Regulation (EU) No 662/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU) No 525/2013 as regards the technical implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Text with EEA relevance)

REGULATION (EU) No 662/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

amending Regulation (EU) No 525/2013 as regards the technical implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) On 8 December 2012, at its eighth session, the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) 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').

(2) Article 4 of the Kyoto Protocol provides for the possibility for Parties to fulfil their commitments under Article 3 of the Kyoto Protocol jointly. At the time of adoption of the Doha Amendment, the Union and its Member States, together with Croatia and Iceland, stated that the quantified emission limitation and reduction commitments for the Union, its Member States, Croatia and Iceland for the second commitment period under the Kyoto Protocol are based on the understanding that these will be fulfilled jointly in accordance with Article 4 of the Kyoto Protocol. That statement is reflected in the Report of the Conference and was endorsed by the Council on 17 December 2012.

(3) The Kyoto Protocol requires Parties that have reached an agreement to fulfil their commitments under Article 3 of the Kyoto Protocol jointly to set out in that agreement the respective emission level allocated to each of them. The Kyoto Protocol requires the

Changes to legislation: *Regulation (EU) No 662/2014 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 August 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Parties to a joint fulfilment agreement to notify the UNFCCC Secretariat of the terms of that agreement on the date of deposit of their instruments of acceptance.

(4) The conclusion of the Doha Amendment, the implementation of accompanying decisions of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol and a joint fulfilment agreement will require the establishment of rules to ensure the technical implementation of the second commitment period of the Kyoto Protocol in the Union, including the transition from the first to the second commitment period, to enable the effective operation of a joint fulfilment agreement, and to ensure its alignment with the operation of the Union's Emissions Trading System (the 'EU ETS') established by Directive 2003/87/EC of the European Parliament and of the Council[(3)] and Decision 406/2009/EC of the European Parliament and of the Council[(4)].

(5) During the first commitment period of the Kyoto Protocol, the internationally agreed requirements for the accounting and management of emissions and units and the joint fulfilment by the Union and its Member States were implemented pursuant to Decision No 280/2004/EC of the European Parliament and of the Council[(5)], Commission Regulation (EC) No 2216/2004[(6)] and Commission Regulation (EU) No 920/2010[(7)]. Regulations (EC) No 2216/2004 and (EU) No 920/2010 have been replaced by Commission Regulation (EU) No 389/2013[(8)], which contains provisions on unit management related to the implementation and operation of the EU ETS and Decision No 406/2009/EC. The recently adopted Regulation (EU) No 525/2013 of the European Parliament and of the Council[(9)], which repealed and replaced Decision No 280/2004/EC, does not contain the legal basis that would enable the Commission to adopt the necessary technical implementation rules for the second commitment period of the Kyoto Protocol in accordance with the terms of the Doha Amendment, the decisions of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol and a joint fulfilment agreement.

(6) Where a Member State is seriously disadvantaged by a specific and exceptional situation, including accounting inconsistencies in matching the implementation of Union legislation with the rules agreed under the Kyoto Protocol, without prejudice to the fulfilment of the Member State's obligations under Decision No 406/2009/EC, the Commission should, subject to the availability of units at the end of the second commitment period of the Kyoto Protocol, adopt measures to address that situation, by means of a transfer of certified emission reductions (CERs), emission reduction units (ERUs) or assigned amount units (AAUs) held in the Union registry to the registry of that Member State.

(7) In order to ensure uniform conditions for the implementation of Article 10(7) of Regulation (EU) No 525/2013, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(10)].

(8) Decision 1/CMP.8 of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol ('Decision 1/CMP.8') amends the rules for the establishment of eligibility to participate in the flexible mechanisms during the

***Changes to legislation:** Regulation (EU) No 662/2014 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 August 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

second commitment period of the Kyoto Protocol. It also sets limits on the carry-over of units from the first to the second commitment period, and includes a requirement for each Party to establish an account for the previous period surplus reserve. Moreover, that Decision provides for a 2 % share of the proceeds to be levied on the first international transfers of AAUs and on the issuance of ERUs for joint implementation projects immediately upon the conversion to ERUs of AAUs or of removal units (RMUs) previously held by Parties. Further rules for the implementation of the second commitment period of the Kyoto Protocol are currently being negotiated.

