash flow method ([32]). The three reports estimated that the value per square metre of the JLR Site is EUR 15,5, EUR 15,0 and EUR 17,0 respectively.

(106) The assumptions about the characteristics of the land are identical in the three reports and correspond to the situation of the JLR Site after the execution of the public infrastructure works.

(107) In addition, the Commission notes that the CB Richard Ellis report that was erroneously submitted by the Slovak authorities was a general market intelligence report of CB Richard Ellis. It only contained a general description of the Slovak real estate market with an average price indication of other plots sold or on sale in Slovakia, which is consistent with the prices of the benchmark sites used as a basis in the JLR site valuation reports. The market intelligence report did not contain any specific adjustments to valuate the market price of the JLR Site.

(108) Therefore, the Commission concludes that the purchase price of EUR 15,83 per square metre complies with market conditions and that the sale of the land in the state described by the market valuation reports was carried out in conformity with market conditions.

Conclusion

(109) The Commission concludes that JLR receives no selective advantage related to the sale of the JLR Site or related to the infrastructure works in connection with the NSP and financed through the Slovak State.

6.2.2.3. Exemption from the ALF fee

(110) The Commission raised doubts in the Opening decision as to whether the exemption from the ALF fee constituted State aid to JLR.

(111) As stated in recital 105, all three independent valuation reports inherently assumed that the site was rezoned for industrial use and that no additional costs resulted from its conversion from agricultural use. The purchase price of EUR 15,83 per square metre is to be considered as a market price where the buyer is not confronted with additional costs related to land conversion. Since the market conformity of the sale of the JLR Site to JLR could be established based upon the independent expert reports, MHI's exemption from paying the ALF fee reduces the costs which this public special purpose vehicle incurs in carrying out its public task, but is not channelled through as a selective advantage to JLR.

(112) Therefore, the Commission concludes that the exemption from the ALF fee does not constitute State aid within the meaning of Article 107(1) TFEU in favour of JLR.

([31]) The […] report started from other plots with prices in the range of EUR 10 to 40 per square metre. The […] report started from other plots with prices in the range of EUR 3 to 55 per square metre. The CB Richard Ellis report started from other plots with prices in the range of EUR 14 to EUR 38 per square metre.

([32]) The methodology started from a sale price of EUR 35 per square metre and a proportionate selling of the land within the next 20 years.

6.2.2.4. Conclusion

(113) The Commission finds that the conditions of the sale of the JLR Site to JLR and the conditions under which land remediation, public utility and other infrastructure works are carried out, do not confer selective advantages to JLR. It is therefore not necessary to further assess the other cumulative conditions for the existence of State aid within the meaning of Article 107(1) TFEU for the assessment of aid in relation to the sale of the NSP land to JLR. The State aid to JLR is thus limited to the notified direct grant.

6.3. **Legality of the State aid**

(114) The Commission has established in the Opening decision that by notifying the planned direct grant of EUR 129 812 750 in nominal value, subject to Commission approval, the Slovak authorities have respected their obligations under Article 108(3) TFEU with regards to that part of the aid.

6.4. **Compatibility of the aid**

6.4.1. *Legal basis for the assessment of the compatibility of the aid*

(115) The measure notified on 12 May 2016 aims at fostering regional development in the Nitra region of Slovakia. It has therefore to be assessed in application of the provisions applicable to regional aid laid down in Articles 107(3)(a) and (c) TFEU, as interpreted by the RAG 2014-2020, and the regional aid map 2014-2020 for Slovakia. The assessment based on the common assessment principles of the RAG takes place in three steps, namely an assessment of the minimum requirements, the manifest negative effects and the carrying out of a balancing test. The Commission concluded in the Opening decision that, on the basis of the common assessment principles, part of the general compatibility criteria were met and the formal investigation did not reveal any elements that question the underlying preliminary assessment on those compatibility criteria.

(116) However, the Commission raised doubts in the Opening decision with regard to the eligibility of expenditure and with regard to the incentive effect and the proportionality of the aid. Therefore, the Commission was also unable to form a definitive view about whether the project satisfies all the minimum requirements of the RAG. In the Opening decision, the Commission could also not exclude the presence of manifest negative effects on trade and cohesion between Member States. In the light of those considerations, the Commission was unable to establish whether the positive effects of the aid, if any, in the possible absence of an incentive effect, could outweigh their negative effects.

6.4.2. *Eligibility of the investment project*

(117) As established in section 3.3.2 of the Opening decision, the Commission considers that the investment project is eligible for regional aid and State aid can be found compatible with the internal market provided that all compatibility criteria of the RAG are met.

6.4.3. *Eligibility of expenditure*

(118) The Opening decision raised doubts related to the eligibility of 'provision costs'. According to paragraph 20(e) of the RAG, '"eligible costs" means, for the purpose of investment aid, tangible and intangible assets related to an initial investment or wage costs'. The Slovak authorities provided a detailed breakdown of the eligible cost items. Those eligible cost items reflected the costs anticipated at the time of the aid application submission and include an amount for provisioning for each of the eligible cost items, as part of a prudent cost estimation. In the Investment Agreement, the full nominal amount of EUR 1 406 620 590 is considered as 'Planned Project Investment' for which JLR has committed the expenditure ([33]).

([33]) The investment agreement states that if the actual investment costs calculated for the investment period are lower than 85 % of the Planned Project Investment, Slovakia will be entitled to terminate the agreement and JLR would have the obligation to return the entire amount of investment aid.

