Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (Text with EEA relevance)

COMMISSION REGULATION (EU) No 389/2013

of 2 May 2013

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Having regard to 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[(2)], and in particular the first subparagraph, second sentence, Article 6(1) thereof,

Having regard to 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[(3)], and in particular Article 11(3) thereof,

Having consulted the European Data Protection Supervisor,

Whereas:

(1) The registries system ensures the accurate accounting of transactions under the Union emissions trading scheme (ETS) set up by Directive 2003/87/EC, the Kyoto Protocol and Decision No 406/2009/EC. Registries are standardised and secured electronic databases containing common data elements to track the issue, holding, transfer and cancellation of the relevant units, to provide for public access and confidentiality as appropriate and to ensure that there are no transfers which are incompatible with the obligations resulting from Directive 2003/87/EC, the Protocol to the United Nations Framework Convention on Climate Change (the Kyoto Protocol) and Decision No 406/2009/EC.

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EU) No 389/2013. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) Article 19(1) of Directive 2003/87/EC requires that all allowances issued from 1 January 2012 onwards are held in a Union Registry on accounts managed by the Member States. 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[(4)] provided for such a Union Registry.

(3) Directive 2003/87/EC has been substantially amended by 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[(5)], requiring major changes to the registries system. The amendments apply from the trading period starting in 2013. At present, there is no international agreement replacing the Kyoto Protocol in force that would apply to Member States after 2012. Aviation allowances were auctioned from 2012 on the basis of 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[(6)], in the same way as general allowances. Therefore, Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council and amending Commission Regulations (EC) No 2216/2004 and (EU) No 920/2010[(7)] was adopted pursuant to Article 19 of Directive 2003/87/EC and applies to the trading period of the Union emissions trading scheme commencing on 1 January 2013 and to subsequent periods. It also applies to aviation allowances auctioned in 2012.

(4) In order to ensure that Kyoto units and allowances can be held on the same Union Registry accounts, the Union Registry must conform to the functional and technical specifications for data exchange standards for registry systems under the Kyoto Protocol, adopted by Decision 12/CMP.1 of the Conference of the Parties to the UNFCCC serving as the Meeting of the Parties to the Kyoto Protocol (Decision 12/CMP.1).

(5) Article 20 of Directive 2003/87/EC requires that an independent transaction log, the European Union Transaction Log (EUTL) is established to record the issue, transfer and cancellation of allowances. Article 6(2) of Decision No 280/2004/EC requires that information on the issue, holding, transfer, acquisition, cancellation and withdrawal of assigned amount units, removal units, emission reduction units and certified emission reductions and the carryover of assigned amount units, emission reduction units and certified emission reductions is made available to the transaction log.

(6) The Union Registry should contain the accounts in which the processes and operations needed to apply the provisions of Directive 2003/87/EC should be registered. Each account should be created in accordance with standardised procedures to ensure the integrity of the registries system and public access to information held in this system. Allowances should be issued in the Union Registry.

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(7) Transactions with allowances within the Union Registry should be carried out through a communication link involving the EUTL, whereas transactions with Kyoto units should be carried out through a communication link involving both the EUTL and the United Nations Framework Convention on Climate Change (UNFCCC) International Transaction Log (ITL).

(8) As allowances and Kyoto units exist only in dematerialised form and are fungible, the title to an allowance or Kyoto unit should be established by their existence in the account of the Union Registry in which they are held. Moreover, to reduce the risks associated with the reversal of transactions entered in a registry, and the consequent disruption to the system and to the market that such reversal may cause, it is necessary to ensure that allowances and Kyoto units are fully fungible. In particular, transactions cannot be reversed, revoked or unwound, other than as defined by the rules of the registry, after a moment set out 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 or Kyoto unit in good faith should be protected.

(9) The central administrator's main responsibilities are to provide, operate and maintain the Union Registry and the EUTL, to manage central accounts and to perform operations which are carried out centrally. The national administrators' main responsibilities are 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 and closure of accounts.

(10) 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 and Commission Decisions adopted pursuant to it. To this end, the relevant national allocation tables should take into account the applications pursuant to Article 10c(5) of Directive 2003/87/EC of Member States concerned as well as the relevant Commission Decisions pursuant to Article 10c(6) of that Directive.

(11) Where a Member State, taking into account its application pursuant to Article 10c(5) of Directive 2003/87/EC and the relevant Commission Decision pursuant to Article 10c(6) of that Directive, delays the issuance of the allowances to be granted free of charge on the basis of Article 10c of Directive 2003/87/EC (ex-post issuance of allowances), that Member State should include in its national allocation table pursuant to Article 51(1) of this Regulation the allocation to be granted free of charge on the basis of investments already undertaken or financial transfers already made at the time of the notification of the table.

(12) Where a Member State, taking into account its application pursuant to Article 10c(5) of Directive 2003/87/EC and the relevant Commission Decision pursuant to Article 10c(6) of that Directive, issues the allowances to be granted free of charge on the basis of Article 10c of Directive 2003/87/EC irrespective of investments already undertaken (ex-ante issuance of allowances), the Member State should include in the national

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allocation table the allocation to be granted free of charge in accordance with Article 10c of Directive 2003/87/EC for the period 2013 to 2019, when notifying the national allocation table to the Commission pursuant to Article 51(1) of this Regulation.

(13) Based on the reports to be submitted to the Commission pursuant to Article 10c(1) of Directive 2003/87/EC, Member States should make changes to the national allocation tables to reflect the advancement of investments undertaken and the status of financial transfers made in accordance with Article 10c of Directive 2003/87/EC and corresponding Commission decisions respectively.

(14) Article 11 of Directive 2003/87/EC provides that competent authorities are to issue by 28 February of each year allowances that are to be allocated that year. Where an operator has submitted information pursuant to Article 24 of Commission Decision 2011/278/EU of 27 April 2011 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[8] that affects the number of allowances to be allocated to that operator, the allocation of the operator will need to be recalculated and notified pursuant to Article 24(2) of that Decision before a transfer of the allowances to the operator can occur pursuant to Article 53(2) of this Regulation.

(15) 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 information pursuant to Article 24 of Decision 2011/278/EU by the date set out in that Article, provided that the central administrator has made a change to the national allocation table of the Member State pursuant to Article 52(2) of this Regulation to adjust the allocation accordingly.

(16) Article 11b of Directive 2003/87/EC forbids the issuance of certified emissions reductions (CERs) and emission reduction units (ERUs) after 31 December 2012 that result in double counting of greenhouse gas emission reductions. However, Article 5(2) of Commission Decision 2006/780/EC of 13 November 2006 on avoiding double counting of greenhouse gas emission reductions under the Community emissions trading scheme for project activities under the Kyoto Protocol pursuant to Directive 2003/87/EC of the European Parliament and of the Council[9] allows allowances in the set-asides established pursuant to Article 3 of that Decision to be converted into assigned amount units (AAUs) or to be sold as 2008-2012 period allowances. Moreover, Member States should be able to issue until 30 April 2013 ERUs from projects involving activities only included in the scope of Directive 2003/87/EC from 1 January 2013 in respect of emission reductions which took place until 31 December 2012.

(17) The Union, the Member States and a number of third countries have taken economy-wide reduction commitments for emissions during the period 2008-2012. Member States have legally binding economy-wide emission reduction targets from 2013 to 2020, as established in Directive 2003/87/EC and Decision No 406/2009/EC. An amendment of the Kyoto Protocol should put in place internationally legally binding

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quantified emission targets from 2013 to 2020 for parties listed in its Annex B once it has entered into force for those parties. Decision 13/CMP.1 of the Conference of the Parties to the UNFCCC serving as the Meeting of the Parties to the Kyoto Protocol (Decision 13/CMP.1) requires that ERUs only be issued by converting AAUs or removal units (RMUs), which have a serial number comprising the commitment period for which they are issued. ERUs cannot be issued if the commitment period marked in the relevant serial number does not match the period during which the emissions reductions took place. Emission trading scheme (ETS) accounts in the Union Registry should not hold ERUs inconsistent with these rules. To this end, ERUs issued by third countries which do not have legally binding quantified emission targets from 2013 to 2020 as set out within an amendment to the Kyoto Protocol pursuant to its Article 3, paragraph 9, or that have not deposited an instrument of ratification relating to such an amendment to the Kyoto Protocol, should only be held in the Union Registry if they have been certified to relate to emission reductions verified as having taken place before 2013. Such ERUs transferred to the Union Registry after 1st May 2013 are expected to be issued pursuant to the verification procedure under the Joint Implementation Supervisory Committee set out in Decision 9/CMP.1 of the Conference of the Parties to the UNFCCC serving as the Meeting of the Parties to the Kyoto Protocol (Decision 9/CMP.1) (pursuant to the so-called 'track 2 procedure').

(18) Article 11a of Directive 2003/87/EC provides for the use of CERs and ERUs from project activities before the entry into force of an international agreement on climate change, by setting up the possibility for operators to exchange such units against allowances.

(19) Third countries or their sub-federal or regional entities should be able to open accounts in the Union Registry once modalities to link the ETS to another mandatory greenhouse gas emissions trading system with an absolute emission cap have been agreed with a third country.

(20) Article 11 of Decision No 406/2009/EC provides that the accurate accounting of transactions under that Decision be ensured in the registries system.

(21) Annual emission allocation units should be issued in the Effort Sharing Decision (ESD) Compliance Accounts in the Union Registry in the quantities determined pursuant to Article 3(2) and 10 of Decision No 406/2009/EC. Annual emission allocation units (AEAs) may only be held in in the ESD Compliance Accounts in the Union Registry.

(22) The Union Registry should enable the implementation of the annual compliance cycle under Decision No 406/2009/EC by providing the processes for the introduction in the ESD Compliance Accounts of the annual reviewed greenhouse gas emissions, for the determination of the compliance status figure for each Member State's ESD Compliance Account for each year and for the application of corrective action pursuant to Article 7 of Decision No 406/2009/EC if necessary.

(23) The Union Registry should ensure the accurate accounting of transactions provided by Article 3(3), (4), and (5) and Article 5 of Decision No 406/2009/EC.