(9) In the delegated acts to be adopted in accordance with this Regulation, the Commission should provide for a clearing process at the end of the second commitment period of the Kyoto Protocol, whereby any net transfers of annual emission allocations in accordance with Decision No 406/2009/EC, and any net transfers of allowances with third countries participating in the EU ETS which are not part of a joint fulfilment agreement with the Union and its Member States, are followed by a transfer of a corresponding number of AAUs.

(10) The relevant international rules governing the accounting for emissions and progress towards achievement of commitments are expected to be adopted at the next climate conference to be held in Lima in December 2014. The Union and its Member States should work with third countries to help ensure this.

(11) Pursuant to Decision 1/CMP.8, which requires Parties to revisit their commitment for the second commitment period at the latest by 2014, cancelling a number of AAUs, CERs and ERUs in order to increase the ambition of their commitment could be considered.

(12) In order to establish coherent rules to ensure the technical implementation of the second commitment period of the Kyoto Protocol in the Union, including the transition from the first to the second commitment period, to enable the effective operation of the joint fulfilment of the commitments of the Union, its Member States and Iceland for the second commitment period, and to ensure its alignment with the operation of the EU ETS and Decision No 406/2009/EC, the power to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission, from the date of conclusion by the Union of the Doha Amendment to the end of the additional period for fulfilling commitments under the second commitment period of the Kyoto Protocol. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council, as well as their consistency with internationally agreed accounting requirements, a joint fulfilment agreement concluded between the Union, its Member States and third countries under Articles 3 and 4 of the Kyoto Protocol, and relevant Union legislation.

(13) The Council conclusions of 9 March 2012 state that the Union’s quantified emission limitation or reduction objective during the second commitment period is determined on the basis of the Union’s total greenhouse gas emissions allowed during the period

Changes to legislation: *Regulation (EU) No 662/2014 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 14 August 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

2013-20 under its climate and energy legislative package, thus reflecting the Union's unilateral commitment to a 20 % reduction by 2020, and in this context confirm that with this approach, the emission reduction obligations of individual Member States should not exceed their obligations agreed in Union legislation.

(14) Compliance with the limits established by the relevant decisions of the UNFCCC or Kyoto Protocol bodies on the carry-over of ERUs and CERs from the first to the second commitment period should be ensured.

(15) Regulation (EU) No 525/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 525/2013 is amended as follows:

(1) the following points are inserted in Article 3:

(13a) "commitment period reserve" or "CPR" means the reserve established pursuant to the Annex to Decision 11/CMP.1 or other relevant decisions of the UNFCCC or Kyoto Protocol bodies;

(13b) "previous period surplus reserve" or "PPSR" means the account established pursuant to Decision 1/CMP.8 of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol ("Decision 1/CMP.8") or other relevant decisions of the UNFCCC or Kyoto Protocol bodies;

(13c) "joint fulfilment agreement" means the terms of an agreement, in accordance with Article 4 of the Kyoto Protocol, between the Union, its Member States and any third country to fulfil their commitments under Article 3 of the Kyoto Protocol, for the second commitment period, jointly;;

(2) Article 10 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

The Union and the Member States shall each, in their respective registries set up pursuant to the first subparagraph, account for their respective assigned amounts in the second commitment period of the Kyoto Protocol and perform the transactions referred to in the first subparagraph, in accordance with Decision 1/CMP.8 or other relevant decisions of the UNFCCC or Kyoto Protocol bodies and with a joint fulfilment agreement. To that effect, the Union and each Member State shall each in their respective registries:

— set up and manage party holding accounts, including a deposit account, and issue an amount of AAUs corresponding to their respective assigned amounts for the second commitment period of the Kyoto Protocol into those party holding accounts,

— account for the issue, holding, transfer, acquisition, cancellation, retirement, replacement or change of expiry date of AAUs, RMUs, ERUs, CERs, tCERs and lCERs, as relevant, held in their respective registries for the second commitment period of the Kyoto Protocol,