(119) Based on the explanations of the Slovak authorities, the Commission notes that the reference to 'provision costs' in the internal JLR presentation of 18 November 2015 was made for internal financial presentation purposes of the investment commitment JLR would enter into with Slovakia. Those provision costs did not refer to an additional cost item on top of a prudent cost estimation of the eligible costs items. Since JLR committed in the Investment Agreement to spend the entire investment nominal amount of EUR 1 406 620 590, and the payment of the regional investment aid will only relate to actually incurred eligible costs, the Commission accepts EUR 1 406 620 590 as the maximum nominal amount of eligible costs for which aid can be granted. The Commission notes in this context that Slovakia committed not to exceed the notified maximum aid amount, nor the notified aid intensity ceiling. The Commission concludes that the eligible costs are in conformity with paragraph 20 (e) of the RAG.

6.4.4. *Minimum requirements*

6.4.4.1. Contribution to regional objective and need for State intervention

(120) As established in section 3.3.4.1(a) of the Opening decision, the aid contributes to the regional development objective and is considered justified as Nitra is included in the regional aid map as a region eligible for regional aid pursuant to Article 107(3)(a) TFEU, with a standard aid intensity ceiling for investment aid to large undertakings of 25 %.

6.4.4.2. Appropriateness of regional aid and of the aid instrument

(121) The Commission already concluded in section 3.3.4.1(b) of the Opening decision that the notified direct grant constitutes in principle an appropriate aid instrument to bridge viability gaps by reducing investment costs. Tax incentives were not preferred due to their administrative complexity.

6.4.4.3. Incentive effect

(122) According to section 3.5 of the RAG, regional aid can only be found compatible with the internal market if it has incentive effect. There is an incentive effect where the aid changes the behaviour of an undertaking in a way that it engages in additional activity contributing to the development of an area which it would not have engaged in without the aid or would only have engaged in such activity in a restricted or different manner or in another location. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.

(123) Paragraphs 64 and 65 of the RAG set out the formal incentive effect requirements, which stipulate that works on an individual investment can start only after the application form for aid was formally submitted. The Commission has already established, in paragraph 166 of the Opening decision, that the formal incentive effect requirement for the grant has been respected, as the aid had been formally applied for before works on the investment project started. The Commission confirms that view for the purposes of this Decision.

(124) In addition to the formal incentive effect requirement, paragraph 61 of the RAG requires the presence of a substantive incentive effect that can be proven in two possible manners, that is to say that without the aid the investment would not be sufficiently profitable (scenario 1) or the investment would take place in another location (scenario 2).

(125) In a scenario 2 situation, the Member State must prove that the aid gives an incentive to the aid beneficiary to locate the planned investment in the selected region rather than in another region where the investment would have been more profitable and could have been implemented in the absence of aid, because the notified aid compensates the beneficiary for the net disadvantages of the implementation of the project in the region to be supported by the aid, compared to the alternative, more viable, 'counterfactual' region.

(126) As set out in Section 3.5.2 of the RAG, the Member State must provide clear evidence that the aid has a real impact on the investment choice or on the choice about the location. To that end, the Member State must provide a comprehensive description of the counterfactual scenario in which no aid would be granted to the beneficiary.

(127) Slovakia presented as the counterfactual scenario a scenario 2 situation, under which the alternative for locating the investment in Nitra, Slovakia, would have been to locate it in H[…] in the State of Puebla, Mexico. According to the notification, the NPV that could be achieved by locating the approved investment project with a capacity of 150 000 vehicles per annum in H[…] exceeds the NPV calculated for Nitra by EUR 413 million, in the absence of aid and over the 20-year planned lifetime of the project.

(128) Paragraph 71 of the RAG indicates that for scenario 2, the Member State could provide the required proof of the incentive effect of the aid by providing contemporary company documents that show that a comparison has been made between the costs and benefits of locating the investment in the selected assisted region with alternative locations. For that purpose, pursuant to paragraph 72 of the RAG, the Member State is invited to rely on official board documents, risk assessments, financial reports, internal business plans, expert opinions, other studies and documents that elaborate on various investment scenarios.

(129) As already stated in the Opening decision, the Slovak authorities submitted such information in the form of an explanation of the location selection process based on contemporary documents which the Slovak authorities also submitted. Those documents describe the decision-making process of the beneficiary concerning the investment and location decision. During the formal investigation procedure, the Slovak authorities provided further explanations and supplementary contemporary documents.

(130) At the Globalisation Forum meeting of 10 July 2015, it was agreed that Nitra should be pushed forward as the recommended site, subject to Board approval. The JLR Board of 3 August 2015 approved Nitra as the recommended site, approved to sign a non-binding letter of intent to confirm progression of exclusive discussions with Slovakia and approved the establishment of a new JLR entity in Slovakia, subject to passing the Business Approval gateway ([34]) and a detailed review of JLR's business plan in the third week of September 2015. The minutes of the Tata Motors Limited Board of 7 August 2015 also make reference to a detailed presentation that would be made by the JLR CFO on the project financials at the next meeting. In July/August 2015, the project scope still referred to a plant with a capacity of 300 000 vehicles per annum. The project passed the Business Approval gateway at the JLR Executive Committee level meeting of 3 September 2015. At the Tata Motors Board meeting of 18 September 2015, JLR updated the Board on Project Darwin including key financials and business case. The total revised State Aid of GBP [150-200] million ([35]) was sufficient to continue to progress Nitra over Mexico and the project would be spread out in two phases. At the Globalisation Forum of 21 October 2015, it was agreed to redefine the initial investment project for aid application purposes to phase 1 only as no sufficient details were available concerning the exact product mix of phase 2, and therefore there was no solid and committed business plan, to enter into a commitment with the Slovak authorities for the full investment. At the JLR Board meeting of 18 November 2015 the updated business plan was approved and Slovakia was confirmed as the preferred location on condition that the full amount of State aid was received for the re-defined project. The NPV for both Slovakia and Mexico were based on the latest product strategy and updated assumptions had been recalculated, removing phase 2. The NPV difference amounted to EUR 413 million and the State aid was recalculated to the nominal amount of EUR 129 812 750.

