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)

COMMISSION DELEGATED REGULATION (EU) 2019/1122

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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(2) Commission Regulation (EU) No 389/2013[(3)] repealed Regulation (EU) No 920/2010 to lay down general, operational and maintenance requirements concerning the Union Registry for the trading period starting on 1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.

(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, 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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/1122. (See end of Document for details)*

(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.

(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.

(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: