Commission Delegated Regulation (EU) 2019/401 of 19 December 2018 amending Regulation (EU) No 389/2013 establishing a Union Registry (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/401

of 19 December 2018

amending Regulation (EU) No 389/2013 establishing a 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 scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC[(1)], and in particular Articles 19(3) thereof,

Whereas:

(1) The registries system ensures the accurate accounting of transactions under the EU emissions trading system (EU ETS) set up by Directive 2003/87/EC, the Kyoto Protocol and Decision No 406/2009/EC.

(2) 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'). In the light of the negotiations pursuant to Article 50 TEU, and pursuant to Article 12(3)(a) of Directive 2003/87/EC, the Commission should regularly assess whether the use of allowances by a Member State in respect of which there are obligations lapsing for aircraft operators and other operators is permitted, in particular in situations where Union law does not yet cease to apply in that Member State or where it is sufficiently ensured that the surrender of allowances takes place in a legally enforceable manner before the Treaties cease to apply.

(3) The draft agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement'), as agreed at negotiators' level on 14 November 2018, establishes a transition period and ensures that UK operators comply with their obligations laid down in the Directive 2003/87/EC as regards their emissions in 2019 and 2020. In case of entry into force of the Withdrawal Agreement, it is no longer necessary to restrict the use of allowances that are issued by such a Member State in those years.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/401. (See end of Document for details)*

(4) No marking of allowances should therefore take place from the day following the one on which the instruments of ratification of both parties to the Withdrawal Agreement are deposited with the Secretary-General of the Council.

(5) Appropriate technical measures should be put in place to ensure the effectiveness of this Regulation at the time of its application.

HAS ADOPTED THIS REGULATION:

[X1 Article 1

In Article 41(4) of Regulation (EU) No 389/2013, the following paragraph is added:

From the day following the one on which both ratification instruments concerning the Withdrawal Agreement have been deposited, allowances created for 2019 and 2020 shall not be identified with a country code if 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 such a Member State from the European Union.**]**

Editorial Information

X1 Substituted by Corrigendum to Commission Delegated Regulation (EU) 2019/401 of 19 December 2018 amending Regulation (EU) No 389/2013 establishing a Union Registry (Official Journal of the European Union L 72 of 14 March 2019).

Article 2

This Regulation shall enter into force on the 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.