(131) To have incentive effect, the aid has to constitute a decisive factor in the decision to locate the investment in Nitra instead of H[…]. As the final investment decision was only taken in October/November 2015, when the initial investment project was redefined and reduced to phase 1 only, and when Slovakia was explicitly reconfirmed as the preferred location by the JLR Board, the Commission considers October/November 2015 as the relevant point in time to test the presence of incentive effect. However, since the location recommendation of 10 July 2015 had already been ratified by the JLR Board and the Tata Motors Board in early August 2015, a non-binding Letter of Intent had been signed with Slovakia on 10 August 2015 and a public announcement was made on 11 August 2015, the Commission considers also the period July/August 2015 of particular relevance to evaluate the presence of incentive effect.

([34]) At the Business Approval gateway the business strategies are agreed, the project is added to the business plan and cycle plan and the full project investment is approved.

([35]) Corresponding to an eligible cost of GBP [1 700-2 100] million, which was lower than the amount of GBP [2 100-2 500] million as referred to in the draft aid application form of 25 June 2015.

Credibility of the Mexico alternative

(132) As a preliminary remark the Commission notes that Slovakia's argumentation that Mexico constituted a credible alternative for JLR as it was a realistic investment location for other car manufacturers cannot be considered as sufficient, as it does not offer authentic proof that without the aid, JLR would have located the investment in Mexico. According to paragraph 68 of RAG, a counterfactual is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment.

(133) The Slovak authorities provided further company documents during the formal investigation procedure showing that a comparison has been made between the costs and the benefits of locating in Nitra and those of locating in H[…], Mexico. Paragraph 71 of the RAG requires the Commission to verify whether that comparison has a realistic basis.

(134) In paragraph 181 of the Opening decision, the Commission raised three main reasons to express doubts on the credibility of the Mexico alternative.

(135) Firstly, the Commission could not exclude that the submitted information related to two separate projects. The Commission considers the argumentation of the Slovak authorities as outlined in recitals 61 to 66 of this Decision as sufficient to conclude that Project Oak and Project Darwin were meant as feasibility studies for one single project, as also explicitly mentioned in the presentation to the Tata Motors Board of 7 August 2015, and that the Mexican alternative was not abandoned until the final decision was taken by the JLR Board on 18 November 2015 to sign an Investment Agreement with Slovakia.

(136) Even before Project Darwin was formally launched, there were indications that Eastern Europe and NAFTA would be benchmarked against each other. One of the action points in the minutes of the Strategy Council of 10 November 2014 for example was to '[u]ndertake desktop global manufacturing competitiveness study including Eastern European to NAFTA benchmarking'.

(137) Both Project Oak and Project Darwin studied the feasibility of a 300 000 vehicle manufacturing plant with a production start date planned for June 2018 and a plot of land of 400 to 600 hectares. The figures on required additional capacity confirm the statements of Slovakia and JLR in their reply to the Opening decision that there was no need to build two separate plants with a capacity of 300 000 vehicles each. This is also illustrated for example in the document 'Global Manufacturing Footprint Expansion' of 15 December 2014.

(138) At the meeting of the Executive Committee Members of 21 January 2015, there was a reference to a second plant. The Slovak authorities explained that the Executive Committee Members briefly considered that after the first site, with a capacity of 300 000 vehicles, was built the building of a future site five to 10 years after completion of works on the first investment, would be considered if there was demand. For the second plant, the United States and Mexico would be considered which could explain why JLR, in December 2015, confirmed to the governor of the Mexican state of Puebla that it was looking forward to further developing its relationship as it continues to realise its global expansion plans and that Puebla and Mexico remain very much at the front of JLR's mind.

(139) Evidence submitted by Slovakia suggests that both the feasibility studies Project Oak and Project Darwin were conducted with one single plant in mind. The Strategy Council of 27 April approved Puebla as the non-Union alternative within the agenda topic of Project Darwin, and decided to discontinue the evaluation of Turkey and other countries not selected. The letter to the governor of the State of Puebla of 25 June 2015 that followed the JLR Global Business Expansion Team visit of the same month to the Puebla sites, announced that H[…] had 'been selected along with a shortlist of sites that remain in consideration for the investment, including Central and Eastern European locations'. The minutes of the Globalisation Forum meeting of 10 July 2015 record that '[t]he objective of the meeting was to decide on a preferred site from the Darwin and Oak projects[…]'. They further stated that 'Nitra (preferred site from the Darwin process) when compared to Puebla (preferred site from the Oak process) was illustrated as being at a significant cost disadvantage'. The minutes of the JLR Board meeting of 18 November 2015 record that '[t]he NPV for each of Slovakia and Mexico based on the latest product strategy and updated assumptions had been recalculated, removing Phase 2'.

(140) The Commission therefore considers credible that the information the Slovak authorities submitted on Project Oak and Project Darwin all relates to one single project.

(141) Secondly, the Commission justified, in the Opening decision, its doubts as to the credibility of the Mexico counterfactual, by highlighting the different levels of detailed assessment for Mexico and the European locations. To counter that argument, Slovakia submitted additional evidence and explanations which are summarized in recital 59(b) of this Decision. The Slovak authorities have also documented their point of view by submitting further correspondence between the Puebla authorities and JLR, the briefing pack for the sites visits and the minutes of the sites visits. On the basis of that additional information the Commission accepts that the analysis within Project Oak and Project Darwin were performed with a comparable level of scrutiny. For the final comparison of the preferred alternative of Project Oak (H[…]) with the preferred alternative of Project Darwin (Nitra), the same level of detail was available for both options and both sites were included in the financial modelling exercise on an identical basis.

(142) In that context, the Commission notes that at the end of 2014, Ernst & Young was brought in to support JLR in advancing Project Oak. JLR developed, in conjunction with Ernst & Young, a detailed set of golden site criteria which were later used in the site selection process of both Project Oak and Project Darwin. As JLR furthered its assessment of the Eastern European sites, it engaged, on 16 February 2015, PriceWaterhouseCoopers ('PwC') to help, amongst others, to refine the golden site criteria. The resulting model was based upon JLR's experience as well as PwC's experience in filtering and site selection in Eastern Europe with other OEM's. The Slovak authorities indicated this criteria refinement as a reason for a difference in analysis and golden site criteria within Project Oak and Project Darwin. However, at the time of the final comparison between the Project Oak preferred alternative and the Project Darwin preferred alternative, the information on both sites was available at a comparable level of detail.

(143) Although the Slovak authorities confirmed that the same level of detail was available for the Oak and the Darwin alternatives at the time of the location recommendation on 10 July 2015, the presentation to the Globalisation Forum contains fewer details on the Oak alternative than on the Darwin alternative, as set out in paragraph 181 of the Opening decision. The Slovak authorities explained that the Globalisation Forum had already seen information on Mexico and Puebla. The selections of Mexico as most promising North American State and of Puebla as most promising Mexican state were already finalised at an earlier stage. For the selection of European sites, the analysis was carried out in a shorter period of time since it only started in February 2015. Therefore, the country and site selection processes were not sequential. At the Globalisation Forum of 10 July 2015, there were still two Darwin countries, Poland and Slovakia, to be presented, but only Nitra in Slovakia was kept.

(144) Thirdly, as the Commission mentions in Paragraph 181 of the Opening decision the fact that the Mexico alternative appeared to have a significant delay contributed to the doubts on the credibility of Mexico as a genuine alternative. The Commission accepts the view of the Slovak authorities, as set out in recital 68 of this Decision, that the longer timeline to start of production was taken into account when Puebla and Slovakia were qualitatively and quantitatively compared to each other at the Globalisation Forum of 10 July. The longer timeline was separately quantified with an NPV impact of between GBP [80-130] million or EUR [96-156] million and a six-month delay and GBP [110-180] million or EUR [132-216] million and a nine-month delay. That risk and the related financial impact was also explicitly considered in the updated business plan figures in October/November 2015.

(145) The Commission therefore concludes that when the final confirmation of the location decision was made, H[…] was a genuine and credible alternative to Nitra and can therefore be considered as a credible counterfactual scenario within the meaning of paragraph 68 of the RAG.

Strategic considerations

(146) Nitra, when compared to H[…] at the time of the final decision in November 2015, was at a significant NPV disadvantage. The NPV difference was calculated by JLR at GBP 344 million or EUR 413 million. The specific risk resulting from an expected six to nine months delay in implementing the investment in Puebla was not included in the NPV analysis; it was estimated to range between GBP [80-130] million or EUR [96-156] million and GBP [110-180] million or EUR [132-216] million, expressed in current value. The remaining NPV difference

amounting to between GBP [164-234] million or EUR [197-281] million and GBP [214-264] million or EUR [257-317] million is bridged only partially, between 33 % and 43 %, by the notified State aid. The notified State aid of GBP 108 million or EUR 130 million was discounted by JLR using a cost of capital discount rate of […] %, which was the rate JLR used in its business planning. With a Project lifetime of 20 years, the State aid was therefore valued at GBP 76 million or EUR 91 million by JLR. However, as results from the presentation to the Board of 18 November 2015, numerous other qualitative factors played a role in the decision making process. The presence and importance of those factors, which had already been discussed and analysed at the time of the Puebla site visit of June 2015 and the Globalisation Forum meeting of 10 July 2015, were reconfirmed.

(147) The fact that despite the aid, Nitra was still at a significant NPV disadvantage when compared to H[…], raised several questions that are relevant for the assessment of the incentive effect and proportionality of the aid: (a) could the strategic factors alone not tilt the balance from Mexico to Slovakia?; (b) why was the aid sufficient to tilt the location decision from Mexico to Slovakia?; and (c) was the full aid amount necessary to tilt the balance from Mexico to Slovakia? Questions (a) and (b) are part of the incentive effect assessment while question (c) is assessed under the proportionality analysis of this Decision.

(148) The Commission first assesses whether the strategic factors alone could tilt the balance from Mexico to Slovakia. The key evaluation considerations, as mentioned in the minutes of the Globalisation Forum of 10 July 2015 included proximity to an automotive cluster, site fundamentals, labour availability, timing, operating costs, upfront cash requirement and deliverability. The Executive Committee Members present during the Globalisation Forum meeting attached particular importance to timing impacts, distance from JLR headquarters and the relatively higher risk of reputational damage associated with Mexico. Other factors included natural disaster risk, political stability, government effectiveness and corruption risks and investment in the Union as a Brexit hedge. The impact of the implementation delay in Mexico was separately quantified. With the exception of some currency hedging effects, the qualitative factors tended to favour investment in Slovakia over Mexico.

(149) The Slovak authorities provided evidence to prove and argued in favour that the Slovak State aid was necessary to tilt the location choice from Mexico to Slovakia and that the qualitative advantages alone were not sufficient to choose Nitra over H[…].

(150) The site visit to Puebla of 16 June 2015 provided further insight in a number of strategic factors that would play an important role in the location recommendation to be made by the Globalisation Forum on 10 July 2015. The briefing pack for that site visit demonstrates that the timely delivery represented a risk for both Central and Eastern Europe and Mexico. There were additional strategic factors and risks associated with Mexico which needed to be explored further as part of the site visit. The minutes of the visit identify a list of remaining concerns, relating to OEM saturation, namely whether there is room for a third OEM and if so, how would JLR fit into a country that has been dominated by Volkswagen for decades, port proximity, safety, security, corruption, cultural differences, distance from operational base and natural disaster risk. However, the minutes also show that the site visit gave assurance on some of the factors that were initially perceived as serious concerns. Assurance had been given that the selected site in Puebla was in a low risk area for natural disasters. The Puebla team also made positive impressions on the JLR representatives.

(151) The Slovak authorities also pointed in particular to the minutes of the Globalisation Forum meeting held on 10 July 2015. The NPV difference between Slovakia and Mexico was accepted by the Globalisation Forum, in a 'very finely balanced' assessment, to be covered by the qualitative concerns, however only after consideration of State aid. The minutes explicitly warn that 'the decision was very finely balanced with particular concern that the NPV of the Slovakian location was substantially lower than the Mexican location and moreover the NPV of the Slovakian site depended on a grant offer that was at the maximum level permitted under EU rules'. At the same time '[i]t was noted that the judgment of the project was that the Government of Slovakia has the capacity and was prepared to defend its decision before the European Commission. It was also noted that Slovakia has coherent arguments as to why approval should be forthcoming'. In the light of the identified risks related to the Mexican location, and only after consideration of the Slovak aid, Nitra was accepted as recommended location in July 2015. The Commission notes that the need for State aid was already identified earlier in the feasibility analysis process. It was for example mentioned in the JLR board presentation of 21 May 2015 that '[m] anagement will explore the full opportunities to secure government incentives in Central and Eastern Europe to offset the financial advantage in Mexico'.

(152) The Tata Motors Limited Board minutes of 18 September 2015 reported that '[f]actoring elements of qualitative and risk, the total revised State aid of GBP [150-200] million ([36]) in cash was sufficient to continue to progress Nitra over Mexico. Based on the financial State Aid, the Investment Agreement with Slovakia was being negotiated with signing in end-September 2015 and floating of new legal entity'.

(153) The JLR board presentation of 18 November 2015 explicitly refers to the presence of the qualitative factors discussed at the Globalisation Forum on 10 July 2015 and as ratified by the JLR and Tata Motors Board in early August 2015. The remaining NPV delta, after consideration of the quantified impact of the delay for the Mexican alternative and after consideration of State aid, '[…] is balanced out by other more qualitative factors as agreed by the Board […]'.

(154) The Commission therefore concludes that as regards point (a) in recital 147 the strategic considerations were only sufficient to bridge the remaining cash flow delta between Nitra and H[…], after the NPV of the Slovak State aid and the NPV impact of the delayed implementation in Mexico had been factored in. The Commission therefore excludes that strategic considerations alone could bridge the full NPV gap between Nitra and H[…].

(155) As regards point (b) in recital 147, which was also referred to in paragraph 172 of the Opening decision the Commission considered the NPV figures as approved in November 2015 by the JLR Board. The State aid, worth GBP 76 million (EUR 91 million) referred to in recital 146 could bridge between 33 % and 43 % of the NPV gap, taking into account the quantification of the expected delay in Mexico. It is clear from the decision documents provided that the full and maximum aid amount was considered throughout the entire decision making process. The decision makers were confronted with a remaining cash flow delta, after consideration of the maximum aid amount, and evaluated whether that cash flow delta could be accepted in view of other non-quantifiable considerations. After a lengthy discussion at its meeting of 10 July 2015, the Globalisation Forum finally agreed to accept the remaining gap. However it was recorded in the minutes of the meeting that, even taking into account the maximum amount of State aid available in Slovakia, a decision favouring Nitra over H[…] was very finely balanced. The Commission therefore concludes that other qualitative and risk factors played a role in the decision making process, explaining why the remaining cash flow delta could be accepted.

Conclusion on incentive effect

(156) The Commission therefore concludes that the aid clearly provided an incentive to locate the planned investment in Nitra rather than in H[…] because it compensates, in combination with strategic considerations, for the net cost disadvantages linked to building the plant in Nitra. There is therefore, the incentive effect required within the meaning of section 3.5 of the RAG.

6.4.4.4. Proportionality of the aid amount

(157) The Commission has to assess the proportionality of the aid package. According to section 3.6 of the RAG, the aid amount must pass a proportionality test which is twofold. Firstly it must be limited to the minimum necessary to induce the additional investment or activity in the area concerned. Secondly, since the Commission applies maximum aid intensities for investment aid, those maximum aid intensities are used as a cap to the 'net extra cost approach'.

(158) Pursuant to paragraph 78 of the RAG, notified individual aid will be, as a general rule, considered to be limited to the minimum necessary, if the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual in the absence of aid. Pursuant to paragraph 80 of the RAG, in scenario 2 situations, that is to say location incentives, the aid must not exceed the difference between the NPV of the investment in the target area and the NPV of the investment in the alternative location, while taking into account all relevant costs and benefits.

([36]) Nominal value — EUR [180-240] million.

(159) The relevant NPV figure to be considered for the proportionality assessment of the notified aid of EUR 129 812 750 in nominal value are those relating to the reduced scope of the project, that is to say 150 000 vehicles. The NPV figures were approved in October/November 2015 by the JLR Board. The NPV delta before consideration of the delayed implementation in Mexico was GBP 344 million or EUR 413 million. Any aid amount in excess of EUR 413 million would be disproportionate. In the Opening decision, the Commission referred in particular to the possible infrastructure aid and ALF fee exemption which, when added to the notified aid amount, may have resulted in an overall aid amount higher than that maximum threshold.

(160) As referred to in recital 113 the Commission does not consider the sale of the NSP land, the provision of related infrastructure works or the exemption from the ALF fee as aid measures in favour of JLR. The proportionality assessment is therefore limited to the notified aid amount.

(161) Slovakia submitted the required documentation and demonstrated on the basis of that documentation that the first part of the proportionality test is met because the notified aid does not exceed the NPV difference between Nitra and H[…] of GBP 344 million or EUR 413 million. The nominal aid amount of GBP 108 million or EUR 130 million represented GBP 76 million or EUR 91 million in current value using the JLR discounting rate of […] %.

(162) The Commission notes that even if the aid is granted, Nitra still registers an NPV disadvantage of GBP 268 million or EUR 322 million. The incentive effect analysis demonstrated that the remaining NPV disadvantage was acceptable for JLR because of the expected implementation delay in Mexico and because of other risk and qualitative factors. Those factors had been discussed at length during the Globalisation Forum Meeting of 10 July 2015 and the conclusions of the risk analysis were confirmed in November 2015 during the presentation to the JLR board which specifically mentioned political/business environment, economic factors, distance from JLR HQ, natural disaster risk and the probability of the emergence of a EU/US Free Trade Agreement. On the basis of that risk analysis the decision was taken to confirm Nitra as preferred location.

(163) As the cap resulting from the net extra cost approach is not exceeded, the Commission considers that the aid conforms with the first part of the proportionality test.

(164) As regards the second part of the proportionality test, the Commission applies, in addition to the net extra cost approach, maximum aid intensities, scaled down in application of paragraph 20(c) of RAG for large investment projects.

(165) The Commission noted in the Opening decision that the notified aid amount of EUR 129 812 750 in nominal value and EUR 125 046 543 in current value, based upon an eligible investment of EUR 1 369 295 298 in current value, results in an aid intensity of 9,13 %, which is prima facie below the maximum scaled down allowable aid intensity of 9,24 % for investment in the region of Nitra, with applicable regional aid ceiling of 25 %. The Commission further established that the eligible cost complies with the conditions of section 3.6.1.1 of the RAG, which is relevant for the assessment of the eligible cost base.

(166) Sections 3.6.1.1 and 3.6.1.2 of the RAG explain which investment costs can be taken into account as eligible costs. In this case, section 3.6.1.1 applies as the eligible costs for the proposed investment aid are calculated on the basis of investment costs. The Commission notes that the eligible costs are established in line with the provisions of those sections since the acquired assets will be new, the investment concerns an initial investment in the form of a new establishment, no leasing costs are taken into account and the intangible assets amount to about […] % of the total eligible costs, which is below the maximum allowed proportion of 50 %. Slovakia confirmed that all other conditions that apply to intangible assets will be complied with.

(167) The Commission concluded in the Opening decision that the notified aid amount would be reduced in case the 'overspend' amounting to GBP [60-85] million or EUR [72-102] million would turn out to be ineligible.

(168) In recital 119 of this Decision the Commission considered that the eligible investment amounts to EUR 1 460 620 591. The notified aid amount remains therefore below the maximum scaled down allowable aid intensity of 9,24 %. Therefore, the double cap condition, laid down in paragraph 83 of the RAG, resulting from the combination of the net extra cost approach, that is to say aid limited to the minimum necessary with the allowable ceilings is respected. The Commission therefore considers proportionate the notified aid amount.

6.4.4.5. Conclusion as to the respect of the minimum requirements

(169) In accordance with the assessment referred to in recitals 120 to 168 of this Decision it can be concluded that all minimum requirements laid down in sections 3.2 to 3.6 of the RAG are met.

6.4.5. *Avoidance of undue negative effects on competition and trade*

(170) The Commission mentioned in section 3.3.4.2 of the Opening decision that the notified aid does not have an undue negative effect on competition through the increase or maintenance of market power or an excessive capacity creation in a declining market. The Commission confirms its conclusion for the purposes of this Decision.

(171) However, the location effects of regional aid can still distort trade. Section 3.7.2 of the RAG lists a number of situations where the negative effects on trade manifestly outweigh any positive effects, and where regional aid is prohibited.

6.4.5.1. Manifest negative effect on trade: the adjusted aid intensity ceiling is exceeded

(172) A manifest negative effect would exist according to paragraph 119 of the RAG where the proposed aid amount exceeds, compared to the eligible standardised investment expenditure ([37]), the maximum adjusted aid intensity ceiling that applies to a project of a given size, taking into account the required 'progressive scaling down' ([38]).

(173) Since this Decision establishes in recital 113, that JLR does not benefit from further aid in addition to the notified aid and, in recital 168, that the applicable adjusted regional aid ceiling is not exceeded, there is no manifest negative effect on trade within the meaning of paragraph 119 of the RAG.

6.4.5.2. Manifest negative effect: Counter-cohesion effect

(174) Paragraph 121 of the RAG specifies that where, in a scenario 2 case, without the aid the investment would have been located in a region with a regional aid intensity which is higher or the same as the target region, that would constitute a negative effect unlikely to be compensated by any positive effect of the aid because it runs counter the cohesion rationale of regional aid.

(175) The Commission considers that the provision applies to a scenario 2 situation in which both alternative locations are in the European Economic Area ('EEA'). The Polish site in Jawor which has been factored in the location decision process until 10 July 2015, is located in a region with the same aid intensity ceiling as Nitra ([39]).

(176) As outlined in the Opening decision, internal documents of JLR indicated that the investment, in comparison to Slovakia and in the absence of the incentives offered by Slovakia, could have been more cost-effective in Jawor.

([37]) The standardised eligible expenditure for investment projects by large firms is described in detail in section 3.6.1.1 and 3.6.1.2 of the RAG.
([38]) See paragraph 86 and 20(c) of the RAG.
([39]) SA.37485 — Regional aid map for Poland (OJ C 210, 4.7.2014, p. 1).

(177) At the Globalisation Forum of 10 July 2015 a two-step analysis was presented, with first a location choice between Jawor and Nitra and in a second step a location choice between Nitra and Mexico. Jawor would have been more cost-effective, but JLR identified a number of disadvantages for that site in terms of site fundamentals, timing upfront cash and deliverability. The Polish site was given a red flag on site fundamentals because it is situated on agricultural land that required rezoning and, as explained by JLR, because of a road dissecting the Jawor site, and on deliverability expressly questioning the […] deliverability capabilities. The meeting minutes recorded that the Executive Committee Members concurred with the recommendation that the Polish site be put on hold for the reasons brought forward. Because of those red flags, the Polish site was not considered by the JLR Board as a feasible alternative.

(178) The Commission has not found evidence that would put into question the unsuitability of Jawor for the reasons identified by JLR, and notes that no third party commented on the issues concerned. Moreover, as explained in section 6.4.4.3 of this Decision, the site in Mexico has been established as the alternative location of the investment in case the State aid would not have been granted. The Commission therefore concludes that the aid has no counter-cohesion effect to the detriment of Jawor in the meaning of paragraph 121 of the RAG.

6.4.5.3. Manifest negative effect: closure of activities or relocation

(179) Pursuant to paragraph 122 of the RAG, where the beneficiary has concrete plans to close down or actually closes down the same or a similar activity in another area in the EEA and relocates that activity to the target area, where there is a causal link between the aid and the relocation, that will constitute a negative effect that is unlikely to be compensated by any positive elements.

(180) Based upon a confirmation from the Slovak authorities that JLR had not terminated the same or similar activity in the EEA in the two years preceding the application for aid and did not have any concrete plans to do so within two years after completion of investment, the Commission had concluded in the Opening decision that the State aid does not lead to a closure of activities or relocation of activities.

(181) However, several press articles dating from April 2018 reported a job-cutting exercise of about 1 000 jobs in the same or similar activity in the United Kingdom.

(182) The Slovak authorities explained that the job-cutting exercise is not related to the Nitra investment decision. They reconfirmed, supported by authentic evidence, that JLR had no concrete plans for job-cutting in its United Kingdom plant or in other plants at the time of aid application in Slovakia. The Slovak authorities provided also a copy of a 'Security agreement' with the trade unions representing JLR's United Kingdom workforce signed by JLR on 30 April 2016. The Security agreement described the cycle plan, that is to say the vehicles that were to be produced at the United Kingdom plant. The Slovak authorities explained that in 2016, JLR and the United Kingdom trade unions agreed in writing that the investment in Slovakia, taking over the […] vehicle production of the Solihull plant, would not require relocation of any United Kingdom jobs nor the closure of any United Kingdom capacity. The Security agreement also establishes the circumstances in which cuts to United Kingdom jobs would be required and the steps that would be taken in response but those circumstances were described as 'major economic changes, such as another global downturn, that reduces demand or otherwise affect the previously agreed cycle plan'.

(183) The reallocation of the […] vehicle from Solihull to Nitra was known at the time of the aid application but JLR planned to expand production output overall and allow Solihull to meet increasing demand for other vehicles, in particular […] and […], with a resulting output increase. The plans indicated that the production capacity of the […] in Castle Bromwich would remain the same.

(184) As the Slovak authorities explained, with the support of publicly available information, the job cuts announced in 2018 were the result of a decline in the demand for diesel vehicles, partly due to the United Kingdom diesel tax policy, and to uncertainties surrounding Brexit. JLR decided to […], with direct impact on the capacity of Solihull. Those factors are unrelated to JLR's investment in Slovakia and occurred years after JLR's investment decision to build a plant in Nitra.

(185) Therefore the Commission reconfirms its conclusion that there is no causal link between the Slovak aid measure and the closure of activities in the United Kingdom.

6.4.5.4. Conclusion as to the existence of manifest negative effects on competition and trade

(186) Through the assessment referred to in paragraphs 170 to 185 of this Decision it is possible to conclude that the aid has no manifest negative effects on competition and trade within the meaning of section 3.7.2 of the RAG.

6.4.6. *Balancing of positive and negative effects of the aid*

(187) Paragraph 112 of the RAG lays down that for the aid to be compatible, the negative effects of the aid in terms of distortion of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest. There are certain situations where the negative effects manifestly outweigh any positive effects, meaning that the aid cannot be found compatible with the internal market.

(188) The Commission's assessment of the minimum requirements showed that the aid is appropriate, that the counterfactual scenario presented is credible and realistic, that the aid has incentive effect and is limited to the amount necessary to change the location decision of JLR. By triggering the location of the investment in the assisted region, the aid contributes to the regional development of the Nitra area. The assessment also showed that the aid has no manifest negative effect in the sense that it does neither lead to the creation or maintenance of overcapacity in a market in absolute decline, nor does it lead to excessive effects on trade, it respects the applicable regional aid ceiling, has no anti-cohesion effect, and is not causal for the closure of activities elsewhere and their relocation to Nitra. In addition, the aid does not entail a non-severable violation of Union law ([40]).

(189) Undue negative effects on competition that would have to be taken into account in the remaining balancing are identified in paragraphs 114, 115 and 132 of the RAG and concern the creation or reinforcement of a dominant market position or the creation or reinforcement of overcapacities in an underperforming market, even where the market is not in absolute decline.

(190) The Commission considers, in line with its analysis in the Opening decision which it confirms by this Decision, that the aid neither does it lead to, or reinforces, a dominant market position of the aid beneficiary on the relevant product and geographic market, nor does it lead to the creation of overcapacity in a market in decline. Therefore the Commission concludes that the aid has limited negative effects on competition.

(191) The effect of the aid on trade is limited since the adjusted regional aid ceiling is respected, and the measure has no counter cohesion and relocation effect.

(192) Since the aid meets all minimum requirements, has no manifest negative effect, and the analysis referred to in recitals 190 and 191 of this Decision shows that it has limited negative effects on competition and trade, the Commission concludes that the substantial positive effects of the aid on the regional development of the Nitra region, and in particular the employment and income generation effects of the investment referred to in the Opening decision, clearly outweigh the limited negative effects.

6.5. **Transparency**

(193) In view of paragraph II.2 of the Commission's Transparency Communication ([41]), Member States must ensure the publication on a comprehensive State aid website, at national or regional level, of a full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it, the identity of the granting authority or authorities, the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking, the region in which the beneficiary is located in

([40]) Paragraph 28 of the RAG.

([41]) Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines (OJ C 198, 27.6.2014, p. 30).

terms of NUTS levels and the principal economic sector of the activities of the beneficiary, at NACE group level. Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions. Member States are required to publish the information referred to in this recital as from 1 July 2016.

(194) In the Opening decision, the Commission noted that Slovakia confirmed that it will comply with all requirements concerning transparency set out in paragraph II.2 of the Transparency Communication.

7. **CONCLUSION**

(195) The Commission concludes that the notified regional investment aid in favour of Jaguar Land Rover Slovakia s.r.o. fulfils all the conditions laid down in the RAG 2014-2020 and can therefore be considered compatible with the internal market in accordance with Article 107(3)(a) TFEU.

(196) In view that the Slovak authorities agreed exceptionally to waive the rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation No 1 ([42]) and to have the planned decision adopted and notified pursuant to Article 297 TFEU in the English language, this Decision should be adopted in the English language,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Slovakia is planning to implement in favour of Jaguar Land Rover Slovakia s.r.o. amounting to a maximum of EUR 125 046 543 in current value and a maximum aid intensity of 9,13 % in gross grant equivalent is compatible with the internal market within the meaning of Article 107(3)(a) of the Treaty on the Functioning of the European Union.

Implementation of the aid is accordingly authorised.

Article 2

This decision is addressed to the Slovak Republic.

Done at Brussels, 4 October 2018.

For the Commission
Margrethe VESTAGER
Member of the Commission

([42]) Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

COMMISSION IMPLEMENTING DECISION (EU) 2019/1128

of 1 July 2019

on access rights to safety recommendations and responses stored in the European Central Repository and repealing Decision 2012/780/EU

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 ([1]), and in particular Article 8(4) thereof,

Whereas:

(1) In accordance with Article 18(5) of Regulation (EU) No 996/2010 of the European Parliament and of the Council ([2]) all safety recommendations and responses thereto have to be recorded in the central repository.

(2) The central repository referred to in recital 1 is established by Regulation (EU) No 376/2014 as the European Central Repository.

(3) In accordance with Article 10 of Regulation (EU) No 376/2014 the access to the occurrence reports stored in the European Central Repository is restricted due to their confidential nature. On the other hand, there is a legitimate interest in giving public access to all safety recommendations and their responses because of the overarching purpose of Regulation (EU) No 996/2010 and of Regulation (EU) No 376/2014 to reduce the number of accidents and to promote a dissemination of findings of safety related incidents. The existence of such legitimate interest is further confirmed by the fact that safety investigation reports, which often include safety recommendations, are to be made public in accordance with Regulation (EU) No 996/2010.

(4) Pursuant to Article 8(4) of Regulation (EU) No 376/2014 the Commission is to adopt arrangements for the management of the European Central Repository. Since for security reasons there should not be any direct access to the European Central Repository, all safety recommendations and their responses contained in the European Central Repository should be made available to the general public through a separate public website.

(5) It should be ensured at all times and at all levels that, as regards data storage, process and exchange, the obligations on personal data protection laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council ([3]) and Regulation (EU) 2018/1725 of the European Parliament and of the Council ([4]) are respected.

(6) Commission Decision 2012/780/EU ([5]) should be repealed and replaced by this Decision, which compared to Decision 2012/780/EU, should establish public access not only to safety recommendations but also to their responses.

([1]) OJ L 122, 24.4.2014, p. 18.

([2]) Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ L 295, 12.11.2010, p. 35).

([3]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

([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).

([5]) Commission Decision 2012/780/EU of 5 December 2012 on access rights to the European Central Repository of Safety Recommendations and their responses established by Article 18(5) of Regulation (EU) No 996/2010 of the European Parliament and of the Council on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ L 342, 14.12.2012, p. 46).

(7) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 127 of Regulation (EU) 2018/1139 of the European Parliament and of the Council [6],

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision lays down measures concerning the management of the European Central Repository set up in accordance with Article 8(1) of Regulation (EU) No 376/2014 as regards the access to safety recommendations within the meaning of Article 2(15) of Regulation (EU) No 996/2010 and to responses thereto recorded under Article 18(3) of that Regulation.

Article 2

Status of safety recommendations and their responses

All safety recommendations and their responses contained in the European Central Repository shall be made available to the general public through a public website which shall be established and managed by the Commission.

Article 3

Protection of personal data

The processing of personal data within the framework of this Decision shall be carried out in compliance with Regulations (EU) 2016/679 and (EU) 2018/1725.

Article 4

Confidentiality

Responses to safety recommendations published in accordance with this Decision shall not contain any information of a confidential nature. Member States shall establish appropriate procedures to that effect.

Article 5

Repeal

Decision 2012/780/EU is repealed.

Article 6

Entry into force

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

Done at Brussels, 1 July 2019.

For the Commission
The President
Jean-Claude JUNCKER

[6] Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency (OJ L 212, 22.8.2018, p. 1).

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